

Missing the Rules of Engagement

An Overview of Legal Frameworks for Citizen Participation in Local Decision-Making Processes in Bosnia and Herzegovina, Croatia and Montenegro



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Abbreviations and acronyms

BiH – Bosnia and Herzegovina

CCI – Centres for Civic Initiatives

CLRAE – Congress of Local and Regional Authorities of Europe

CoE – Council of Europe

CSO – Civil society organization

ECLSG –European Charter of Local Self-Government

FBiH – Federation of Bosnia and Herzegovina

FOIA – Freedom of access to information act

ICCPR - International Covenant on Civil and Political Rights

LC – Local community (Mjesna zajednica)

LG – Local government

LOTUS – Lokalna, odgovorna, transparentna uprava i samouprava (*Local, Accountable, Transparent Government and Self-Government*)

POTEZ – Projekat odgovorne, transparentne i efikasne zajednice (*Project for Accountable, Transparent and Efficient Communities*)

RS – Republika Srpska

UDHR – Universal Declaration of Human Rights

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1.

Introduction

Citizen participation in local level decision-making processes is not a novelty in the region of former Yugoslavia. The subject had received international attention during the 1970s, when innovative participatory institutions and practices in Yugoslav municipalities were making their way into scholarly texts discussing solutions to the problems of participatory democracy. Yet despite – or maybe because of – the apparent historical legacy of citizen participation in local-level decision-making, current accounts of local-level practices of citizen engagement appear to be wanting. Research conducted in Bosnia and Herzegovina (hereafter: BiH), Croatia and Montenegro, three countries considered in this report, points to weaknesses in the way participatory processes are conducted. Despite variations in practice, the general impression is that citizens are inadequately informed about possibilities for participation and may lack feedback on outcomes of participatory processes; that their ability to influence decision-making is perceived to be questionable; or that local administrations lack capacities and expertise for organizing well-structured participatory events. The motivation of citizens to engage in decision-making appears to be hampered by their perception that chances to do so are limited and that official channels for addressing their problems and needs are absent.¹ Such findings are especially telling considering that citizen participation has become a key word in the jargon of national and local governments, as well as international organizations that have in the past twenty years devoted significant efforts to policy development and capacity building processes in the area of citizen engagement.

To date, little attention has been paid to the factors that potentially influence participatory processes and that may help explain the similarities and differences in practice in these three countries since their democratization. Considering an enabling policy environment to be such a factor,² this report seeks to inquire whether legal and institutional frameworks for citizen participation in BiH, Croatia, and Montenegro enable or discourage citizen participation in decision-making in local affairs. This factor appears especially important given the substantial effort vested in participation policies and programs by domestic and international actors. At the same time, we recognize the importance of other

¹ See, for example: Snežana Mišić Mihajlović, "Citizen Participation in Bosnia and Herzegovina: Between Tradition and Transition," Igor Bajok and Vanja Škorić, "Connected Communities: How Can Local Governments Initiate, Enable, and Support Citizen Participation in Public Decision-making?" and Ranka Šarenac, "Citizen Participation in Public Decision-making: How Subnational Governments Can Support Citizen Engagement and Institutionalize Participatory Practices in Montenegro," all in *Citizen Participation in South Eastern Europe*, ed. Vivien Lowndes (Budapest: Open Society Foundations, 2012); Centri civilnih inicijativa (CCI) BiH, *Izveštaj o stanju učešća građana u odlučivanju u BiH za 2011*. [Report on the state of citizen participation in decision-making in BiH for 2011] (Banja Luka: CCI, 2012); Mary McNeil et al, *Citizen Review of Service Delivery and Local Governance in Bosnia and Herzegovina* (Washington: The World Bank, 2009); Mirna Škrbić, "Does Participation Matter? Assessing Participatory Approaches to Local Development Planning in Municipalities in Bosnia and Herzegovina," (MA diss., Central European University, 2009).

² Rosemary McGee et al, *Legal frameworks for citizen participation: synthesis report*, LogoLink research report (Brighton: Institute of Development Studies, 2003).

contextual factors for effective participation, such as the level of democratization, tradition of citizen engagement or the capacities of different actors to encourage participatory practices,³ but do not examine them at any length in here.

This report is a result of research conducted for the project “Effective and sustainable citizen participation” in order to inform the creation of operational documents for citizen participation in local decision-making processes in BiH, Croatia and Montenegro. The ultimate purpose of the report is to provide a systematic overview of legal arrangements for citizen participation in the three countries, so that operational documents could be drafted in such a way as to correspond with the existing legal and institutional frameworks.

Besides the needs of the project, the comparison of these three countries is also conceptually and methodologically motivating because they recently were a part of the same legal, political and cultural whole in the joint administrative organization of the former Yugoslavia, but have in the past twenty years had different reform paths, as suggested by their different EU accession prospects.⁴ These differences and similarities between countries form an interesting basis for analysis of legal and institutional frameworks for citizen participation, especially having in mind the rather bleak findings on citizen participation in practice.⁵ Furthermore, an almost total absence of comparative studies on legal frameworks and institutional practices with respect to citizen participation at the local level in the three countries is an additional reason for providing an overview such as this one. Although its theoretical and explanatory value might be limited by a primarily descriptive approach and methodological limitations (see below, Chapters 2 and 3), this report attempts to offer a sound systematic basis for further studies on this largely neglected topic in the region of Western Balkans. In that respect, the ambition of this text is to provide a broad overview of key characteristics, trends and processes in respect to the evolving legal frameworks and institutional practices for citizen participation in BiH, Croatia and Montenegro, and to point out key issues and questions, rather than to offer explanations and answers. Special emphasis will be placed on correspondence between legal frameworks in the three countries on one side, and relevant international norms and standards, notably those of the Council of Europe, on the other.

This report begins with a conceptual framework of citizen participation in Chapter 2, followed by the analytical approach and methodology in Chapter 3. Chapter 4 provides an overview of local governance and a synthesis of results on citizen participation in practice in these three countries to date, and Chapter 5 contains an analysis of the enabling and disabling aspects of the institutional and legal frameworks for citizen participation. The findings of this overview are discussed in the concluding Chapter 6, with recommendations for the institutionalization of local-level citizen participation processes and with suggestions for further inquiry.

³ Ibid.

⁴ Croatia is expected to join the EU in 2013, Montenegro has been a candidate for membership since 2011, and Bosnia and Herzegovina is still a potential candidate.

⁵ See Chapter 4 of this report.

2. Citizen participation in decision-making: A conceptual framework

The central concept addressed in this report is direct citizen participation in decision-making processes at the local level of government. Rowe et al. (2004) have loosely defined public participation as “the practice of consulting and involving members of the public in the agenda-setting, decision-making, and policy-forming activities of the organizations or institutions responsible for such functions.”⁶ Here, the focus is not on citizen engagement in elections or political parties, but rather, their engagement in public hearings and assemblies, citizen initiatives, referenda, in sub-municipal local communities (*mjesna zajednica*) and in other forms of direct, deliberative or participatory democracy at local level (while recognizing the differences between the latter concepts and their manifestations in practice). In other words, emphasis is placed on opportunities for participation between elections.

Citizen participation in decision-making processes is considered as a source of empowerment by many authors. According to Arnstein (1969), citizen participation is a “categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future.”⁷ Those usually without power can then influence how information is shared, how goals and policies are determined, how tax resources are distributed, how programs are operated or benefits allocated.⁸ There is also a conviction that citizen participation leads to more realistic public policies that are based on citizen preferences and that in turn encounter less opposition by the public. Some authors propose that citizen participation may also have a potentially transformative effect on the community because it may develop human capacities and may contribute to an active, public-oriented morale.⁹

It is, however, important to note that some critical voices question the effectiveness of involving citizens in decision-making processes: according to a synthesis of such criticism by Roberts (2004), direct citizen participation may be based on false notions of human nature, it may be inefficient as processes may be slow, expensive, complex and citizens may not have the expert knowledge to participate, it may be politically naïve in light of elite and

⁶ Gene Rowe, Roy Marsh and Lynn J. Frewer, “Evaluation of a Deliberative Conference,” *Science, Technology & Human Values* 29, no. 1 (2004), pp. 88-89.

⁷ Sherry R. Arnstein, “A ladder of citizen participation,” *Journal of the American Planning Association* (1969), p. 216.

⁸ Ibid.

⁹ Nancy Roberts, “Public Deliberation in an Age of Direct Citizen Participation,” *American Review of Public Administration* 34, no. 4 (2004), pp. 322-324.

interest-group politics, it may be unrealistic in terms of citizens' availability to participate, it may be disruptive if high levels of mobilization occur or even dangerous in extremist, non-democratic contexts.¹⁰

Nevertheless, direct citizen participation has without a doubt become a normative ideal, with preferences for citizen participation in decision-making reflected in different international and regional legal instruments. The 1948 United Nations Universal Declaration of Human Rights¹¹ (hereafter: UDHR) and the 1966 United Nations International Covenant on Civil and Political Rights (hereafter: ICCPR)¹² are two key international legal instruments that establish the right of citizens to participate in governance and public affairs, directly or indirectly via elected representatives. Council of Europe (hereafter: CoE) *acquis* on citizen participation at the local government level contains a number of documents prepared and adopted by different council bodies, such as the Committee of Ministers, the Parliamentary Assembly or the Council of Local and Regional Authorities of Europe (hereafter: CLRAE). Different treaties, recommendations, declarations or resolutions offer a comprehensive normative basis for the development of democratic institutions in member countries, in particular at the local level;¹³ countries have a margin of appreciation with respect to defining and regulating concrete democratic institutions that best suit their context. According to Pratchett and Lowndes, CoE's "support for greater citizen participation in the affairs of the government ... is premised on an assumption that such engagement will redress current citizen disaffection with institutionalized politics and enhance engagement with the formal democratic process of elections."¹⁴ In other words, representative and participatory democracy need to coexist.

Literature on the subject is increasingly focused on identifying prerequisites for effective and meaningful citizen participation. In addition to identifying and testing procedural criteria for the effectiveness of individual participatory processes or events, such as independence, transparency, representativeness, availability of information and resources, ability of citizens to influence decisions, and others,¹⁵ empirical studies have also sought to identify contextual factors that help explain the outcomes of such processes. One of the

¹⁰ Ibid, pp. 325-327.

¹¹ This document is not legally binding. United Nations, Universal Declaration of Human Rights, December 10, 1948, article 21.

¹² The Covenant came into force in 1976. United Nations, International Covenant on Civil and Political Rights, Resolution 2200A (XXI), December 16, 1966, article 25.

¹³ For example, the European Charter on Local Self-Government or the Framework Convention for the Protection of National Minorities are legally binding treaties for those members that sign and ratify them, whereas other documents, such as the proceedings of the Committee of Ministers or the CLRAE may have an informal influence on members. Committee of Ministers' recommendations on matters for which a common policy has been agreed are deemed especially significant in the CoE *acquis*. See Lawrence Pratchett and Vivien Lowndes, *Developing democracy in Europe - An analytical summary of the Council of Europe's acquis* (Strasbourg: Council of Europe, 2004), pp. 18-19.

¹⁴ Pratchett and Lowndes, *Developing democracy*, pp. 49.

¹⁵ See for example: Gene Rowe, Roy Marsh, and Lynn J. Frewer, "Evaluation of a Deliberative Conference."

factors identified in literature is the nature of the institutions and norms in place.¹⁶ According to a comparative study of constitutions, laws and policies for local-level citizen participation in 18 countries, the manner in which citizen participation is incorporated into the legal framework of the country ultimately influences how it will look in practice.¹⁷

The latter study identifies enabling and constraining characteristics of legal frameworks for citizen participation. On the one hand, laws and policies for citizen participation are enabling if they emerge bottom-up, upon citizen demand and with their input; combine elements of representative and participatory democracy and aim to strengthen institutions of representative democracy by better representation of persons with the least voice, better-quality representation and performance; recognize people's and CSOs' right to participate in governance and auxiliary rights as citizen rights; integrate measures of accountability, ensure recall of representatives and the possibility of holding government actors responsible for weak performance; and allow for a substantial degree of fiscal decentralization and citizen engagement in fiscal processes, both as incentive for participation and as guarantee that local governments will finance participatory processes. Moreover, an enabling framework incorporates laws supported by operational guidelines, policies and capacity building measures to ensure their implementation. On the other hand, a legal framework is likely to constrain participation if imposed top-down, without citizen demand, and extensively influenced by prevalent international discourses to the neglect of local discourses and aspirations; if it strengthens only institutions of representative democracy; if it treats people and CSOs as passive subjects to be involved in non-binding consultations relatively late in the decision-making process; if it has no or unenforceable accountability measures; if it does not allow for citizen participation in fiscal affairs and features centralized power over revenue-raising and allocation; and if it excessively relies on laws, without guidelines, practical support and capacity building for their application.¹⁸

However, apart from institutions and norms, authors of the study find that different contextual factors may critically determine how the existing legal framework works in practice. Hence, a country's modes of governance significantly influence laws and institutions, while the existence or absence of institutions of representative democracy and civil and political rights and freedoms influences not only the development of legislation, but the establishment and (re)positioning of different institutions and actors. The enabling contextual features that the authors emphasize are the importance of a strong civil society; advanced processes of political, administrative and fiscal decentralization; mutual trust between citizens and state; local discourses of participation, governance and decentralization or at least international ones that are well-adapted to the local setting; the existence of progressive political parties with a background in democratization or social

¹⁶ See John Gaventa, "Strengthening Participatory Approaches to Local Governance: Learning the Lessons from Abroad," *National Civic Review* 93, no. 4 (2004); Vivien Lowndes, Lawrence Pratchett, and Gerry Stoker, "Local political participation: the impact of rules-in-use," *Public Administration* 84, no. 3 (2006).

¹⁷ McGee et al, *Legal frameworks for citizen participation*.

¹⁸ McGee et al, *Legal frameworks for citizen participation*, pp. 62-63.

movements committed to internal representativeness, transparency and participatory democracy; a culture of openness and transparency, including free access to information legislature and active disclosure measures; other legislation that is consistent with, not in contradiction to, participation legislation; ongoing commitment to movement from an elite towards a participatory democracy; and opportunities for experimentation and innovation with spaces of interaction between state and non-state actors.¹⁹

The significance of legal and institutional arrangements for the promotion of effective citizen participation in decision-making processes is also recognized by different international and regional instruments. CoE devotes significant attention to the institutionalization of different aspects of citizen participation in member states. In the Recommendation Rec(2001)19 of the Committee of Ministers on the participation of citizens in local public life, state governments are advised to frame a policy (together with local authorities) to promote citizen participation in local public life, with reference to the European Charter of Local Self-Government (ECLSG) and the recommendation's principles. In the context of such a policy, they are to adopt measures "in particular with a view to improving the legal framework for participation and ensuring that national legislation and regulations enable local and regional authorities to employ a wide range of participation instruments." Local authorities are, *inter alia*, invited to take on the effective implementation of policy promoting citizen participation and to improve their "regulations and practical arrangements concerning citizens' participation in local public life."²⁰ State parties to the Additional Protocol to the ECLSG on the right to participate in the affairs of a local authority (2009) are to codify the right of everyone in their jurisdiction to participate in local authority affairs.²¹

Recommendation Rec (2001)19 pays special attention to the importance of decentralization: member countries are advised to use all opportunities of functional decentralization in terms of delegating certain tasks to local authorities, so that citizens are able to impact local affairs.²² Further decentralization is recommended through the establishment of sub-municipal representative bodies with advisory and information functions, or delegated executive functions, and in accordance with the principle of subsidiarity advocated in this recommendation.²³

CoE documents also address the improvement of procedural aspects of citizen participation. For example, the principle of inclusion of groups such as women, youth, ethnic minorities, persons with disabilities, elderly or foreign residents are advocated through

¹⁹ Ibid, pp. 63-64.

²⁰ Committee of Ministers, Recommendation Rec (2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life, December 6, 2001, paragraphs 1-3.

²¹ Council of Europe, Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, no. 207, November 16, 2009, article 1.1.

²² Committee of Ministers, Recommendation Rec(2001)19, Annex I, A.1 and A.2.

²³ Ibid, A.7.i.

documents pertaining to citizen participation more generally²⁴ or the participation of individual groups specifically.²⁵ Citizens' right to be informed on decisions that impact them before they are made is frequently stressed;²⁶ local authorities are to take different measures to ensure transparency of their work.²⁷ Member states are to legally oblige local authorities to inform the public on their policies and allow them to access public documents.²⁸ The use of new information technologies for interaction with citizens is another well-established principle.²⁹ Moreover, participatory processes should take into account systematic feedback mechanisms, monitoring and evaluation.³⁰ In a special recommendation, the Committee of Ministers advocates the usage of CLEAR,³¹ a diagnostic tool for self-evaluation of citizen participation that is to help local governments identify strengths and weaknesses of citizen participation in their vicinity and to define more comprehensive strategies for improvement. Finally, member states are to implement a wide palette of participatory mechanisms,³² as well as raise awareness of different participation possibilities.³³

Considering such efforts to standardize local-level citizen participation as well as to follow the policies for citizen participation countries have been adopting,³⁴ we can conclude that different CoE bodies strongly advocate the institutionalization of citizen participation at national, regional and local levels of government. State and local governments are flexible to

²⁴ See CLRAE, Resolution 91 (2000) on responsible citizenship and participation in public life, May 24, 2001; Committee of Ministers, Recommendation Rec(2001)19; CoE, Additional Protocol to the ECLSG.

²⁵ *Inter alia*, these are: CoE, Convention on the Participation of Foreigners in Public Life at Local Level, no.144, 5 February, 1992; CoE, Framework Convention for the Protection of National Minorities, no.157, February 1, 1995; Committee of Ministers, Recommendation Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, November 16, 2011; Committee of Ministers, Recommendation Rec(2004)13 of the Committee of Ministers to member states on the participation of young people in local and regional life, November 17, 2004; CLRAE, Revised European Charter on the participation of young people in local and regional life, May 21, 2003; CLRAE, Resolution 141 (2002) on the participation of foreign residents in local public life: consultative bodies, June 5, 2002; CLRAE, Resolution 92 (2000) on the participation of foreign residents in local public life, May 24, 2000.

²⁶ For example, see CLRAE, Resolution 91(2000); Committee of Ministers, Recommendation Rec (2001)19.

²⁷ CLRAE, Resolution 91(2000), II.2.

²⁸ CLRAE, Recommendation 113(2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy), June 5, 2002, article 2.b. Also: Council of Ministers, Recommendation Rec (2001)19, Annex I; CoE, Additional Protocol to the ECLSG, article 2.2.ii.b.

²⁹ Committee of Ministers, Recommendation Rec (2001)19, Annex I.

³⁰ *Ibid*, Annex I, C.6.

³¹ Abbreviation for: Can do; Like to; Enabled to; Asked to; Responded to. Committee of Ministers, Recommendation Rec(2009)2 of the Committee of Ministers to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level, March 11, 2009, Annex, frame 2.

³² Committee of Ministers, Recommendation No.R(96)2 of the Committee of Ministers to member states on referendums and popular initiatives at local level, February 15, 1996; Committee of Ministers, Recommendation Rec (2001)19, Annex III, C.3. i-iii.

³³ *Ibid*, preamble; Annex II, C.1.

³⁴ For example, the European Committee on Local and Regional Democracy commissioned a survey on the implementation of Recommendation Rec (2001)19 in 2009. European Committee on Local and Regional Democracy (CDLR), Results of the survey on the implementation of Recommendation Rec(2001)19 on the participation of citizens in local public life, CDLR(2009)22 Addendum I, April 15, 2009.

use methods of citizen participation that best suit the local context. Concrete measures mentioned in the *acquis* can be interpreted as a matter of choice, as long as participation in local affairs represents a citizen right and basic principles – such as inclusion or the right to information – are met.

3.

Analytical and methodological approach

As stated earlier, this report seeks to inquire whether the current legal and institutional frameworks for citizen participation in BiH, Croatia, and Montenegro encourage or discourage citizen engagement in local-level decision-making. The report looks into similarities and differences in how existing legal and institutional frameworks promote principles and mechanisms of citizen participation, drawing on international standards and recommendations mentioned in the previous chapter. The report also scrutinizes operational documents and support structures for the implementation of laws and policies, as well as related legislation on decentralization and transparency of local government. In other words, we are looking at legal and institutional aspects identified by McGee et al (2003), with a focus on laws and institutions that pertain to local-level citizen participation in decision-making, as well as legislation on decentralization and information access. Although space has been devoted to historical contexts of decentralization and citizen participation, mainly in order to understand basic structural similarities and differences between the countries, we do not analyze other contextual variables such as the nature of political parties, level of democratization or the development of civil society, as they are not the focus of this report.³⁵

The comparative overview of normative solutions is complemented with some indication of what local governments are doing in practice, hoping to come to general conclusions on what aspects of the institutionalization of citizen participation need further improvement. However, it is important to point out that the report neither analyzes the implications that laws and policies have on local practice, nor draws conclusions about the impact of individual norms on participatory practices, as this requires empirical research beyond the ambition of this report.

The report primarily relies on desk-based research, including an overview of international literature, standards and comparative practices, as well as laws and policies³⁶ and synthesis of participation research in the three case study countries to date. For an additional insight

³⁵ This is not to say that these contextual variables are not important, but rather that such analysis would go far beyond the scope of this report. Hence, we assume that in all three countries, we have political systems characterized by late democratization and significantly shaped by the EU accession processes, as well as a relatively weak civil society. Consequently, these broader contextual variables have been controlled for in the analysis, thus assuming that they have a similar effect on citizen participation in all three countries.

³⁶ Constitutions, relevant laws, higher-level policies and guidelines, and model documents on citizen participation were scrutinized. Model documents were analyzed because of the vast number of municipalities, with the assumptions that municipalities use them when drafting their own norms. We are aware of all the potential limitations of our approach, especially oversight of potentially interesting and progressive local norms.

into the kind of participatory mechanisms used in practice, the manner in which citizen participation is institutionalized and the potential obstacles to participation,³⁷ a survey³⁸ was sent to all local government units in the three countries and was completed by 304 local government representatives: 111 from BiH (77.08%), 175 from Croatia (31.47%) and 18 from Montenegro (85.71%).³⁹ Although there are important limitations to data generated through the survey,⁴⁰ it offers interesting insights into local-level practices.

³⁷ The survey consisted of nine closed questions.

³⁸ Surveys were sent to municipalities via fax or e-mail. If set deadlines for completion of the survey were not respected, contact persons were reminded to submit surveys. Respondents were also reminded to fill out all questions if they hadn't done so. In exceptional cases, it was not possible to contact a municipality or town at all, even after numerous tries.

³⁹ Among them were 253 municipalities, 50 towns and one district.

⁴⁰ Respondents may give politically desirable or partial answers and may not be aware of all participatory processes in their municipality. The survey contained closed questions that do not allow for deeper insight into different aspects of local participation practices. One should also be cautious when comparing countries as differences between the samples are vast.

4.

Citizen participation in local affairs in BiH, Croatia and Montenegro

4.1. The local governance context

First steps towards decentralization relevant for today's understanding of local governance in BiH, Croatia and Montenegro were taken during former Yugoslavia. Especially after the 1950s, local governments enjoyed an important economic and social role and had significant competences in a number of sectors, along with a certain level of fiscal independence.⁴¹ However, municipalities were in fact "not easily distinguishable from the State, even though they had substantial powers and a large degree of autonomy;" this autonomy was, according to a CLRAE report, purely functional, with municipalities subject to strict political control.⁴² Moreover, "problems of conformity with the political choices of the State were in fact settled through extra-legal channels, as it was the same political design - that of the party - that inspired the authorities at every level and in every sphere of public action." In brief, the municipality served to execute higher-level policies.⁴³ Although local level elections did take place and different political candidates even competed for the same positions, they were from the same party.⁴⁴ In terms of the organization of local governments, local legislatures consisted of three sub-councils,⁴⁵ and elected executive councils headed by a president.

Today, the situation is considerably different: municipalities have own competences and a right to own sources of revenue. The meddling of higher-level governments into local affairs has been significantly reduced in comparison to the former system; representative democracy is affirmed by regular, credible local elections. Local legislatures neither elect executive councils nor are made up of sub-councils any longer; in BiH and Croatia, mayors are directly elected.

The local government system in BiH was to a large extent predetermined by the new political and administrative organization after the signing and ratification of the Dayton Peace Agreement in 1995: besides the state level, the country is made up of two entities –

⁴¹ CLRAE, *Report on Local and Regional Democracy in the Federal Republic of Yugoslavia*, CG (8) 24 Part II E, November 26, 2001.

⁴² Ibid, II.

⁴³ Ibid.

⁴⁴ Sidney Verba, Norman H. Nie and Jae-on Kim, *Participation and Political Equality: A Seven-Nation Comparison* (Cambridge: Cambridge University Press, 1978), p. 49.

⁴⁵ Joint work council, socio-political council and *mjesna zajednica* council made up the municipal legislature.

the Federation BiH (hereafter: FBiH) and Republika Srpska (hereafter: RS) - as well as Brčko District as a separate unit of local self-government under state sovereignty.⁴⁶ There are 10 cantons in FBiH and 80 local self-government units (78 municipalities and two cities). The RS is more centralized, consisting of the entity-level government and 63 local governments (57 municipalities and six cities). As a result of a complex administrative setup, BiH has 13 constitutions at state, entity and cantonal level. According to the BiH Constitution,⁴⁷ entities,⁴⁸ not the state level, are responsible for local government matters.⁴⁹ In FBiH, this responsibility is further shared between entity and cantons.⁵⁰ Local government matters are further regulated by the Law on local self-government in the RS (2004) and the Law on the principles of local self-government in FBiH (2006). Since 1999 in the RS and 2004 in FBiH, mayors are directly elected. After the country's accession to CoE and the ratification of the ECLSG in 2002, BiH significantly harmonized its local government legislation with the Charter.⁵¹

Croatia initiated local government reforms after 1992, with a great increase in the number of local governments and the establishment of twenty counties. In 1996, Croatia became a CoE member and in 1997 ratified the ECLSG. In 2000 and 2001, substantial local governance reforms ensued,⁵² with changes to the Constitution creating preconditions for the broadening of local government competences,⁵³ the adoption of a new Law on local and regional self-government (2001) and changes to relevant sectoral legislation.⁵⁴ Since 2009, citizens elect the mayor directly. In terms of political and administrative organization, Croatia has a central government, twenty county governments, 127 towns⁵⁵ and 429 municipalities.⁵⁶

⁴⁶ "Amandman I na Ustav BiH" ["Amendment I to the Constitution of Bosnia and Herzegovina"], *Official Gazette BiH*, no. 25/09.

⁴⁷ "Constitution of Bosnia and Herzegovina," 1995, preamble. The BiH Constitution is part of the Dayton Peace Agreement and originally in English language.

⁴⁸ "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities." Ibid, III.3.a.

⁴⁹ Ibid, III.1.

⁵⁰ According to CLRAE, the FBiH constitution doesn't explicitly give the FBiH government the power to implement legislation pertaining to local government. "For this reason one either may conclude that legislation in the field of local authorities is an exclusive power of the Cantons or, on the contrary, infer from the rules set out in the Constitution ... that responsibility for adopting implementing legislation lies with the Federation." CLRAE, *Local and regional democracy in Bosnia and Herzegovina*, CG (13) 30 part2, October 23, 2006, C.20.

⁵¹ UNDP BiH, *Bolja lokalna uprava u Bosni i Hercegovini* [Better local governance in Bosnia and Herzegovina], (Sarajevo: UNDP 2005), p. 46.

⁵² See, for example, Teodor Antić, "Centralna uprava i lokalna samouprava u Hrvatskoj: decentralizacija i demokratizacija" [Central government and local self-government in Croatia: Decentralization and democratization], in *Fiskalna decentralizacija u Hrvatskoj*, eds. Katarina Ott, Anto Bajo and Mihaela Pitarević, Institut za javne financije, 2002.

⁵³ Ibid, p. 68.

⁵⁴ Ibid.

⁵⁵ City of Zagreb has city and county status.

⁵⁶ According to the Constitution of the Republic of Croatia, larger towns may be provided with county competences. These additional competences of towns are listed in the Law on local and regional self-government. "Ustav Republike Hrvatske" [Constitution of the Republic of Croatia], consolidated text, *Official Gazette of the Republic of Croatia*, no. 85/10, VI.134; "Zakon o lokalnoj i regionalnoj (područnoj) samoupravi" [Law on local and regional self-government], *Official Gazette of the Republic of Croatia*, no. 33/01, 60/01, 106/03, 129/05, 109/07, 125/08, 36/09, 150/11, 144/12, 19.a.

Towns and municipalities are units of local self-government.⁵⁷ The central level of government has exclusive competences in the area of local self-government.

In Montenegro, a decentralization trend begun in the early 1990s with an incremental transfer of competences from state to local level, reflected in changes to existing local government legislation.⁵⁸ Against the backdrop of independence from a state union with Serbia in 2006, and rapid legislative change in light of the country's ambition to become an EU member, Montenegro has in the past ten years undergone frequent changes of local government legislation⁵⁹ and a number of local government reform programs, many of them implemented in cooperation with CoE.⁶⁰ Montenegro became a CoE member in 2007 and ratified the ECLSG in 2008. The state has 21 units of local self-government that differ significantly in terms of size and population.⁶¹ The right to local self-government is constitutionally guaranteed,⁶² and the basic form of local self-government is the municipality.⁶³ Local affairs are further regulated by the Law on local self-government (2003).

4.2. Issues with decentralization

Decentralization is seen to be an important prerequisite for establishing effective participation practices in local-level decision-making, allowing citizens to truly decide on matters that are important to them and local governments to regulate, plan and organize meaningful participation processes.⁶⁴ In the past twenty years, BiH, Croatia and Montenegro have undergone a continuous process of decentralization and local government reform. Nevertheless, obstacles with respect to functional and fiscal decentralization remain.

In BiH, local government laws define own and delegated competences;⁶⁵ with some differences between the two entities, municipalities are in charge of regulatory and management functions in different sectors (adoption of different plans, budgets, programs,

⁵⁷ The Constitution leaves room for the establishment of other kinds of local self-government units. "Constitution of the Republic of Croatia," VI.134.

⁵⁸ CLRAE, *Report on Local and Regional Democracy in the Federal Republic of Yugoslavia*, IV.1.

⁵⁹ According to CLRAE, the pace of legislative change in the country "has affected the text of the Law on Local Self-Government ... the Law on Local Government Finance which is subject to reforming proposals, electoral law, the law on territorial organisation, the law on public service, the law on public utilities and some others..." CLRAE, *Local Democracy in Montenegro*, CPL (19)4, Explanatory Memorandum, October 5, 2010, II.9.i.

⁶⁰ CLRAE, Recommendation 293 (2010): Local Democracy in Montenegro, October 26-29, 2010, 4.c.

⁶¹ Ibid, III.14.

⁶² "Ustav Crne Gore" [Constitution of Montenegro], *Official Gazette of Montenegro*, no. 1/07, article 22.

⁶³ Other forms of local self-government may also be established. Ibid, article 114.

⁶⁴ McGee et al, *Legal frameworks for citizen participation*, p. 44.

⁶⁵ Zakon o principima lokalne samouprave u Federaciji BiH" [Law on the principles of local self-government in Federation BiH], *Official Gazette of FBiH*, no. 49/06, article 10; "Zakon o lokalnoj samoupravi" [Law on local self-government], *Official Gazette of RS*, no. 101/04, 42/05, 118/05, articles 28, 64.

administrative organization, management of municipal property, etc) and service provision (administrative, communal, cultural, social, environmental protection, health, etc). This is similar to Montenegro, where municipalities' own competences refer to the adoption of different plans and programs, budgets and other policies, as well as the regulation and management in different areas of interest for the local community, including communal affairs, roads and transport, construction of objects, housing, environmental protection, civil protection, development and entrepreneurship, culture, sports, etc.⁶⁶ The state can also delegate or transfer certain responsibilities to municipalities for more efficient and cost-effective implementation.⁶⁷ Municipal jurisdictions in Croatia include the management of settlements and housing, to spatial and urban planning, public utilities, child care, primary health protection, social welfare, pre-school and primary education, culture, sports, consumer protection, environmental protection, civil protection, etc.; when higher levels of government are delegating responsibilities to towns, municipalities or counties, authorities that are the closest to citizens have an advantage.⁶⁸ Local governments have the right to determine their internal organization and jurisdictions, in line with local needs and possibilities.⁶⁹

However, local governments face numerous obstacles with respect to own competences. This is especially true for FBiH, where there is an unclear delineation of responsibilities between cantons and municipalities, as cantons are competing with municipalities for competences and the principle of subsidiarity is not necessarily respected.⁷⁰ The implementation of the Law on principles of local self-government is uncertain as most cantons have not harmonized their local self-government legislation with this law. Many provisions of entity laws are "very unclear and require concretization through further laws." Bylaws are not always harmonized with local self-government legislation.⁷¹ CLRAE (2012) points to a significant breach of the ECLSG in BiH given that competences of local governments are frequently far from full or exclusive, and in practice challenged by entities or cantons.⁷² The system of competences in BiH is monotype, meaning that all municipalities have the same competences, despite differences in the size of territory, population, the level of development or financial and human capacities; in practice, this may hamper the achievement of important municipal functions.

⁶⁶ For a detailed overview, see "Zakon o lokalnoj samoupravi" [Law on local self-government], *Official Gazette of the Republic of Montenegro*, no.42/03, 28/04, 75/05, 13/06 and *Official Gazette of Montenegro*, no. 88/09, 3/10 and 38/12, articles 29-33.

⁶⁷ Ibid, article 38.

⁶⁸ "Constitution of the Republic of Croatia," article VI.135.

⁶⁹ Ibid, VI.136.

⁷⁰ CLRAE, *Local and regional democracy in Bosnia and Herzegovina* (2006), C.45; CLRAE, Recommendation 324 (2012): Local and regional democracy in Bosnia and Herzegovina, March 21, 2012, 4.d.

⁷¹ Ibid, 2. d.

⁷² CLRAE, Recommendation 324, 4.d; CLRAE, *Local and regional democracy in Bosnia and Herzegovina*, 2012, CG(22)12, March 21, 2012, article 72.

In Croatia, after large towns were assigned new competences, new laws or bylaws to existing sectoral legislation are yet to be adopted;⁷³ there is also a lack of precision and clarity with respect to the current overlap of local and county competences in the local government law.⁷⁴ Small municipalities may not be able to carry out all the functions assigned to them by law.⁷⁵ In addition, some competences of higher levels of government (such as education, social welfare, health care, etc.) that have been “decentralized,” appear to, in fact, be delegated to counties and large towns, without giving them the discretion to manage funding designated for these services. This leads to the conclusion that in this particular case, “true decentralization has not been achieved.”⁷⁶

On the other hand, CLRAE also questions the level of completeness and exclusiveness of the competences of Montenegrin municipalities, as they may lack the capacity to perform in line with the many functions they have been assigned by law.⁷⁷

In fact, in all three countries, local governments appear to have scarce financial resources to rely on, possibly challenging the execution of their tasks. In BiH, local authorities have own resources that are far from adequate and which they cannot manage freely, as they can only introduce or collect a limited number of local taxes.⁷⁸ Legislation that guarantees local property is missing.⁷⁹ Although municipalities in Montenegro have a constitutional right to property and financing from own and state resources⁸⁰ and a fiscal equalization system and earmarked higher-level grants have been introduced,⁸¹ municipal resources are deemed inadequate.⁸² Croatian municipalities also have a right to own resources that correspond to their functions and the state is legally obliged to assist the financially weaker ones,⁸³ but the overall level of revenues is also deemed insufficient to meet their needs.⁸⁴

It is important to mention that the sub-municipal local community (local board or town district in Croatia),⁸⁵ a traditionally important venue for citizen participation during former

⁷³ CLRAE, *Local and regional democracy in Croatia*, CG (14) 21 REP, October 16, 2007, C.44.

⁷⁴ Ibid, C.46-47.

⁷⁵ Ibid, C.48.

⁷⁶ Ibid, E.52.c.

⁷⁷ CLRAE, *Local democracy in Montenegro*, Ibid, III.27. Also see III.19; III.20.b.

⁷⁸ CLRAE, *Local and regional democracy in Bosnia and Herzegovina* (2012), article 81.

⁷⁹ Ibid.

⁸⁰ “Constitution of Montenegro,” article 117.

⁸¹ CLRAE, *Local democracy in Montenegro*, III.40.

⁸² According to CLRAE, 15 out of 21 municipalities depend on the system of fiscal equalization, signaling that regular financial resources are not sufficient and do not respond to municipal competences. Ibid, III.47.

⁸³ “Constitution of the Republic of Croatia,” article VI.138.

⁸⁴ CLRAE, *Local and regional democracy in Croatia*, E.52.a and b.

⁸⁵ Local communities (“mjesne zajednice”) as such were abolished in Croatia, and their property became municipal and town property. See Ivan Koprić, “Stanje lokalne samouprave u Hrvatskoj” [The state of local self-government in Croatia], *Hrvatska javna uprava*, year 10 (2010), no 3, p. 666.

Yugoslavia, has by many accounts lost in importance in the past twenty years. In all three countries (except in the entity of RS), these bodies have the status of legal persons; they are established either by local authorities (usually the municipal council/assembly) or upon the initiative of citizens or citizen associations.⁸⁶ Their work and financing is usually regulated by municipal statute, special municipal decisions or special LC acts.⁸⁷ Legislation in Croatia and FBiH explicitly states that the municipality may by law delegate some of its tasks to the LC.⁸⁸ However, in all three countries, LCs have lost many of the significant functions they performed in the former political system, including communal affairs, consumer protection, child care, etc. According to Klarić, compared with the former LC, competences and tasks given to local boards in Croatia today are “incomparably more restrictively determined, and the role it plays in the life of the local community primarily depends on the interest of the local self-government unit to, through this organizational form, more strongly motivate citizens in the local community to participate in conducting joint social tasks,” i.e. to delegate some tasks from its jurisdiction.⁸⁹ According to the author, the role of the boards has been reduced to a minimum also because of imprecisely defined functions and a lack of own sources of funding.⁹⁰ Similar critiques are voiced by authors in BiH.⁹¹ Given that sub-municipal bodies were traditionally key venues for citizen participation and are, according to a number of studies, still widely used, the systematic weakening of their legal position may cast doubt on the ability of citizens to use these institutions to influence decisions pertaining to their communities.

Institutions and laws of citizen participation are also influenced by the nature of the decentralization processes themselves in regard to the roles played by different actors – citizens and NGOs, local and central authorities or international organizations.⁹² In all three

⁸⁶ In FBiH, their formation can be initiated by the mayor, municipal council, citizens and citizens' associations. “Law on the principles of local self-government in FBiH,” article 26; In the RS, the interest of the population of a certain territory regarding the establishment of an LC is determined at a citizens' assembly and decided on by the municipal assembly. “Law on local self-government,” articles 106-107. In Montenegro, citizens initiate the formation of local communities, and the municipal assembly confirms the decision on its formation. “Law on local self-government,” article 96, 45. In Croatia, local boards or town districts are established upon the initiative and proposal of citizens and their organizations and associations, as well as other bodies as determined by the municipal statute. “Law on local and regional self-government,” article 58.

⁸⁷ LC tasks and functions are determined by their statute and establishment act in FBiH. “Law on the principles of local self-government in FBiH,” article 28. In the RS, the municipal statute regulates the organization, manner of work and financing of LCs. “Law on local self-government,” article 109. In Montenegro, the local assembly determines the conditions for the formation of LCs, their tasks, organs, election procedure, decision-making procedures, financing, etc. “Law on local self-government,” article 97. In Croatia, the procedure of formation, as well as other aspects of work and functioning of local boards or town districts is determined by municipal statute and other general acts of the municipal council. “Law on local and regional self-government,” article 59.

⁸⁸ “Law on the principles of local self-government in FBiH,” article 30; “Law on local and regional self-government,” article 60.

⁸⁹ Mirko Klarić, “Mjesna samouprava u Republici Hrvatskoj” [Community self-government in the Republic of Croatia], in *Zbornik radova veleučilišta u Šibeniku*, ed. Onesin Cvitan, year 2, no. 1-2 (2008), p.3.

⁹⁰ Ibid, p. 14.

⁹¹ See, for example Igor Stojanović and Reuf Bajrović, “Submunicipal Government and decentralization in Bosnia and Herzegovina,” in *Mind Your Own Business! Community Governance in Rural Municipalities*, ed. Gabor Peteri (Budapest: Open Society Institute, 2008).

⁹² See McGee et al, *Legal frameworks for citizen participation: synthesis report*.

countries, decentralization processes were largely carried out in a top-down manner. This is, for example, explicitly stated by CLRAE for Croatia: CLRAE rapporteurs express their concern that decentralization has been “centrally managed”, without sufficient inclusion of local and regional interests.⁹³ International assistance to decentralization processes in Croatia appears to be moderate, mostly taking place right after 2000, but with some more significant influence in the past couple of years.⁹⁴ In BiH, reforms in this area are largely top-down⁹⁵ and international organizations are significantly involved in decentralization processes in BiH, initiating most reforms.⁹⁶ In Montenegro, local-government reforms also appear to be largely top-down.⁹⁷ It also appears that in all three countries, citizens and their associations have not had a significant impact on the decentralization processes.⁹⁸ Thus, laws and institutions do not appear to be a result of bottom-up demand, but rather top-down commitments to international donor projects (particularly in BiH), CoE standards, and reforms as part of EU accession processes.

4.3. General insights into participation practices in BiH, Croatia and Montenegro

Local-level citizen engagement in the countries of former Yugoslavia is often discussed in terms of a rich historical legacy of participation resting on the principles of self-

⁹³ CLRAE, *Local and regional democracy in Croatia*, IV.67. According to the same report, while CLRAE's rapporteurs were told that the degree of consultation by government with associations of towns and municipalities in Croatia varies, the rapporteurs' impression was that “the associations have strong support from individual authorities and do manage to play a strong representative role.” Ibid, G.56.

⁹⁴ According to Koprić, despite the formation of a designated state-level council in charge of decentralization in 2004, no greater progress with respect to decentralization took place: referring to Mikelsons (2007), the author finds that it was only with the assistance and the pressure of USAID that the category of large towns was established, that some decentralization of functions occurred, that direct election of mayors was introduced and other smaller changes in the system of local and regional self-government took place. Ivan Koprić, “Prijedlozi za reformu lokalne i regionalne samouprave u Hrvatskoj” [Suggestions for Local and Regional Self-Government Reform in Croatia], *Hrvatska javna uprava*, year 10 (2010), no. 4, p. 942.

⁹⁵ Although it should be noted that entity local self-government laws were drafted with the involvement of local government actors, associations, and international organizations. For example, see UNDP, *Better local governance in Bosnia and Herzegovina*, p.46. Also, according to a 2012 CLRAE report, biannual consultations between the RS government, municipal mayors and the the Association of municipalities and towns in this entity have recently been introduced. CLRAE, *Local and regional democracy in Bosnia and Herzegovina* (2012), para. 75.

⁹⁶ According to the World Bank, the engagement of donors in BiH has been very extensive albeit fragmented. Organizations such as the OHR, OSCE, UNDP, USAID or World Bank have worked on “community development, the enabling environment, and strengthening municipal structures, particularly capacity building.” Organizations have also contributed to a number of important policies, such as VAT transfers for municipalities. World Bank, *From Stability to Performance: Local Governance and Service Delivery in Bosnia and Herzegovina*, 2009, p. 27.

⁹⁷ However, CLRAE points out that the Union of municipalities of Montenegro presents collective views of municipalities to the central level of government on a regular basis and cooperates with the central level of government on decentralization reforms. CLRAE, *Local Democracy in Montenegro*, III.52, 53.

⁹⁸ In FBiH, the proposal of the Law on the principles of local self-government was the subject of wide consultations in expert and other circles prior to the law's adoption. Association of municipalities and towns of FBiH, *Priručnik za općinske/gradske vijećnike u Federaciji Bosne i Hercegovine* [Guide for municipal/town councillors in the Federation of Bosnia and Herzegovina], 2009, p.12.

management. Studies conducted about the Yugoslav participation phenomenon some thirty years ago throw a light on the manifestation of earlier local-level participatory institutions in practice. According to Verba et al (1978), although Yugoslavia was a “democracy of a different sort” where citizens were neither fully denied nor fully endowed with a broad range of political rights, it provided a variety of alternative political institutions, such as local councils or worker’s councils that encouraged high rates of citizen participation.⁹⁹ Thus, “Yugoslavia has been in the forefront in the innovation of new modes of political activity, particularly functional self-management institutions,”¹⁰⁰ with “a wide array of quite meaningful self-government institutions in local communities, the workplace, residential units and else-where, that represent significant channels of participation.”¹⁰¹ According to the authors, many scholars of democracy saw the establishment of direct channels for participation in decentralized socio-economic and political institutions comparable to those in Yugoslavia as possible solutions to the problems of participation.¹⁰²

Leonardson and Mirčev discuss local citizen participation before the adoption of a new Yugoslav Constitution in 1974.¹⁰³ Indeed, the 1963 Constitution contained numerous progressive provisions on the right to direct citizen participation.¹⁰⁴ However, in practice, many “social and institutional barriers prevented mass participation.”¹⁰⁵ Comparing the normative model of self-management with practice in the early 1970s, the authors come to the following general conclusions: 1) structures that offered the possibility for direct self-management were not used; 2) members of representative governing bodies were not in contact with the electorate; 3) local decision-making bodies did not have real decision-making power in most areas anyway; 4) bureaucratic, technocratic and other circles were involved in public policy formulation and implementation without citizen input; 5) higher-level bodies, such as banks and export-oriented companies, had the real economic power, impeding on the influence of citizens and workers. Moreover, the lack of true fiscal and functional decentralization hindered self-management.¹⁰⁶

By the late 1960s, there was a continuous decrease in the participation of citizens in mechanisms of direct self-management, including election turnout and attendance at

⁹⁹ Sidney Verba, Norman H. Nie and Jae-on Kim, *Participation and Political Equality*, p. 49.

¹⁰⁰ Ibid, p.219

¹⁰¹ Ibid, p.216

¹⁰² Ibid, p.219.

¹⁰³ Gene S. Leonardson and Dimitar Mirčev, “A Structure for Participatory Democracy in the Local Community: The Yugoslav Constitution of 1974,” *Comparative Politics* 11, no. 2 (1979), p. 189.

¹⁰⁴ According to the 1963 Constitution, citizens had the right to initiate voters’ meetings, to initiate referenda on any issue or to submit proposals and petitions to local representative or other bodies and receive answers to them, as well as to initiate and participate in a recall of elected officials. They had the right to be informed about the work of the municipal assembly and its organs, and assembly representatives had an obligation to present issues on the assembly agenda at voters’ meeting to allow for participation in decision-making processes. The constitution even entailed general provision on citizen participation in the management of the system, especially with respect to the initiation of decisions. Ibid, p.192.

¹⁰⁵ Ibid, p.193.

¹⁰⁶ Ibid, pp.193-195.

voters' meetings. Key reasons, according to Leonardson and Mirčev, were a lack of belief that participation could significantly impact decisions, especially after municipal councils often ignored decisions made at voters' meetings; a lack of information on events and concrete facts pertaining to the relevant decision; a low level of overall education and awareness about the significance of participation; a low level of political education and culture, resulting in a lack of knowledge about possible venues for participating and influencing decisions; and the concentration of power in the hands of one or more local companies or groups and elites.¹⁰⁷ Socio-political organizations such as the League of Communist or the Socialist Alliance of the Working People often prevented self-management activities by exerting direct political control through members in important political or bureaucratic positions that hindered citizen participation in decision-making.¹⁰⁸ A new Constitution in 1974 reflected an awareness of such problems by the highest political functionaries in the country, leading to a significant reorganization in the municipality.¹⁰⁹

In sum, although many authors recognized the meaningfulness and innovativeness of local-level citizen participation in former Yugoslavia, critical accounts portray shortcomings of participatory processes. Accounts of strong imposition of one sole political option in participatory processes are particularly worrisome, bringing into question their inclusiveness, representativeness or independence.¹¹⁰ Although former local-level circumstances cannot be compared to those of today, especially in light of the parallel processes of democratization and economic transition that have been taking place for the past twenty years, one cannot exclude the possibility that citizen perceptions of participation in BiH, Croatia or Montenegro today are conditioned by their past experiences.

Generally speaking, current research on citizen participation in local-level decision-making in the three countries points towards weak citizen motivation to participate. According to results of the survey conducted for the purposes of this report, 74.6% of respondents from local governments in three countries find that citizens' lack of interest to participate represents a problem and potential obstacle for participation.¹¹¹ Turnout in

¹⁰⁷ Ibid, pp.194-195.

¹⁰⁸ Ibid, p.197. Research conducted by Verba et al. in former Yugoslavia in the 1970s also shows that those citizens that participated in "regular political activities" (election campaigns, participation in the community or interaction between citizens and local authorities for the purpose of solving joint problems) were mostly members of these socio-political organizations. Verba, Nie and Kim, *Participation and Political Equality*.

¹⁰⁹ New structures were introduced that, according to the authors, had the aim of increasing the frequency and direct contact between citizens and their representatives, as well as reducing the role of bureaucracy and other social, economic, and political groups in positions of power. For example, a system of "self-managing interest communities" was introduced; these bodies gathered representatives of citizens and producers and were charged with the implementation of municipal councils' policies in certain sectors (education, public health, culture, etc.). Ibid, p.198.

¹¹⁰ For an in-depth look into the debates on whether or not political participation as a right can be realized in one-party states, see Henry J. Steiner, "Political Participation as a Human Right," *Harvard Human Rights Yearbook* Vol.1 (1988).

¹¹¹ A CCI survey in BiH shows that municipal representatives find the main reason for a lack of participation to be a lack of interest (49%). CCI BiH, *Report on the state of citizen participation in decision-making in BiH for 2011*, p. 35.

participatory processes is not assessed as particularly good either: overall,¹¹² 45% of local government representatives responded that citizens occasionally participated and 37.2% that turnout was relatively good. Annual surveys conducted by the Centres for Civic Initiatives in BiH (hereafter: CCI) show similar trends: in 2011, a small percentage of citizens had personally participated in decision-making processes.¹¹³ Only 28.1% said they would surely participate if invited.¹¹⁴ A survey conducted by the World Bank in BiH shows that over the period of one year, 75% of citizens did not attend any meetings or activities organized locally by LCs, NGOs or municipal authorities.¹¹⁵ According to research conducted in eight municipalities in Montenegro by Šarenac, it appears that there was not much interest by citizens in attending public discussions unless their subjects were related to personal interests.¹¹⁶ On the other hand, Bajok and Škorić find that neither of their three case study municipalities in Croatia has systematically introduced ways of motivating citizens to participate.¹¹⁷

Although respondents to our survey did not believe that too many other factors besides citizen disinterest hindered participatory practices in their communities, a smaller percentage of municipal representatives did see the following aspects as considerably or somewhat problematic with respect to citizen participation: a lack of material and human resources to organize participatory processes (40.8%), a lack of representativeness of participatory processes as not all stakeholders that should take part are invited or actually participate (33.6%), late notification of citizens about participation possibilities (16.7%), late involvement of citizens in decision-making processes (17.1%), a lack of follow-up information on the outcomes of participation (16.8%) and a lack of possibility for citizens to express their opinion or offer input during participatory processes (16.3%). Similar results are found by other authors: case study municipalities of Bajok and Škorić in Croatia pointed to a shortage in capacities and resources as important deficiencies when it comes to organizing participatory processes. Also, municipalities did not systematically tackle educating their staff to organize participatory events.¹¹⁸ Some municipalities in Montenegro studied by Šarenac cited difficulties in implementing legal provisions on participation because of a lack of expert and administrative capacity.¹¹⁹

Studies also show that the effectiveness and meaningfulness of participatory processes may be challenged because of the way they are organized. A study conducted in three case-

¹¹² There are some differences between the countries: 46.8% of municipalities in BiH responded that turnout was relatively good, compared with 32.6% in Croatia and 22.2% in Montenegro.

¹¹³ The percentage of those that personally participated ranged from 13.3% to 38.9%, depending on the participation mechanism. CCI BiH, *Report on the state of citizen participation in decision-making in BiH for 2011*, p. 19.

¹¹⁴ Ibid, p. 21.

¹¹⁵ McNeil et al, *Citizen Review of Service Delivery and Local Governance in Bosnia and Herzegovina*, p.61.

¹¹⁶ Šarenac, *Citizen Participation in Public Decision-making*, pp.126.

¹¹⁷ Bajok and Škorić, *Connected Communities*, p.67.

¹¹⁸ Bajok and Škorić, *Connected Communities*, pp.83-84.

¹¹⁹ Šarenac, *Citizen Participation in Public Decision-making*, pp. 120-121.

study municipalities that have conducted participatory development planning in BiH showed that representativeness of processes was a major obstacle to meaningful participation.¹²⁰ Informing citizens about opportunities for participation in a timely manner and providing them with feedback about the outcomes of their engagement also appears to be challenging. According to the CCI survey (2011), local government representatives in BiH believed that a lack of information was one of the key reasons why citizens chose not to participate (32%).¹²¹ In Montenegro, representatives of local authorities and NGOs contended that citizens were not sufficiently informed about various participation possibilities.¹²² CCI's survey found that only 39.5% of citizens knew of a case where citizen intervention through participation resulted in a favorable municipal decision.¹²³ Research in Montenegro and Croatia showed that a lack of feedback to citizens on the outcomes of their engagement hampered effective participation.¹²⁴ In Montenegro, reports on public hearing outcomes were difficult to access and did not include information on what proposals that citizens had given on a particular act had or had not been accepted.¹²⁵

Although such studies tackle different issues and have different methodological approaches, they give us an insight into potential issues that should be addressed by adequate policies at local and higher levels of government. An analysis of legal and institutional frameworks in subsequent chapters may cast a light on the potential reasons behind such participatory practices.

¹²⁰ Škrbić, "Does Participation Matter?" pp. 31-32.

¹²¹ CCI BiH, *Report on the state of citizen participation in decision-making in BiH for 2011*, p.19

¹²² Šarenac, *Citizen Participation in Public Decision-making*, p. 122.

¹²³ CCI BiH, *Report on the state of citizen participation in decision-making in BiH for 2011*, p.

¹²⁴ Šarenac, *Citizen Participation in Public Decision-making*, p. 124; Bajok and Škorić, *Connected Communities*, p.90; p.92.

¹²⁵ Based on an analysis of a sample of five reports by the author. See Šarenac, *Citizen Participation in Public Decision-making*, p.126.

5.

Legal and institutional frameworks for citizen participation

Drawing on international standards and recommendations for effective citizen participation, this chapter examines whether and to what extent existing legal and institutional frameworks in BiH, Croatia and Montenegro promote principles and mechanisms of citizen participation, and whether they provide local governments with adequate guidelines and support structures to be able to implement norms and organize effective participatory processes. The assumption is that better and more detailed regulation leads to better practice of citizen participation. Moreover, we look at whether institutions and laws explicitly recognize the right of citizens to take part in local-level decision-making processes and whether there are adequate provisions for transparency of local governments as an important precondition for citizens to be able to participate in the first place. These dimensions of legal frameworks and institutional arrangements are also assessed against international norms and standards, as outlined in Chapter two above.

5.1. Transparency and information as a precondition for citizen participation

As discussed in the earlier chapters, complementary legislation that pertains to freedom of access to information in general, and the right of citizens to obtain timely information on possibilities for participation in decision-making in particular, is considered a prerequisite for meaningful citizen engagement. Laws on local governance in all three countries contain provisions on the transparency of local authority work. In BiH and Croatia, this means that citizens can attend council sessions, in accordance with municipal acts, that municipal organs publish regular bi-annual or annual reports on achieved results, that acts are published in official gazettes, etc.¹²⁶ The local-government law in Montenegro regulates this area in more detail: publicity and transparency of work of local government organs is to be ensured, *inter alia*, by publishing general and other acts in the official gazette and on the municipal website, by granting citizens direct access to local acts and documents pertaining to the execution of local governance functions and the realization of citizen rights, by citizen participation in public hearings in the process of adopting acts pertaining to issues of direct interest for the local population, by publishing or by organizing different forms of citizen education.¹²⁷

¹²⁶ "Law on local and regional self-government," articles 35.b; 37; "Law on the principles of local self-government in FBiH," articles 40-41; "Law on local self-government," articles 75-78; articles 81-82.

¹²⁷ "Law on local self-government," article 138. Municipal statutes may introduce other measures, while the means of the rights and obligations pertaining to publicity of work and transparency, as stipulated by this article, are further to be regulated by statutes, decisions or rulebooks of the municipal assembly. Ibid.

In BiH, current legal provisions on transparency of work provide municipalities with a great amount of discretion; as a result, transparency of work is prescribed in a rather restricted manner by local acts, either because of “narrow political interests, a lack of knowledge on the subject matter itself, or a lack of funding.”¹²⁸ According to entity laws, citizens may – if municipal organs decide so – have insight into the text of a general act in all phases of its adoption via means of public information, and may have the possibility of giving written comments on these acts.¹²⁹ In other words, provisions concerning insight and consultation are only affirmative in theory, as current provisions on transparency do not introduce the obligation for local authorities to truly consult citizens.¹³⁰ Exceptions pertain to specific acts such as the draft budget in the RS.¹³¹ Milosavljević (2010) analyzed legislation on citizen participation in the RS, and found that provisions on the publicity of work are neither particularly detailed nor correspond to the real needs and requirements of transparency.¹³²

Legislation and special guidelines in Montenegro and Croatia prescribe informing citizens are about participatory processes. In Montenegro, local authorities are obliged to publically announce consultations or other forms of expert treatment or discussion of issues within its jurisdiction, and to allow for citizens to participate in them.¹³³ In Croatia, thanks to the Code of practice on consultation with the interested public in procedures of adopting and implementing laws, other regulations and acts,¹³⁴ a state-level document that applies to municipalities, there is an obligation of notifying the interested public about consultation processes and publishing relevant acts and materials in a timely manner, as well as providing feedback to participants.¹³⁵

All three countries have adopted freedom of access to information (hereafter: FOIA) legislation. While all laws guarantee a passive right to information, meaning that citizens may file requests to access information,¹³⁶ the law in Croatia goes a step further and obliges

¹²⁸ Snežana Mišić-Mihajlović and Mirna Jusić, “Communication as a prerequisite for participation at the local level: The case of Bosnia and Herzegovina,” in *Communication and community: Citizens, media, and local governance in Bosnia and Herzegovina*, ed. Tarik Jusić (Sarajevo: Mediacentar Sarajevo, 2010), p. 214.

¹²⁹ “Law on the principles of local self-government in FBiH,” articles 40-41; “Law on local self-government,” articles 75-78.

¹³⁰ Mišić-Mihajlović and Jusić, “Communication as a prerequisite for participation at the local level: The case of Bosnia and Herzegovina,” p. 214.

¹³¹ “Law on local self-government,” article 104.

¹³² Bogoljub Milosavljević, *Jačanje građanskog učešća na lokalnom nivou u Republici Srpskoj: Analiza pravnog okvira sa preporukama* [Strengthening of citizen participation at the local level in Republika Srpska: Analysis of the legal framework with recommendations] (Bijeljina: Savez opština i gradova Republike Srpske, 2010), p.57.

¹³³ “Law on local self-government,” article 141.

¹³⁴ “Kodeks savjetovanja sa zainteresiranom javnošću u postupcima donošenja zakona, drugih propisa i akata” [Code of practice on consultation with the interested public in procedures of adopting and implementing laws, other regulations and acts], *Official Gazette of the Republic of Croatia*, no. 140/09.

¹³⁵ “Code of practice on consultation,” V.1, V.2 and V.4.

¹³⁶ “Zakon o slobodi pristupa informacijama” [Law on freedom of access to information], *Official Gazette of Republika Srpska*, no. 20/01, “Zakon o slobodi pristupa informacijama u FBiH” [Law on freedom of access to information in FBiH], *Official Gazette of FBiH*, no. 32/01, “Zakon o slobodnom pristupu informacijama” [Law on free access to information], *Official Gazette of Montenegro*, no. 68/05, “Zakon o pravu na pristup informacijama” [Law on the right of access to information], *Official Gazette of the Republic of Croatia*, 172/03, 144/10, 37/11, 77/11.

public bodies to actively provide information in their possession, including information on their work (activities, expenditures, sources of financing, etc.), information on filed requests, complaints, petitions, proposals, as well as other activities initiated by users towards the public body, documentation on procurement, as well as public bodies' decisions and measures that impact the interest of users and reasons for their adoption. With respect to citizen participation, the law obliges public authorities to publish draft acts and subordinate legislation and allow beneficiaries to provide their comments on these acts within an adequate timeframe.¹³⁷

Research to date has shown that citizens' lack of information on participation opportunities is an important obstacle to their participation. For example, CCI research in BiH shows that local government representatives deem citizens' access to information on citizen participation opportunities to be satisfactory; at the same time, they believe that a lack of information is one of the main reasons for a low citizen turnout in participation processes.¹³⁸ Research conducted in Montenegro showed that local government and NGO representatives concurred that citizens were not sufficiently informed on different possibilities for participation.¹³⁹

Research on local-level compliance with FOIA in BiH (2010) showed that 80.14% of municipalities provided insight into their annual budget execution reports.¹⁴⁰ Research on local-level transparency and good governance in Montenegro¹⁴¹ (2011) found that in the course of six months, municipal assembly official minutes and/or decisions were published on municipal websites in 66.7% cases; that only 38.1% of municipalities published one or more announcements from assembly sessions on their website; and that only 47.6% published budgets online. In other words, citizens had to "make extra effort to gain insight into these documents, which on a practical level makes their level of information, and simultaneously their direct control over local authority, difficult."¹⁴² Information centers worked in 11 municipalities and in only 9 could citizens access acts adopted by or related to the municipality (published in the country's official gazette).¹⁴³ According to research

¹³⁷ Ibid, article 20.

¹³⁸ CCI BiH, *Report on the state of citizen participation in decision-making in BiH for 2011*, p. 34-35. As part of the research, 47.4% of citizens answered positively and 38.5% negatively to the question of whether they had to date ever been personally invited by the municipality or had seen a municipal invitation calling on citizens to actively participate with their proposals and comments in planning or decision making processes. Ibid, p.19.

¹³⁹ Šarenac, *Citizen Participation in Public Decision-making*, pp.121-124.

¹⁴⁰ Mirna Jusić, *Procjena budžetske transparentnosti u općinama u Bosni i Hercegovini* [Assessment of budget transparency in municipalities in Bosnia and Herzegovina], (Sarajevo: Analitika – Center for Social Research, 2011), p.47.

¹⁴¹ Project for Accountable, Transparent and Efficient Communities (Projekat odgovorne, transparentne i efikasne zajednice, hereafter POTEZ), implemented by the Center for democratic transition from Montenegro.

¹⁴² Centar za demokratsku tranziciju, *Transparentnost i dobro upravljanje na lokalnom nivou: Finalni nalazi istraživanja projekta POTEZ sa primjerima dobre prakse* [Transparency and good governance at the local level: Final research results of POTEZ project with examples of good practice], (Podgorica: Centar za demokratsku tranziciju, 2011), p.18.

¹⁴³ Ibid, p. 19.

conducted for the purpose of this report, 46.6% of local government representatives in BiH, 48.6% in Croatia, and 72.2% in Montenegro said their municipality provides citizens with follow-up information on the results of participatory processes organized; 45.9% of surveyed municipalities in BiH, 46.3% in Croatia and 22.2% in Montenegro do this from time to time or on an *ad hoc* basis.

Despite bleak results, the increasing usage of municipal websites for information purposes is promising: according to results of our survey, websites are one of the most frequently used tools for informing citizens about possibilities for participation: 73% of surveyed municipalities in BiH, 74.3% in Croatia and 77.8% in Montenegro use them regularly to that end. According to different research reports, 86% of municipalities had active official websites in Montenegro (2011);¹⁴⁴ 89% of BiH municipalities had functioning official websites (2010);¹⁴⁵ and 90% of municipalities and counties had official websites in Croatia (2012).¹⁴⁶ Nevertheless, a study of existing websites conducted in BiH (2010) shows that most municipal websites are static, created usually as a passive source of information on municipal activities and rarely harnessing the potential of new technologies to strengthen local-level citizen participation.¹⁴⁷ Similarly, research conducted in Montenegro shows that many of the basic local acts do not get published on municipal websites.¹⁴⁸ According to GONG, although 90% of local and regional governments in Croatia have an official website, this has not lead to greater transparency, as research results show that authorities do not sufficiently use these websites for information and interaction purposes.¹⁴⁹

In general, we can say that formal legal prerequisites for the transparency of municipal work and access to information do exist in the three countries. In BiH, the current legal framework leaves room for a rather restrictive interpretation of transparency of work by local governments. FOIA legislation in Montenegro and BiH allows for passive means of access to information, rather than on a proactive approach towards informing citizens; such provisions may have negative effects on the practice of informing citizens about participation opportunities. Legal preconditions for transparency and access to information in Croatia appear to be more progressive, as local administrations are obliged to regularly publish information and documents that are in the other two countries usually available upon

¹⁴⁴ Ibid, p.7.

¹⁴⁵ Jusić, *Assessment of budget transparency in municipalities in Bosnia and Herzegovina*, p.48.

¹⁴⁶ Data according to GONG's 2012 research project *Local, Accountable, Transparent Government and Self-Government* (Lokalna, Odgovorna, Transparentna Uprava i Samouprava, hereafter LOTUS) in Croatia. GONG, LOTUS 2011/12: *Nalazi istraživanja o transparentnosti i otvorenosti rada jedinica lokalne i regionalne samouprave u Republici Hrvatskoj* [LOTUS 2011/12: Results of research on transparency and openness of local and regional self-government units in the Republic of Croatia], (Zagreb: GONG, 2012). p.11.

¹⁴⁷ Adla Isanovic, "New Media, Local Governance and Participatory Communication in Bosnia and Herzegovina," in *Communication and community: Citizens, media, and local governance in Bosnia and Herzegovina*, ed. Tarik Jusić (Sarajevo: Mediacentar Sarajevo, 2010), p. 279.

¹⁴⁸ For a detailed insight into which acts municipalities do or do not publish, see Centar za demokratsku tranziciju, *Transparency and good governance at the local level*, p.19.

¹⁴⁹ GONG, LOTUS 2011/12, p.5.

request. Although legal requirements for informing citizens and providing them with access to information differ in the three countries, research shows that in practice, local governments could do much more to that end.

5.2. Constitutional guarantees and international obligations

Constitutions are the backdrops against which rights and freedoms are established.¹⁵⁰ In addition to related political rights, the highest legal acts in BiH, Croatia and Montenegro more or less explicitly grant citizens the right to participate in decision-making processes. Citizens' right to participation is constitutionally defined in broad terms, although constitutions of Montenegro and Croatia, and individual entity or cantonal constitutions in BiH, explicitly mention individual participation mechanisms.

The BiH Constitution does not explicitly endow citizens with the right to directly participate in decision-making processes to the extent that international instruments envisage this right.¹⁵¹ Citizens in FBiH are by the FBiH Constitution granted the right to participate in the conduct of public affairs;¹⁵² individual participation mechanisms are not mentioned in this document. Some cantonal constitutions in FBiH go a step further to introduce mechanisms of direct citizen participation in local-level decision-making.¹⁵³ According to the RS Constitution, in addition to participating in referenda on important issues¹⁵⁴ and recalls of entity president and vice-president,¹⁵⁵ RS citizens have the right to send complaints, petitions and proposals to state and other organs and receive answers,¹⁵⁶ as well as the right to propose laws and general acts.¹⁵⁷

¹⁵⁰ McGee et al, *Legal frameworks for citizen participation*, p. 44.

¹⁵¹ Although the Constitution's preamble does state that it is inspired, *inter alia*, by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; Annex I to the Constitution includes human rights agreements that are to be applied in the country, including the International Covenant on Civil and Political Rights and its 1966 and 1989 Optional Protocols. "Constitution of Bosnia and Herzegovina," preamble, Annex I.

¹⁵² "Ustav Federacije Bosne i Hercegovine" [Constitution of Federation BiH], *Official Gazette of FBiH*, no. 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05, and 88/08, article II.33. The ICCPR is included in the Annex of the FBiH Constitution as one of the 21 "instruments for the protection of human rights that have the strength of constitutional provisions."

¹⁵³ According to the Constitution of the Tuzla Canton, citizens can directly decide on "affairs of interest and importance for the local population" through citizen assemblies and referenda; they have the right to submit citizen initiatives and establish other forms of communal self-governance. "Ustav Tuzlanskog kantona" [Constitution of Tuzla Canton], unofficial consolidated text, *Official Gazette of Tuzla-Podrinje Canton*, no. 7/97 and 3/99 and *Official Gazette of Tuzla Canton* no. 13/99, 10/00, 14/02, 6/04, and 10/04, article VI.68.

¹⁵⁴ "Ustav Republike Srpske" [Constitution of Republika Srpska], *Official Gazette RS*, no. 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02, 30/02, 31/02, 69/02, 31/03, 98/03, 115/05, and 117/05, article I.2.

¹⁵⁵ Ibid, article V.88.

¹⁵⁶ Ibid, article II.32.

¹⁵⁷ 3000 voters are needed for this. Ibid, amendment XXXVIII.

Citizens in Montenegro “shall exercise power directly and through freely elected representatives,”¹⁵⁸ also with respect to local self-government. The right to local self-government includes “the right of citizens and local self-government bodies to regulate and manage certain public and other affairs, in their own responsibility and in the interest of the local population.”¹⁵⁹ Voters have the right to propose laws or submit proposals for national referenda.¹⁶⁰ Everyone has the right to address state authorities or organizations exercising public powers and to receive a response.¹⁶¹

All Croatian citizens, under the same conditions, have the right to participate in the conduct of public affairs;¹⁶² voters are entitled to take part in national referenda.¹⁶³ Everyone has the right to file petitions and complaints or submit proposals to governmental and other public bodies, and to receive responses to them.¹⁶⁴ Especially significant is the provision that citizens may directly participate in the administration of local affairs, through assemblies, referenda and “other forms of direct decision-making,” in line with law and statute.¹⁶⁵ Soon to become a full-fledged EU member, Croatia’s Constitution also entails provisions on the right of citizens to participate at EU level (e.g. by submitting petitions to the European Parliament).¹⁶⁶

In addition to constitutional provisions, countries have also taken on international obligations relevant for citizen participation. As previously mentioned, the ECLSG has been signed and ratified by all three countries. The Charter recognizes “the right of citizens to participate in the conduct of public affairs” as one of the democratic principles shared by all CoE member states that can most directly be exercised at the local level.¹⁶⁷ Local authorities are to exercise the right to local self-government through elected councils/assemblies that “shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.”¹⁶⁸ The ECLSG does not introduce an explicit obligation of decision-making by direct citizen participation. The Additional Protocol to the ECLSG on the right to participate in the affairs of a local authority, to date ratified only by Montenegro,¹⁶⁹ obliges its parties to “secure to everyone within their jurisdiction the right

¹⁵⁸ “Constitution of Montenegro,” article 2. According to article 9, ratified and published international agreements are an integral part of the legal order with supremacy over national legislation.

¹⁵⁹ Ibid, article 113.

¹⁶⁰ 6,000 voters have the right to propose laws via a parliamentary representative they authorize; 10% of voters may submit proposals for referenda. Ibid, article 93.

¹⁶¹ Ibid, article 57.

¹⁶² “Constitution of the Republic of Croatia,” article III.2.44.

¹⁶³ Ibid, article III.2.45.

¹⁶⁴ Ibid, article III.2.46.

¹⁶⁵ Ibid, article VI.133.

¹⁶⁶ Ibid, article VIII.146.

¹⁶⁷ CoE, European Charter on Local Self-Government, CETS no. 122, Strasbourg, October 15, 1985, preamble.

¹⁶⁸ Ibid, article 3.2.

¹⁶⁹ Montenegro signed the Additional Protocol to the ECLSG in 2009 and ratified it in 2010.

to participate in the affairs of a local authority” and to take all necessary measures that would give effect to this right, which may include forms of direct citizen participation.¹⁷⁰

All three countries have also ratified the Framework Convention for the Protection of National Minorities¹⁷¹ that obliges parties to “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.”¹⁷² In addition, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) – the Aarhus Convention – also represents an international obligation for all three countries.¹⁷³ The convention, *inter alia*, introduces the obligation for parties to inform the public on environmental matters, involve them in environmental policies and grant them access to justice through the implementation of „necessary legislative, regulatory and other measures.”¹⁷⁴ This Convention pertains to not only to the state level, but to other levels of government as well.¹⁷⁵

To conclude, all three countries have more or less incorporated citizen participation in their constitutions; differences pertain to the level of detail, especially with respect to individual mechanisms of citizen participation mentioned. All three countries have also taken the same international obligations with respect to granting access to local-level decision-making processes, with Montenegro also ratifying the Additional Protocol to the ECLSG. To what extent the countries have truly committed themselves to creating legal preconditions for citizen participation in decision-making processes locally is discussed in the next section.

5.3. Legal frameworks for citizen participation

The promotion of rights and possibilities for citizen participation in decision-making processes is integrated in legislation that pertains to local governance¹⁷⁶ and in individual laws regulating specific participation mechanisms in the three countries.

¹⁷⁰ CoE, Additional Protocol to the ECLSG, article 2.1. Such measures may also include consultative processes, local referenda, or petitions. *Ibid*, article 2.2.ii.a.

¹⁷¹ BiH is a state party to the convention since 2000, Croatia since 1997 and Montenegro since 2006.

¹⁷² According to the advisory committee in charge of the convention’s implementation, besides political representation, mechanisms of consultations with national minority members should also be used. Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, February 27, 2008, p. 7.

¹⁷³ BiH ratified the convention in 2008, Croatia in 2007 and Montenegro in 2009.

¹⁷⁴ UNECE, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, article 3.1.

¹⁷⁵ *Ibid*, article 1.

¹⁷⁶ Individual sectoral laws, such as spatial planning laws, may also contain provisions on citizen participation, but will not be considered here in detail.

In their laws, countries vary in the extent to which they recognize citizen participation as a right. Montenegro's legislation appears to be most progressive in this respect: local self-government is "the right of citizens and local self-government organs to, in the limits set by law, regulate and manage certain public and other affairs, based on their own responsibility and in the interest of the local population."¹⁷⁷ Citizens have the right to an initiative/citizen initiative,¹⁷⁸ to propose decisions, rules or general acts, to file complaints and to ask for information under local authorities' jurisdiction.¹⁷⁹ The Law on local self-government also entails general provisions on guaranteeing rights to foreigners and minorities within local self-government, in line with special legislation in this area.

In the RS, similar to Montenegro, local self-government is the "right of citizens to directly or through their freely and democratically elected representatives participate in the achievement of common interest of residents of the local community."¹⁸⁰ However, current entity-level local government legislation in BiH rarely mentions individual mechanisms for citizen participation in the context of citizen rights;¹⁸¹ such mechanisms are usually mentioned as a possibility.

Citizens in Croatia have the right to vote in referenda and to propose to the municipal council a referendum on the recall of the mayor, on the adoption of an act or on solving issues under the jurisdiction of the municipal council.¹⁸²

With respect to the means and forums of participation, legislation in the three countries neither promotes a wide variety of participatory mechanisms, nor especially defines the few possibilities mentioned. Legislation in general only vaguely refers to the implementation of different participatory mechanisms in practice, which is left to local governments to regulate by statute or special decisions. Only traditional mechanisms of direct democracy (referenda, citizen initiatives) are regulated in more detail in Croatia and in the RS. Montenegro may be singled out for its extra effort to prescribe key principles and steps of organizing consultation processes in its Law on local self-government.

In FBiH, citizens are, according to the law, to directly decide on issues within the jurisdiction of the local authority via referenda, local community-based assemblies (*mjesni*

¹⁷⁷ "Zakon o lokalnoj samoupravi" [Law on local self-government], *Official Gazette of the Republic of Montenegro*, no.42/03, 28/04, 75/05, 13/06 and *Official Gazette of Montenegro*, no. 88/09, 3/10, and 38/12, article.1.

¹⁷⁸ Montenegro's local self-government law makes a distinction between an *initiative* and a *citizen initiative*: In the former case, the local authority is responsible to respond to the initiative but it doesn't have further implications. If the local authority does not accept the citizen initiative, a referendum may be called. "Law on local self-government," article 102.

¹⁷⁹ Ibid, articles 47, 101, 102, and 107.

¹⁸⁰ "Law on local self-government," article 2.

¹⁸¹ A right to submit citizen initiatives is mentioned in the FBiH law. "Law on the principles of local self-government in Federation BiH," article 45.

¹⁸² "Law on local and regional self-government," articles 24, 25, 40.c.

zborovi) and other forms; procedures of such decision-making are to be regulated by law and local statute. Citizens can also submit proposals through citizen initiatives, citizens' associations, NGOs, and other means as defined by statute. Municipalities are allowed to introduce any other "mechanisms of participatory democracy" not prohibited by law.¹⁸³ In addition, municipal organs are obliged to grant all private and legal persons the possibility of filing complaints concerning local government work.¹⁸⁴ Cantonal laws¹⁸⁵ are not more detailed with respect to participation possibilities than is the entity law. The Law on local self-government in the RS mentions referendum, citizens' assembly, citizen initiative, LCs, citizen panels, proposal schemes "citizen hours," and other forms not prohibited by law.¹⁸⁶ Although the law promotes a greater number of options than the one in FBiH, it doesn't define or further mention some of the potentially more deliberative forms such as citizen panels. As in FBiH, authorities are obliged to allow private and legal persons to file complaints regarding local government work. They are also to organize public hearings on certain acts determined by law, such as draft budget decisions.¹⁸⁷ Procedures and issues subject to citizen decision-making¹⁸⁸ are to be determined by local statute. RS has also adopted the Law on referendum and citizen initiative (2010).

Mechanisms of direct citizen engagement in decision-making in Montenegro are initiatives, citizen initiatives, citizens' assemblies, LC and municipal referenda and other forms of decision-making foreseen by statute. Mechanisms are briefly prescribed.¹⁸⁹ The law foresees potentially more empowering forms of participation, as the local population is to participate in managing bodies of public departments and other legal persons with public authorities, with the aim of satisfying cultural, sports, educational, health, information and other needs. The municipality is also to create preconditions, foster and assist participation of the local population in achieving local self-government through different forms of decision-making on issues of common interest.¹⁹⁰ Issues and means of decision-making are to be determined by local statute.¹⁹¹ Representatives of the public can also participate in the Council for the development and protection of local self-

¹⁸³ "Law on the principles of local self-government in Federation BiH," article 43.

¹⁸⁴ *Ibid*, article 46.

¹⁸⁵ We focus here on recently adopted cantonal laws on local self-governance: Law on local self-government of Una-Sana Canton (2011) and Law on local self-government of the West Herzegovina Canton (2009). All cantons were supposed to harmonize their laws with the FBiH law but only two have done so to date. Tuzla Canton annulled its local self-government law in 2007.

¹⁸⁶ "Law on local self-government," article 99.

¹⁸⁷ *Ibid*, article 80.

¹⁸⁸ *Ibid*, article 100.

¹⁸⁹ See Annex II for details.

¹⁹⁰ "Law on local self-government," articles 99-100.

¹⁹¹ *Ibid*, article 52.

government.¹⁹² In addition to the general possibility of participating in advisory committees or council of the local assembly,¹⁹³ provisions on cooperation with the civic sector prescribe that NGOs shall be informed, consulted and involved in working groups preparing local acts and policies and in joint organization of public events with the municipality.¹⁹⁴

The law in Montenegro is rather detailed, as it prescribes how individual phases of consultation processes – essentially referring to public hearings – should look like.¹⁹⁵ *Inter alia*, it refers to different phases of the implementation of participatory processes, including principles such as informing citizens on opportunities for participation, publishing documents that are subject to consultation or processing citizen inputs. The law even introduces the obligation of preparing a “report on the success of the process.”¹⁹⁶ In case that acts such as development programs, spatial and urban plans or budgets are up for adoption, local authorities have to produce a plan on citizen participation and appoint departments in charge of organizing public hearings.¹⁹⁷ Local authorities also have to adopt a special act that regulates local-level citizen participation.¹⁹⁸

In Croatia,¹⁹⁹ citizens can directly participate in decision-making on local affairs through referenda and citizen assemblies in the LCs, in line with the law and local statute.²⁰⁰ The local government law only generally regulates the referendum procedure and the process of consulting the LC citizen assembly by the municipality, the right of citizens to propose to the municipal council a certain act solving a certain issue, and the possibility of filing complaints.²⁰¹ A special law regulates procedures pertaining to referenda (obligatory and consultative), citizen assemblies and citizen complaints.²⁰²

¹⁹² Ibid, article 145. Council members are appointed by the municipal assembly from “distinguished and eminent citizens” and experts in areas of importance for local governance. This council has the right to submit to public authorities proposals for the enhancement and development of local governance, increasing the quality of public services, protection of legally established rights and obligations of local governments and protection of rights and freedoms of local population. Bodies that the council addresses must formally respond within 60 days. An unofficial model decision on the council prepared by the Union of Municipalities of Montenegro prescribes procedural aspects of this body’s work in more detail; for example, the model decision foresees that the council can in certain instances also act upon an initiative of citizens or NGOs and that council members can be appointed by NGOs. Research conducted by Šarenac shows that only eight out of 21 municipalities in 2009 had established this body in practice. Union of Municipalities of Montenegro, “Model Odluke o Savjetu za razvoj i zaštitu lokalne samouprave” [Model decision on the Council for the development and protection of local self-government], 2010, article IV. 25, article III. 19; Šarenac, *Citizen Participation in Public Decision-making*, pp. 159-160.

¹⁹³ “Law on local self-government,” article 49.

¹⁹⁴ Ibid, articles 116.1-116.7.

¹⁹⁵ “Law on local self-government,” article 110.

¹⁹⁶ Ibid, article 110.6.

¹⁹⁷ Ibid, article 108 and 109.

¹⁹⁸ Ibid, article 108.

¹⁹⁹ There is a number of sectoral laws pertaining to civil society cooperation in Croatia that will not be addressed here due to objective limitations. For more information, see Bajok and Škorić, *Connected Communities*, p. 78.

²⁰⁰ “Law on local and regional self-government,” article 24.

²⁰¹ Ibid, articles 24-26.

²⁰² Zakon o referendumu i drugim oblicima osobnog sudjelovanja u obavljanju državne vlasti i lokalne samouprave” [Law on referendum and other forms of participation in the functioning of state authority and local self-government], *Official Gazette of the Republic of Croatia*, no. 33/96, 92/01, 44/06, 58/06, 69/07, and 38/09, article 2.

Annex II of this report provides a more detailed overview of how individual mechanisms of citizen participation are regulated by law in terms of their definition, purpose, individual implementation procedures, prerequisites and outcomes. In general, we can say that legislation rarely defines what individual mechanisms are, although their purpose is usually relayed. For some – such as the citizens' assembly – it is unclear whether they are venues for voting, deliberation or consultations. Outcomes of many participatory mechanisms are usually uncertain, except in the case of referenda where decisions, if valid, are obligatory for local legislatures.²⁰³ However, where laws regulate decision-making procedures for mechanisms such as citizen referenda or citizen initiatives in a more specific manner, they are overly restrictive: for example, in both the RS and Croatia, in order for the outcome of a referendum to be valid, more than 50% of voters registered in the municipality have to come out to vote, and more than 50% of those who voted have to support the decision. In Croatia, more than 20% of voters are needed to initiate a local referendum.²⁰⁴ In the RS, the collection of signatures for citizen initiatives has to be reported to the local police: according to Milosavljević, such a requirement "... opens up room for speculation on police control in the implementation of a typically political citizen right as an inadequate measure in a democratic system." Moreover, the fact that citizen initiators only have seven days to collect signatures is unsustainable, given that only well-resourced organizations, such as political parties, can perform such a feat in this timeframe.²⁰⁵

In addition to the ambiguity regarding what the mechanisms of citizen participation that are explicitly mentioned by law should entail in terms of procedure, more innovative, deliberative forms of engagement that may connote joint learning processes for local authorities and citizens are neglected by current legal frameworks (e.g. citizen juries, forums, consensus conferences, etc). With the exception of advisory bodies and joint local government and NGO activities that are mentioned in legislation in Montenegro, participatory venues denoting partnership and joint action in general appear to be absent from the scrutinized legislation.²⁰⁶

5.4. Operationalization of citizen participation

5.4.1. Rules on participation

In order to ensure that local authorities are in practice able to adhere to legal provisions, as well as respect a minimum of standards when it comes to the meaningfulness of

²⁰³ Laws do not mention the possibility of an advisory referendum, except for in Croatia. See Croatia's "Law on local and regional self-government," article 24.

²⁰⁴ Ibid, article 6. "Law on local and regional self-government," article 24; "Zakon o referendumu i građanskoj inicijativi" [Law on referendum and citizen initiative], *Official Gazette of Republika Srpska*, no. 42/10, article 35.

²⁰⁵ Milosavljević, *Strengthening citizen participation at the local level in Republika Srpska*, p. 39.

²⁰⁶ Sectoral legislation in Croatia, does however prescribe the establishment of particular multi-sectoral advisory bodies that involve citizen representatives at the local level, such as socio-economic councils or gender equality committees. GONG research shows that such bodies exist in 42% of municipalities. For more information, see GONG, *LOTUS 2011/12*, p.39.

participatory processes, it is important for them to have basic guidelines on what citizen engagement should look like in practice. Protocols, guidelines, or other operational documents are even more important having in mind the results of legal analysis in these three countries pointing, for the most part, to vague provisions and a lack of basic instructions for the application of participatory mechanisms in practice. The three countries considered differ significantly in respect to operational documents.

In accordance with practices of a number of European countries,²⁰⁷ the Croatian government adopted in 2009 the Code of practice on consultation with the interested public in procedures of adopting and implementing laws, other regulations and acts that determines general principles, a minimum of standards and measures for consulting the interested public on documents “which regulate matters and take positions of interest for public benefit (protection and promotion of human rights, public services, the justice system, environmental protection, etc.).”²⁰⁸ This Code is to offer to public authorities “guidelines stemming from the concrete practical experience to date of dialogue and cooperation between the public authorities in the Republic of Croatia and the interested public,” with the result of making such interaction easier and encouraging more active participation of citizens in public life.²⁰⁹ The Code’s provisions, *inter alia*, are also to be appropriately applied by local authorities when adopting general acts regulating matters in their jurisdiction “which directly meet the needs of citizens, or other matters of interest for the public benefit of citizens and legal entities within their territory or within the field of their activity (development of a settlement and housing, physical planning, communal activities and other public services, environmental protection, etc.).”²¹⁰ Given that standards in the Code aren’t addressed in detail, the Croatian government’s Office for cooperation with NGOs has prepared *Guidelines for the implementation of the Code*.²¹¹

As previously mentioned, local government legislation in Montenegro introduces the obligation of municipalities to adopt special decisions that are to regulate mechanisms, subjects, procedures, deadlines, means, reports on the success of participatory processes,

²⁰⁷ See, for example, the UK government’s Code of practice on consultation (2008), the Austrian government’s Standards of Public Participation: Recommendations for Good Practice (2008), or the European Commission’s General principles and minimum standards for consultation of interested parties (2001).

²⁰⁸ “Code of practice on consultation,” II.1.

²⁰⁹ Ibid, II.2.

²¹⁰ Ibid, IX. The Code gives definitions and establishes key principles of participation, followed by a minimum of standards and measures for consultation: timely notification of citizens on the plan of adoption of a certain law or act, availability and clarity of the content of the consultation process, the minimum timeframe for consultation, follow-up information on the outcomes of the consultation and harmonization of the implementation of standards and measures of consultation in state bodies. The Code opens up the possibility for experts belonging to the interested public to become involved in consultation processes, as well as for organizing public consultations on the impacts (financial, economic, social, environmental, human rights) of adopting and implementing certain laws, regulations or acts. Ibid, VI.1. and VI.2. In terms of further institutionalization of consultation, the Code foresees the appointment of a “coordinator for conducting consultations” as a contact person in all central bodies of the state administration and government offices. Ibid, V.5.

²¹¹ Office for cooperation with NGOs, *Smjernice za primjenu Kodeksa savjetovanja sa zainteresiranom javnošću u postupcima donošenja zakona, drugih propisa i akata* [Guidelines for the implementation of the Code of practice on consultation with the interested public in procedures of adopting and implementing laws, other regulations and acts], 2010, p.6.

and other relevant questions relating to citizen participation.²¹² The Model *Decision on the means and procedures of participation of the local population in the conduct of public affairs*, prepared by the Union of municipalities of Montenegro, offers an example of what such a decision may entail.²¹³ The document combines some of the main principles of participation, as well as obligations of the municipality to that end, but in practical terms mostly focuses on public hearings as a form of participation.²¹⁴ This document contains important guidelines on principles that should be followed when organizing public hearings: the obligation to include citizens in all phases of the policy making process, inclusion of different groups within the population, timely information provision, follow-up information on citizen inputs and the use of different mechanisms for consultation and public hearings. The model decision is detailed and every step is formulated as an obligation of local authorities. The decision foresees that municipal authorities name a contact person for cooperation with NGOs; moreover, for each participation process, an “organ for the respective administrative area” is to be appointed by the municipal president. This body – presumably a relevant department within the local administration – is to organize public hearings, take minutes, summarize results of hearings and write reports. It is to assess and consider all inputs received, explain what has or has not been accepted and for what reason, decide on such inputs and include them in the report delivered to the organ in charge of the local act up for consultation.²¹⁵ According to research conducted in all municipalities in Montenegro, 18 out of 21 municipalities had adopted a decision on citizen participation in 2009.²¹⁶

Although there are rules at state and entity levels regulating public consultation processes in BiH, they do not pertain to local governments. Citizen participation is further operationalized primarily through local statutes and council/assembly rulebooks, as in the other two countries. However, “statutory arrangements differ negligibly from one municipality to the next and as a rule do not define in sufficient detail the practical aspects of the implementation of ... participation mechanisms. The statutes of individual municipalities are often no more detailed than the laws.”²¹⁷ Some 25-30% of municipalities have adopted special decisions pertaining to citizen participation, promoted by the CCI;²¹⁸ other local acts on citizen participation were adopted as part of specific international

²¹² “Law on local self-government,” article 108.

²¹³ See Union of Municipalities of Montenegro, *Odluka o načinu i postupku učešća lokalnog stanovništva u vršenju javnih poslova, model* [Model decision on the means and procedure of participation of local population in the conduct of public affairs], 2011.

²¹⁴ The Model decision does mention other forms of participation, such as forums for consumers and service users, thematic forums or those of interest groups, citizen panels, and boards on specific questions of individual groups or communities. Ibid, article 10.

²¹⁵ Ibid, articles 16, 12, 14; .29.

²¹⁶ Šarenac, *Citizen Participation in Public Decision-making*, pp. 159-160.

²¹⁷ Snežana Mišić-Mihajlović and Mirna Jusić, “Communication as a prerequisite for participation at the local level: The case of Bosnia and Herzegovina,” p. 216.

²¹⁸ These documents, promoted by CCI in municipalities in BiH, include decisions on public hearing procedures, on LC surveys for the purpose of setting project priorities, or on procedures and criteria for selecting NGO projects. Ibid, p.211.

assistance programs.²¹⁹ In 2012, the RS Association of municipalities and towns and the RS Ministry of administration and local self-government published a non-binding *Model decision on forms of citizen participation in achieving local self-government* that local governments can use when drafting relevant local legislation. The decision primarily outlines and describes different forms of citizen participation that are contained in the entity self-government law, adding some additional ones not covered by the law; it also provides some guidance for organizing citizen assemblies and hearings.²²⁰ International organizations active in the field of local governance reform in BiH have also heavily promoted participatory approaches through a myriad of locally-implemented projects relating to development, spatial or environmental planning; in some cases, such processes have been institutionalized, but usually end once the projects end.²²¹

Generally speaking, it appears that operational guidelines and policies that would ensure that local authorities are able to interpret and implement relevant legal obligations in the right manner are currently missing. Exceptions are in Montenegro and Croatia with respect to processes of consultation, where local authorities are offered operational guidance on how to implement mandatory consultation processes with citizens; a non-binding model decision in the RS may also provide municipalities with some more detail on how to organize individual consultation processes. In general, it appears that local authorities in all three countries would greatly benefit from such documents, also with respect to other forms of participatory processes.

5.4.2 “Support structures” and evaluation

The existence of a designated person or body as a support structure in charge of planning and organizing citizen engagement in different decision-making processes is a sign of institutionalization of participation. In only 21.7% of the municipalities surveyed for the purpose of this report, a designated person was, in line with their job description, responsible for all activities of citizen participation in different decision-making processes in the municipality: more so in Croatia (28.6%), where municipalities are to appoint a consultation coordinator in line with the Code of practice on consultation, and to a lesser

²¹⁹ For example, through their program “Local First,” the OSCE in BiH has assisted municipalities in adopting acts that define citizen participation mechanisms or the organization of citizen participation processes. The OSCE has also supported municipalities in adopting local acts on LCs.

²²⁰ In terms of procedural guidance for organizing participatory events, this model document addresses the citizen’s assembly in particular, listing examples of issues that could be discussed and decided on at the assembly and what the procedures for that could be. The document also provides, albeit to a lesser extent than for the citizen’s assembly, some guidance for organizing public hearings. For more, see Association of municipalities and towns of Republika Srpska and Ministry of administration and local self-government of Republika Srpska, *Model odluke o oblicima učešća građana u ostvarivanju lokalne samouprave* [Model decisions on forms of citizen participation in achieving local self-government], (Bijeljina: August, 2012).

²²¹ For more, see Škrbić, “Does participation matter?” pp. 15-16.

extent in BiH (12.6%) and Montenegro (11.1%). On the other hand, in 61.1% of Montenegrin municipalities, more departments are formally in charge of citizen engagement in different decision-making processes, which corresponds to the provisions of the Model *Decision on participation*. Looking at the data for the three countries in total, 17-21% municipalities either have a department, more persons, or more departments formally responsible for different activities of citizen participation, potentially signaling that municipalities have started to recognize that citizen participation activities need institutionalized support structures. On the other, 21.4% - or one fifth - of municipalities do not have a designated person or body in charge of such activities, which may indicate that they organize participatory processes on an *ad hoc* basis. According to LOTUS research conducted in Croatia, only 2% of towns and no municipalities surveyed had published contact data of the coordinator for conducting consultations, an obligatory position according to the Code of practice on consultation, on their websites.²²²

Data on evaluation also signal the extent to which municipalities have institutionalized meaningful participatory practices. In sum, most municipalities do not have a special evaluation procedure pertaining to participatory processes they have organized. They usually keep minutes on these processes only (56.6%), mostly so in Croatia (57.7%) and BiH (58.6%), and to a lesser extent in Montenegro (33.3%). It appears that a certain number of municipalities do evaluate participatory processes, but the numbers are low: 18.1% of the municipalities surveyed responded that following a participatory event, they prepare a report on it, where they assess its success in line with previously determined criteria. This percentage is the largest in Montenegro (61.1%) and much lower in BiH (28.8%) or Croatia (6.9%). Only 7.2% of surveyed local government representatives in the three countries responded that a survey is conducted with participants after an event to assess their perception and satisfaction with the event.²²³ In 10.5% of municipalities (in BiH and Croatia) events are neither evaluated, nor are minutes prepared for them.

What we can conclude, at least for Croatia and BiH, is that evaluation of participatory processes is more of an exception than a rule: currently, the rule appears to be mere minute-keeping. Although minutes do leave the possibility that proposals and suggestions of citizens may be scrutinized by local parliaments during decision-making processes, without evaluation, it is difficult to claim that participatory processes are organized in a meaningful way and that citizens are able to influence concrete decisions. On the other hand, it appears that municipalities in Montenegro have to a greater extent institutionalized such practices, which is not surprising given that local governance legislation and decisions on participation require reporting on the outcomes of participatory activities.

²²² GONG, *LOTUS 2011/12*, p. 29.

²²³ Or by country, 16.2% of respondents from BiH, 1.7% from Croatia and 5.6% from Montenegro.

6.

Concluding remarks and recommendations

This investigation of legal and institutional frameworks for citizen participation in local-level decision-making processes in BiH, Croatia and Montenegro naturally evokes the discussion on how citizen participation should be institutionalized: should participation be regulated at the national, or at the local level? And should more emphasis be placed on a detailed regulation approach or on more “flexible” policies? In an 18-country study, McGee et al (2003) find that where decentralization legislation gives significant legislative powers to local authorities (such as in federal systems), higher-level law may set a “minimum standard,” and “what might be of real interest is the scope for *local* governments to introduce laws that actively promote, or at least do not inhibit, citizen participation.”²²⁴ The same research also shows that “in some cases the operational provisions regulating how laws and policies get enacted, and the supportive guidance issued by governments to accompany them and enhance the chances of successful implementation, are as important as the laws and policies themselves.”²²⁵ However, authors find that the balance between the proliferation of laws *versus* supporting guidelines appears to be partly contingent on the legislative and policy tradition of a given context.²²⁶ The latter “flexible” approach opens up the possibility for local governments to innovate more in this area, but a disadvantage may be that “too much is left to local authorities’ discretion and interpretation rather than unambiguously laid down by law.”²²⁷

In BiH, Croatia and Montenegro, the experience appears to be mixed: higher levels of government are in charge of adopting the legal framework for citizen participation, but this framework is often too ambiguous to really set a minimum of standards for participation. While the legal framework does declaratively promote principles of participatory democracy in all three countries, it fails to regulate in enough detail individual citizen participation mechanisms (examples are citizen panels and hours in the RS, the referendum in Montenegro or citizen initiative in Croatia). Laws and policies also do not sufficiently promote some of the principles of effective participation processes, such as inclusion and representation of different groups (except for in Montenegro to a certain extent), true evaluation of participation or feedback to citizens on the outcomes of participatory processes. As previously explained, provisions on referenda in Croatia and the RS are

²²⁴ Emphasis added in the original. Ibid, p. 46.

²²⁵ McGee et al, *Legal frameworks for citizen participation*, p.46.

²²⁶ For example, authors find that the proliferation of supporting guidelines and policies is more inherent to Western countries. Ibid.

²²⁷ Ibid.

restrictive because of high turnout quota as preconditions for the validity of referenda decisions; procedural requirements for citizens to make use of citizen initiatives in the RS, for example pertaining to the collection of signatures, may also act in a restrictive manner.

The approach taken to institutionalization in these three countries appears to be flexible only to the extent that local governments are vested with significant space to further regulate the procedural aspects of citizen participation in decision-making by statutes and local acts, but not in sense that higher level governments truly develop comprehensive supporting guidance on citizen participation as is the case in some countries scrutinized by McGee et al. It also appears to be more focused on higher-level laws, albeit, as stated previously, with too much ambiguity and not enough obligation to truly involve citizens. This is, however, where some differences are apparent between the countries. Referenda are regulated in more depth in Croatia and in the RS (and citizen initiatives in the RS). Montenegro regulates citizen participation more comprehensively with its local self-government law than do the other two countries, also introducing the obligation of a special local-level decision on citizen participation. Although all three countries introduce the obligation of consultations and tend to identify the subjects that citizens need to be consulted on, Croatia and Montenegro have gone an extra step in regulating how the process of consultations should look like in higher-level legislation and providing (obligatory) guidance to that end. The Code of practice on consultation in Croatia also introduces the obligation of assigning a coordinator for conducting consultations.²²⁸ An important question that remains to be answered is whether such guidance on consultations is making a difference at the local level in Croatia and Montenegro.

While recognizing the differences between the countries with respect to diverse levels of regulation, it is nevertheless questionable whether local governments in all three countries are truly able to take advantage of the flexibility of the current legal frameworks; they indeed appear to be falling into the trap of too much discretion for interpreting the already ambiguous legal framework. Evidence shows that local statutes and other acts often just repeat scarce and ambiguous legal provisions, whereas local governance could really use a minimum of support from higher levels of government, especially in case of more complex participatory processes, such as direct democratic institutions that require better regulation of procedures, but also deliberative events that require significant know-how and coordination. The general absence of policies and programs that would seek to enhance local-level participatory practices and build up the capacities of local governments to that end cast a doubt on the true determination of higher levels of government to mainstream participatory decision-making.

A synthesis of such findings yields a number of recommendations with respect to the institutionalization of citizen participation practices.

²²⁸ "Code of practice on consultation," V.5.

- First of all, potential restrictions and ambiguities posed by current legal provisions pertaining to different mechanisms of citizen participation²²⁹ need to be examined in more depth and tackled, with reference to international standards.
- Higher levels of government in all three countries should provide municipalities with detailed guidance on the procedural aspects of implementing different participatory mechanisms, which are currently to be regulated by local acts (and usually are not).²³⁰ The modalities of such guidance may differ,²³¹ but it should certainly be a part of wider efforts to build supporting structures for citizen participation in local authorities, such as educating designated staff or introducing evaluation procedures.
- Last but not least, any such efforts, i.e. policies and programs for enhancing local-level participatory practices, should be created in consultation with local authorities and the local population, in line with international standards and literature on citizen engagement.

This report would have benefited from an assessment of local-level participatory processes and insight into the institutional environment in which they occur, pointing to good and innovative practices, or alternatively, to participation constraints. Unfortunately, limited resources did not allow for such extensive data-gathering and field-work to be conducted. In that sense, further studies may explore how current laws and policies, and the differences between levels of regulation in countries in that respect, really influence local-level participation. Research to date appears to show that practices of participation in all three countries are generally weak in terms of how processes are carried out, and it would be interesting to see whether levels of regulation do in fact make a difference. Another interesting question may be whether there are alternative participatory practices taking place despite weak or no regulation, and why. Our survey has pointed to the usage of some forms of participation that are not necessarily covered by legislation everywhere (for example, advisory committees involving citizens),²³² which certainly should be investigated in more depth. An important subject of study may be the extent to which current discourses on citizen participation in the three countries are shaped by international assistance programs focused on the subject, and what implications this may have on participatory practices. Moreover, contextual variables such as the common historical legacy of participation during former Yugoslavia, processes of democratization and “top-down” (and largely incomplete) fiscal and functional decentralization processes and their relationship to the practice of participation will also make an important subject of further inquiries.

²²⁹ See Annex II of this report for a detailed overview.

²³⁰ For recommendations on how supporting guidance for citizen participation could look like in these three countries, see Mišić Mihajlović, “Citizen Participation in Bosnia and Herzegovina;” Bajok and Škorić, “Connected Communities” and Šarenac, “Citizen Participation in Public Decision-making.”

²³¹ For example, binding versus non-binding; adopted at higher or local levels of government; very detailed and prescriptive as opposed to setting only a minimum of standards, etc.

²³² For more on what forms of citizen engagement municipalities use, see Annex I of this report.

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Annex I – Citizen participation mechanisms used in past five years in local governments in BiH, Croatia and Montenegro

Table 1. Citizen participation mechanisms used in decision-making processes in municipality/town in past five years

Citizen participation mechanism	Total for all countries		BiH		Croatia		Montenegro	
	No.	%	No.	%	No.	%	No.	%
Local referendum	60	19.7	28	25.2	25	14.3	7	38.9
Citizen initiative	171	56.3	81	73.0	75	42.9	15	83.3
Citizen assembly in LC	238	78.3	106	95.5	114	65.1	18	100
LC council/assembly	239	78.6	97	87.4	124	70.9	18	100
Public hearings/ consultations	279	91.8	110	99.1	151	86.3	18	100
Petitions, pleas, proposals, complaints	288	94.7	105	94.6	165	94.3	18	100
Citizen hours	229	75.3	89	80.2	124	70.9	16	88.9
Participation of citizens in committees/ boards/working groups of municipal assembly/ council	266	87.5	104	93.7	146	83.4	16	88.9
Advisory bodies (councils) of representatives of individual population groups	203	66.8	76	68.5	114	65.1	13	72.2
Citizen panels	48	15.8	32	28.8	14	8.0	2	11.1
Surveys on public perception	166	54.6	95	85.6	62	35.4	9	50
Focus groups	166	54.6	78	70.3	79	45.1	9	50
Other	40	13.2	17	15.31	20	11.43	3	16.67

Source: Results of survey conducted with representatives of towns/municipalities for the purpose of this report in January-March 2012; BiH (N = 111), Montenegro (N = 18) and Croatia (N = 175).

Annex 2 – Analysis of legal framework by individual citizen participation mechanisms

Referendum	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal acts regulating mechanism	Law on the principles of local self-government in FBiH; cantonal local self-government laws; municipal statutes	Law on local self-government; Law on referendum and citizens' initiative; municipal statutes	Law on local self-government; Municipal statutes	Law on referendum ; Law on local and regional self-government; municipal statutes
Precision of legal provisions: Definition, clarity of purpose, procedures	No definitions; By FBiH law, referendum can be held to decide on proposal of change of statute, on proposal of general act, other matters within LG jurisdiction and other issues determined by law and statute. Direct citizen participation in referendum is to be further regulated by law and statute. ²³³ Some cantonal constitutions cite obligation of organizing referenda in case of formation of new municipalities. ²³⁴	Defined as means of direct and free decision-making by citizens, by personal and secret ballot on one or more issues. ²³⁵ Called on issues in LG jurisdiction determined by law and statute, obligatorily for territorial changes. ²³⁶ Law on referendum prescribes in detail procedure of implementation, but also publicity of procedure, protection of citizens' rights and their right to file complaints to responsible bodies and the Supreme court. ²³⁷	Law mentions LC/LG referendum. At LC referendum, citizens from part of LG territory decide on questions within LC jurisdiction. LG referendum can be called for citizens from municipality to decide on individual issues within LG jurisdiction. Topics and procedures to be determined by law and statute. ²³⁸	No further provisions provided by law. Defined as form of direct decision-making by voters in conduct of public affairs on issues within LG jurisdiction as defined by law and statute. ²³⁹ Law on referendum regulates in detail procedure of implementation. ²⁴⁰ Can be called to decide on proposal on change of statute, proposal of general act and other issue within municipal council jurisdiction and other issues determined by law and statute. ²⁴¹ Municipal council can also call advisory referendum on issues within its jurisdiction. ²⁴²

²³³ "Law on the principles of local self-government in FBiH," articles 43 and 44.

²³⁴ "Ustav Bosansko-podrinjskog kantona" [Constitution of Bosna-Podrinje Canton], *Official Gazette of Bosna-Podrinje Canton*, no. 8/98, 10/00, and 5/03, article V.50. "Ustav Kantona Sarajevo" [Constitution of Canton Sarajevo], *Official Gazette of the Canton Sarajevo*, no. 1/96, 2/96, 3/96, 16/97, 14/00, 4/01, and 28/04, article V.35.

²³⁵ "Law on referendum and citizens' initiative," article I.6.

²³⁶ See "Zakon o teritorijalnoj organizaciji Republike Srpske" [Law on territorial organization of Republika Srpska], *Official Gazette of Republika Srpska*, no. 69/09, article 11,13,30; Also refers to two or more municipalities applying for city status. "Law on local self-government," article 62.

²³⁷ Ibid, articles I.8, I.9; also see articles III.38, III.40, IV.49, 50, 52.

²³⁸ "Law on local self-government," articles 104 and 105.

²³⁹ "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 2.

²⁴⁰ Ibid. Law prescribes the format of decision on calling referendum and manner of its publication (articles 9-11), actors in charge of implementing procedure (articles 22-23). Similar as in RS, offers very detailed overview of procedural/organizational aspects of implementing a referendum (articles 26-46).

²⁴¹ "Law on local and regional self-government," article 24.

²⁴² "Law on local and regional self-government," article 24.

Referendum	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Who initiates it?	Municipal council adopts decision to call referendum. ²⁴³ In Una-Sana canton, can be called by citizens' initiative that has to be supported by majority of citizens from an LC. ²⁴⁴	Referendum called by majority vote of all municipal assembly representatives, upon proposal of at least 1/3 municipal representatives, mayor, at least 10% of voters or 3,000 voters if more than 30,000 registered in municipality. ²⁴⁵	To be called by municipal assembly, in line with statute. ²⁴⁶	Municipal council may call referendum on issue within its jurisdiction under conditions prescribed by law and statute, ²⁴⁷ upon proposal of 1/3 of municipal council representatives, the mayor, a majority of local boards. ²⁴⁸ In case referendum proposed by 20% of municipal voters, council has to send proposal to central government authority in charge of local and regional governance; the latter determines the validity of the proposal (required number of voters, compliance of the referendum question with legal provisions). If central authority determines it to be valid, the municipal council is to call a referendum within 30 days.
Legal status of participation results: What happens after participation?	Decision adopted at referendum is obligatory for council. ²⁴⁹ No conditions for its validity specified.	Decision adopted at referendum obligatory. For validity of the decision, support by simple majority of those who voted is needed, and a simple majority of registered voters have to vote in the referendum. ²⁵⁰	No provision in law.	Adopted referendum decision obligatory (except for advisory referendum). ²⁵¹ For decision to be valid, support by majority of those who voted needed, with turnout quorum of a majority of overall number of registered voters. ²⁵²

²⁴³ "Law on the principles of local self-government in FBiH," article 13.

²⁴⁴ "Law on local self-government of Una-Sana Canton," article 52.

²⁴⁵ "Law on referendum and citizens' initiative," article II.10.1 and II.10.2.

²⁴⁶ "Law on local self-government," articles 45, 105.

²⁴⁷ "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 4.

²⁴⁸ "Law on local and regional self-government," article 24.

²⁴⁹ "Law on the principles of local self-government in FBiH," article 44.

²⁵⁰ "Law on referendum and citizens' initiative," article II.35.

²⁵¹ "Law on local and regional self-government," article 24.

²⁵² "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 6. This is not the case for the state referendum after amendments to the Constitution in 2010.

Referendum	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Potential limitations and restrictions	General lack of precision of current legal provisions.	Restrictive turnout quorum. Referendum can be called on the same question after six months. ²⁵³ For further restrictions pertaining to signature collection procedure, see table on citizens' initiative below.	General lack of precision of current legal provisions.	Restrictive turnout quorum. Citizens have 15 days to collect signatures to initiate referendum. ²⁵⁴ Responsible municipal body has a right to adopt act or decision content-wise opposed to decision adopted at referendum one year after referendum date; referendum can be called on same question after six months. ²⁵⁵

Citizens' initiative	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal acts regulating mechanism	Law on the principles of local self-government in FBiH; cantonal local self-government legislation, municipal statutes	Law on local self-government; Law on referendum and citizens' initiative; municipal statutes	Law on local self-government; municipal statutes	Law on referendum; Law on local and regional self-government; municipal statutes
Precision of legal provisions: Definition, clarity of purpose, procedures	Initiative vaguely regulated. Definition not provided. Submitted to LG organs for adoption of certain act or solving of certain issue within its jurisdiction. ²⁵⁶	Definition, purpose and procedure prescribed. By initiative, citizen can propose adoption of general act in LG jurisdiction and other proposal in line with Constitution, law and statute, as well referenda. Procedure of implementing initiative regulated in detail, as well as right of citizens to report flaws in procedure. ²⁵⁷	Two kinds: <i>initiative</i> with aim of considering and deciding on issue of interest for local population and citizens' <i>initiative</i> proposing adoption or change of act on significant issue within LG jurisdiction. By citizen initiative, municipal assembly session can be called within 15 days of submission. Issues, procedures to be regulated by statute. ²⁵⁸	Submitted to responsible municipal organ for adoption of a certain act or solving of a certain issue within its jurisdiction. ²⁵⁹
Who initiates it?	Citizens	Citizens	Citizens	Citizens

²⁵³ "Law on referendum and citizens' initiative," article II.37.

²⁵⁴ Ibid, article 8.b.

²⁵⁵ Ibid, article 8.

²⁵⁶ "Law on the principles of local self-government in FBiH," article 45.

²⁵⁷ "Law on referendum and citizens' initiative," article I.3, article I.9.

²⁵⁸ "Law on local self-government," articles 101 and 102.

²⁵⁹ "Law on local and regional self-government," article 25.

Citizens' initiative	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal status of participation results: What happens after participation?	Municipal council has to discuss proposal if signed by a number of registered voters, in line with the statute; number will not be more than 5% of total number of voters. ²⁶⁰ No timeframe for council discussion.	For proposal on adoption of act within municipal assembly jurisdiction, initiative can be submitted by 10% or 1000 voters; for adoption, change of statute, 20% or 1500 voters. ²⁶¹ By statute, number of signatures cannot be less than 5% or 500 or more than 7% or 700 voters. ²⁶² If list of signatures in line with law, responsible organ has to decide on proposal in accordance with statute/rulebook. ²⁶³ Assembly has to hold discussion within 60 days of receipt and provide answer. ²⁶⁴	Responsible organ has to consider initiative within 30 days, take a stance on it and inform applicant. In case it doesn't, applicant can refer to municipal president or assembly. If responsible organ doesn't accept citizens' initiative, referendum can be called on the subject of the initiative, to be held 90 days after the decision is made. Necessary number of signatures needed for citizens' initiative and for an initiative to call municipal assembly session to be determined by statute. ²⁶⁵	Municipal council has to discuss proposal if signed by at least 10% of registered voters. Council has to give answer to applicants within 3 months of receipt of proposal. ²⁶⁶
Potential limitations and restrictions	General lack of precision of current legal provisions.	Initiators to report signature collection to police. Collection can last 7 days. ²⁶⁷ Verification of validity of proposal to eliminate potential flaws prior to collection not foreseen. Mechanism of protection of initiators' rights imprecise. ²⁶⁸	General lack of precision of current legal provisions.	General lack of precision of current legal provisions.

²⁶⁰ "Law on the principles of local self-government in FBiH," article 45.

²⁶¹ "Law on local self-government," articles 73,74.

²⁶² "Law on local self-government," article 104.

²⁶³ "Law on referendum and citizens' initiative," articles 50-51. If responsible organ does not accept proposal, it has to inform initiators about its decision, who can in turn, if they believe that the organ did not proceed correctly, submit a complaint to the Supreme Court. The Supreme Court decision on the complaint is final. Ibid, article 52.

²⁶⁴ "Law on local self-government," article 103.

²⁶⁵ "Law on local self-government," articles 101-102, 46.

²⁶⁶ "Law on local and regional self-government," article 25.

²⁶⁷ "Law on referendum and citizens' initiative," articles IV.44, 45, 47.

²⁶⁸ See Milosavljević, *Strengthening citizen participation at the local level in Republika Srpska*, pp.38-40.

Citizens' assembly	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal acts regulating mechanism	Law on the principles of local self-government in FBiH; cantonal local self-government laws; municipal statutes, other acts	Law on local self-government; municipal statutes, other acts	Law on local self-government; municipal statutes, other acts.	Law on referendum; Law on local and regional self-government; municipal statutes, other acts
Precision of legal provisions: Definition, clarity of purpose, procedures	No provisions in FBiH law. In two cantons, assembly has purpose of discussion, proposing solutions to issues of importance to LC residents and proposing adoption of acts within LC or LG jurisdiction; some cantonal legislation mentions that LG can use this mechanism to consult citizens. ²⁶⁹	Law only prescribes who calls LC assembly. The procedure of calling a citizens' assembly and its operation is to be regulated further by a special decision of the municipal assembly. ²⁷⁰	Law only refers to implications of citizens' assembly (see below under legal status).	Citizens decide at assembly on matters of local importance. Called for the purpose of discussion on needs and interests of citizens, as well as giving proposals for solving matters of LC importance. ²⁷¹ Municipal council can ask opinion of assemblies on proposal of general act or other issue within its jurisdictions, as well as other issues determined by law and statute. ²⁷² Manner of calling an assembly and its functioning to be further regulated by municipal statute. ²⁷³
Who initiates it?	According to law in one canton, LC council calls assembly based on need, mandatorily upon request of municipal council, mayor, or 10% of LC inhabitants. ²⁷⁴	Mayor, every municipal assembly representative residing in LC, LC president, who also has to call assembly upon request of 50 voters. ²⁷⁵	LC assembly calls citizens' assembly upon own initiative or proposal of 1% inhabitants from LC, according to unofficial model document. ²⁷⁶	Local board/town district council calls assembly, in line with statute. ²⁷⁷ Can also be called by municipal council. ²⁷⁸ Possibility of citizens initiating LC assembly not mentioned by law.

²⁶⁹ "Law on local self-government of West Herzegovina Canton," article 35; "Law on local self-government of Una-Sana Canton," article 55. According to latter law, citizens' assembly in LC to be further regulated by municipal statute. Ibid.

²⁷⁰ "Law on local self-government," article 102.

²⁷¹ "Law on local and regional self-government," article 63. Similar provision contained in Law on referendum, which also states that assembly is called for citizens to decide on certain issues of local importance. See "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 61.

²⁷² "Law on local and regional self-government," article 24.a.

²⁷³ "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 62.

²⁷⁴ "Law on local self-government of West Herzegovina Canton," article 35.

²⁷⁵ "Law on local self-government," article 102.

²⁷⁶ Union of municipalities of Montenegro, *Model odluke o mjesnim zajednicama* [Model decision on local communities], 2010, article 46.

²⁷⁷ "Law on local and regional self-government," article 63.

²⁷⁸ "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 62.

Citizens' assembly	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal status of participation results: What happens after participation?	Not defined	Not defined	By majority of citizens' votes at LC assembly, requests and proposals adopted, submitted to responsible organ; municipal organs obliged to consider them within 60 days and inform citizens. ²⁷⁹	Decision adopted by public vote (unless decision by majority of present citizens to decide secretly) at assembly obligatory for local board/town district council, but not for municipal council. ²⁸⁰
Potential limitations and restrictions	General lack of precision of current legal provisions.	General lack of precision of current legal provisions.	General lack of precision of current legal provisions.	General lack of precision of current legal provisions.

Public hearings and consultations	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal acts regulating mechanism	Law on the principles of local self-government in FBiH; sectoral laws; ²⁸¹ cantonal local self-government laws; municipal statutes/rulebooks, other acts	Law on local self-government; sectoral laws; ²⁸² municipal statutes/rulebooks, other local acts	Law on local self-government; mandatory decisions on citizen participation; municipal statutes/rulebooks	Sectoral laws; ²⁸³ Code of practice on consultation; ²⁸⁴ FOIA; municipal statutes/rulebooks

²⁷⁹ "Law on local self-government," article 103.

²⁸⁰ "Law on local and regional self-government," article 24.a; "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," articles 61-62. Provisions of the referendum law pertain to citizens' assembly in general. Law on local and regional self-government regulates citizens' assembly in LCs. See "Law on local and regional self-government," article 63.

²⁸¹ "Zakon o prostornom planiranju i korištenju zemljišta na nivou FBiH" [Law on spatial planning and land use at FBiH level], *Official Gazette of FBiH*, no.2/06 and 72/07.

²⁸² "Zakon o uređenju prostora i građenju" [Law on spatial development and construction], *Official Gazette of Republika Srpska*, no. 55/10.

²⁸³ "Zakon o prostornom uređenju i gradnji" [Law on spatial planning and construction], *Official Gazette of Republic of Croatia*, no. 76/07, 38/09, 55/11, 90/11, 50/12, 55/12.

²⁸⁴ Non-mandatory guidelines on how to implement the Code offer very detailed advice. For more, see: *Guidelines for the implementation of the Code of practice on consultation*.

Public hearings and consultations	Bosnia and Herzegovina Federation BiH	Republika Srpska	Montenegro	Croatia
Precision of legal provisions: Definition, clarity of purpose, procedures	Public hearings mentioned as possibility for participation within LC concerning urban planning in FBiH law. In course of preparation and adoption of certain general act, municipal authorities may decide to publish its text in all phases of adoption, and determine a deadline for submission of written comments. ²⁸⁵ Sectoral law further defines procedure of consultations.	In course of preparation and adoption of certain general act, mayor may decide to publish its text in all phases of adoption, and for a deadline for submission of written comments to be determined. Public hearings mandatory for draft statute, draft decision on budget and other acts as defined by law and statute. ²⁸⁶	Municipal organs obliged to announce consultations and discussion on matters within its jurisdiction, as well as to allow for citizen participation. Public hearing mandatory in adoption of development, spatial and urbanism plans, budget and general acts that establish rights and duties of citizens. Timeframe cannot be shorter than 15 days. Municipality obliged to prepare citizen participation plan and appoint responsible organ. ²⁸⁷ Law ²⁸⁸ and mandatory decision entail detailed provisions on organizing public hearing. ²⁸⁹	Public hearings obligatory by sectoral laws. Consultations regulated in more detail by Code of practice on consultation, obliging LGs to a minimum of standards on timely notification on plan on adoption of acts; accessibility and clarity of the subject of consultation; minimum timeframe for conducting consultations; follow-up information on outcomes. Public bodies to appoint consultation coordinator. ²⁹⁰ By FOIA, public authorities to publish draft acts and allow submission of comments on acts within adequate timeframe. ²⁹¹
Who initiates it?	Responsible municipal organs	Responsible municipal organs	Responsible municipal organs	Responsible municipal organs

²⁸⁵ "Law on the principles of local self-government in FBiH," article 25; article 42.

²⁸⁶ "Law on local self-government," article 78; article 104.

²⁸⁷ "Law on local self-government," article 141; article 109.

²⁸⁸ Such as informing citizens about public hearings, involving minorities in public hearings, informing citizens on outcomes of hearings, etc. Ibid, article 110.

²⁸⁹ See *Model decision on the means and procedure of participation of local population in the conduct of public affairs*.

²⁹⁰ "Code of practice on consultation," articles V.1-V.5.

²⁹¹ "Law on right to access information," article 20.

Public hearings and consultations	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal status of participation results: What happens after participation?	Not prescribed	Not prescribed	Organs have the duty to consider incoming proposals and suggestions from public hearing participants, to sum up comments that were accepted and explain reasons for why some were not accepted; authorities then prepare report on results of public hearings, to be submitted with draft act and delivered to body proposing act. ²⁹²	Inputs by the interested public and a concise explanation on comments to individual provisions of the draft that were not accepted are to be published on website of public body responsible for the preparation of the act or in another appropriate manner, so that "the effect of consultations ... can be seen." ²⁹³
Potential limitations and restrictions	Mandatory procedures for conducting public hearings/ consultations missing	Mandatory procedures for conducting public hearings/ consultations missing	-	-

Proposals/petitions and complaints	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Legal acts regulating mechanism	FBiH, cantonal constitutions; Law on the principles of local self-government; cantonal local self-government laws; municipal statutes/ rulebooks	RS Constitution; Law on local self-government; municipal statutes/ rulebooks	Constitution; Law on local self-government; municipal statutes/ rulebooks	Constitution; Law on local and regional self-government; Law on referendum; municipal statutes/rulebooks.

²⁹² "Law on local self-government," article 110.

²⁹³ "Code of practice on consultation," article V.4.

Proposals/petitions and complaints	Bosnia and Herzegovina		Montenegro	Croatia
	Federation BiH	Republika Srpska		
Precision of legal provisions: Definition, clarity of purpose, procedures	LC organs obliged to enable citizens and legal persons to submit letters (<i>podnesci</i>) and complaints regarding their work, work of their institutions and bodies, and on improper conduct of employees of these bodies. ²⁹⁴ No information on what sort of conditions the LG is to provide to that end, such as complaint boxes, possibilities of giving verbal statements, etc.	LG organs obliged to allow private and legal persons filing of objections and complaints about the work of their organs, as well as on improper conduct of administrative officials. ²⁹⁵ No information on what sort of conditions the LG is to provide to that end, such as complaint boxes, possibilities of giving verbal statements, etc. No provisions on submitting anything other than objections/complaints.	Law mentions petitions, proposals and complaints: Everyone has right to file complaint or submit petition to LG organs, or ask for notifications about matters of their jurisdiction. Procedures are to be further regulated by statute. ²⁹⁶ LG also obliged to have a book and a box for comments, proposals and complaints; as well as enable citizens to meet head of respective municipal organ, as to voice their comments and objections pertaining to work of organ or improper conduct of officials. ²⁹⁷	Municipal bodies to enable citizens and legal persons to submit petitions (<i>predstavke</i>) and complaints on its work, work of its administrative bodies, and improper conduct of employees of these bodies. Municipal bodies to provide in visible place in official facilities necessary technical and other means for filing petitions and complaints (e.g. a complaints book) and allow for verbal statements of petitions or complaints. ²⁹⁸ Law on referendum foresees that citizens with right to vote can file petitions, ²⁹⁹ in contradiction with the Constitution, whereby everyone has the right to file petitions and complaints, give proposals to gov. organs and other public bodies and receive an answer to them. ³⁰⁰

²⁹⁴ "Law on the principles of local self-government in FBiH," article 46.

²⁹⁵ "Law on local self-government," article 80.

²⁹⁶ "Law on local self-government," articles 106 and 107.

²⁹⁷ "Law on local self-government," article 114.

²⁹⁸ "Law on local and regional self-government," article 26.

²⁹⁹ "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," article 65. Petition has to be signed with name, surname and identification number of citizen. Ibid, article 63.

³⁰⁰ "Constitution of the Republic of Croatia," article III.2.46.

Proposals/petitions and complaints	Bosnia and Herzegovina		Montenegro	Croatia
Who initiates it?	Federation BiH	Republika Srpska	Citizens	Citizens
Legal status of participation results: What happens after participation?	Municipal organs responsible for giving answer to filed complaints and letters within 30 days of their submission. ³⁰¹	The mayor is responsible to provide an answer to the filed objections or complaints within 30 days of their submission. Objections or complaints that refer to the work of the mayor are to be considered by the municipal assembly that takes a stance on them. ³⁰²	Organs who receive proposals have to make decision or give notification within 30 days of receipt. ³⁰³ On filed objections/complaints, organ to answer in writing within 15 days, if citizen demands so. Organs who receive objections/complaints are obliged to analyze them on a monthly basis and take measures for solving respective problems. ³⁰⁴	According to Law on referendum citizen petitions are not binding for the body they were submitted to; the body is due to respond to citizens who filed petition in appropriate deadline. ³⁰⁵ Law on local self-government specifies that the head of the executive is responsible to respond to filed petitions and complaints within 30 days of submission. ³⁰⁶
Potential limitations and restrictions	Not certain whether complaints merit formal investigations by LGs. ³⁰⁷ Law should prescribe means that the LG is to provide for citizens to be able to use this mechanism.	Not certain whether complaints merit formal investigations by LGs. Law should prescribe means that the LG is to provide for citizens to be able to use this mechanism.	Not certain whether complaints merit formal investigations by LGs.	Not certain whether complaints merit formal investigations by LGs.

³⁰¹ "Law on the principles of local self-government in FBiH," article 46.

³⁰² "Law on local self-government," article 80.

³⁰³ "Law on local self-government," article 107.

³⁰⁴ "Law on local self-government," article 114.

³⁰⁵ "Law on referendum and other forms of participation in the functioning of state authority and the local self-government," articles 64 and 65.

³⁰⁶ "Law on local and regional self-government," article 26.

³⁰⁷ For more, see Milosavljević, *Strengthening citizen participation at the local level in Republika Srpska*, p.53.

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