

LogoLink Latin America: Legal and Policy Frameworks for Citizen Participation

LogoLink Research – Legal Frameworks for Citizen Participation
Latin America Regional Report

Nelson Saule, Júnior, Alejandra Meraz Velasco and Zuleika Arashiro
POLIS Brazil

26th August 2002



LogoLink is a global learning initiative aimed at strengthening citizen participation in local governance. Through a network of partners, LogoLink provides spaces for exchange, reflection and research on diverse experiences around the world, and encourages learning and action for participatory local governance. LogoLink is hosted by the Participation Group at the Institute of Development Studies, University of Sussex, UK.

Table of contents

1. Introduction	4
2. Historical context and constitutional framework (guaranteed rights)	5
Brazil	6
- Context	6
- Key terms	7
Bolivia	8
- Context	8
- Key terms	9
Chile	9
- Context	9
- Key terms	10
Mexico	10
1. Federal District	10
- Context	10
- Key terms	11
2. Oaxaca	11
- Context	11
- Key terms	12
Uruguay	13
- Context	13
- Key terms	13
3A. National laws specifically related to participation	14
Brazil	14
- Legal and policy frameworks	14
- Evolution	16
Bolivia	17
- Legal and policy frameworks	17
- Evolution	18
Chile	18
- Legal and policy frameworks	18
- Evolution	20
Mexico	21
1. Federal District	21
- Legal and policy frameworks	21
- Evolution	22
2. Oaxaca	23
- Legal and policy frameworks	23
- Evolution	24
3A. Legal Framework – Summary chart	27
3B. Local governance and citizen participation interaction	29

4. Lessons and conclusions	32
4A. Implementation: enabling and inhibiting factors	33
- Enabling factors	34
- Inhibiting factors	35
4B. Final comments	36
Bibliography	38

1. Introduction

This report is part of a worldwide investigation initiative sponsored by the Ford Foundation Logo Group and the Institute of Development Studies at the University of Sussex, through the LogoLink program.

Following the guidelines set for the other regional partners and as coordinator of the LogoLink Latin America network, the Instituto Pólís (Brazil) organized a two-day meeting with the participation of researchers from Bolivia, Brazil, Chile, Mexico, and Uruguay.

Considering the territorial dimensions and the high diversity of Latin America, it should be noted that the comparisons and results presented in this report must be examined with caution, in an effort to avoid generalizations. The more detailed analyses of the region now tend to focus on a new division, based on cultural, economic, and political similarities. In these terms, we could refer to an Andean region (here represented by Bolivia), the Southern Cone (including Uruguay and Chile), Brazil, Mexico, and Central America.

Having mentioned this limitation, we are very optimistic about the development of this regional initiative. Following the regional meeting, we can affirm that sharing experiences produced a rich discussion and raised fundamental questions for further studies on the meaning and dynamics of citizen participation under different historical and cultural contexts.

The country reports on which the Latin American Report is based are:

- Renjel, Luis Marcelo, "Legal Frameworks and Policies for Citizen Participation in Local Governments" (Bolivia)
- Saule Jr., Nelson, "Legal Framework of Popular Participation in Brazil" (Brazil)
- Albuquerque, Maria do Carmo A., "The Current Stage of Citizen Participation in Brazil" (Brazil)
- Bello, Daniela, and M. Angélica Rodríguez, "Assessment of Social Participation in Chile" (Chile)
- Zermeño, Sergio, "Citizen Participation in the Federal District: Legal Framework and its Results" (Mexico)
- Sanchez, Consuelo, "Citizen Participation in the Government of the State of Oaxaca" (Mexico)
- Caruso, Arles, "Marcos Legales y Participación Ciudadana: La Experiencia de Montevideo" (Uruguay)

During the elaboration of the report, we were able to identify some common features in the legal approach to participation. Moreover, the fact that all countries under analysis have been in a process of democratization, after a period of authoritarianism, helps us understand better the goals and limitations of participatory regulations when facing resistant behaviours imbedded in the political culture.

We start by addressing the legal and policy frameworks existing in the countries under analysis, taking into consideration the contexts in which they emerged, the main instruments created, the key terms, and the evolution of each country's framework.

We then describe the patterns and main differences regarding the legal frameworks, focusing on the implementation process and the identification of enabling and inhibiting factors.

The final comments bring a general evaluation of the impact of the legal and policy frameworks, as identified and discussed by the researchers. They indicate the possible initiatives that could foster a deeper understanding of the effects and evolution of the participatory process in Latin America.

2. Historical context and constitutional framework (guaranteed rights)

Comparative Historical Context

Like most Latin American nations, Bolivia, Chile, Uruguay, and Mexico were Spanish colonies. In the countries where the presence of the indigenous population was larger, the indigenous influence on cultural and social patterns continue to be strong, despite the colonization process. Brazil is a different case because it was colonized by the Portuguese and is characterized by a multiethnic society, formed by Europeans, indigenous groups and African descents, whose ancestors had been brought as slaves during the colonial period.

Looking at the political history of the region, it is possible to identify similarities between the various Latin American countries, with regard to the evolution of democracy during the second half of the twentieth century, marked by revolutionary movements, military coups and authoritarian regimes.

Brazil experienced different periods of authoritarian regimes such as "the new State," under Getulio Vargas' dictatorship (1930-1945), and the military dictatorship, which started with the military coup of 1964 and lasted until 1986, with the beginning of the political process of the elaboration of a new Constitution.

In Chile, the democratic socialist government of Salvador Allende (President from 1970 to 1973) was overthrown by a military coup led by General Augusto Pinochet, giving birth to a dark period of authoritarian regime that lasted until 1989.

Uruguay too had an authoritarian political experience with a military dictatorship between 1972 and 1985.

Bolivia experienced a revolution in 1952, articulated by the National Revolutionary Movement (MNR). Nevertheless, in 1964, a military junta

deposed the MNR and inaugurated a period of dictatorship that lasted until 1982.

The mobilization of different actors from civil society was the leading force in the transition from authoritarianism to a democratic State of Law, ensuring the popular and free election of their representatives and pressurizing for the construction of a system direct democracy.

The key similarity between these countries is the emergence of new social actors, who have been playing a fundamental role in the elaboration of legal frameworks for the democratic system, decentralization processes, and guarantee of the right to participation by the society in local governments, which has created new mechanisms to improve democracy and the citizens' quality of life.

Brazil

Context

Unlike other Latin American nations, Brazil was a Portuguese colony, and it was able to build a nation of continental proportions which now comprises about half of South America. Moreover, while Brazil has various indigenous communities, their number is not as large as that in countries such as Bolivia and Mexico. It is the black population – whose origins in Brazil can be found in the period of intensive slave trade and which now represents a large portion of the Brazilian population – that continues to suffer from various forms of social exclusion

During the 1970s, with the shut down of traditional channels and local spaces of participation, new types of social manifestation were organized (the “new social movements”) around housing conditions, gender, race, and the situation on the outskirts of major cities, among other topics. They became public issues and established the grounds for political action, influencing more traditional actors such as opposition political parties, labour unions, and the progressive forces of the Catholic Church. The *Comunidades Eclesiais de Base* (Ecclesiastical Base Communities), mothers' clubs, popular movements for the improvement of basic health, popular pastoral groups, and the emergence of a new labour movement, all of which broke with the traditional State co-optation, intensified the pressures on the military regime. In 1974, the military started its slow and gradual “opening,” in a long transition to democracy that culminated with the election, by an electoral college, of a civilian president in 1985.

Nevertheless, the key move towards a democratic state actually occurred with the 1988 Constitution. The popular amendments allowed civil society to propose amendments to the constitutional text, as long as they were supported by a minimum of three civil entities and 30,000 voters.

Approximately 160 popular amendments were presented, subscribed by 12 million voters, and addressing mechanisms of popular participation, urban and

agrarian reform, indigenous rights, children's rights, education, health, and the rights of the black population.

The success of the popular amendments at the Federal level led to this instrument also being adopted in the elaboration of state-level constitutions (Brazil is a federation with federal, state and municipal levels of administration). More importantly, they were adopted in the elaboration of the municipal organic laws (that could be considered the equivalent of a constitution at the municipal level). This enabled the inclusion of popular participation in local public management through mechanisms such as the Municipal Councils of Public Policy Management, made up of public officials and members of the local community.

Key Terms

Participation: from the popular viewpoint, participation is a never-ending process which allows citizens to influence the elaboration of public policies and exercise control over government actions.¹ It means the right to free and democratic election of local representatives, as well as the right to participatory mechanisms such as the plebiscite and the popular legislative initiative, and equal access to public hearings and debates. It also includes the right to an equal and deliberative voice in the definition of the municipal budget and the participation in sectorial and territorial councils and commissions, based on the principles of transparency and efficacy of the public administration.

Decentralization: a constitutional principle, the process of decentralization expanded the attributions of the municipalities, increasing their role in areas such as health, education, children and youth, housing, elders, and the environment. Therefore, municipalities also increased their responsibility, even if indirectly, for the promotion of local economic development and public safety. In terms of resources, however, there has been a re-concentration at the federal level.

Right to the City: understood as the collective right of the citizens to fair urban living conditions and their access to a rich and diverse cultural environment. In its political dimension, the right to the city is the right to broad participation by the urban population in the conduction of their future, based on the principles of sustainability and social justice.

The right to the city is a collective right of social groups and individuals who live in urban areas and it offers a new guarantee particularly to the most vulnerable social groups. It legitimizes their actions and organization around their practices and customs so that they can effectively enjoy the full exercise of their rights to adequate living standards and political participation.

Democratic public management: starting with the Federal Constitution, there is a clear understanding that popular participation in public management is key for

¹ During the 1990s, however, the term "participation" acquired a new meaning, as it came to be used by international financial institutions and the state, in the process of state reform. The call for participation and social solidarity has sometimes been used as a means of delegating state responsibilities to civil society.

the construction of a more democratic society. The concept of democracy in this way, goes beyond the representative component to incorporate mechanisms of direct democracy.

Democratic management of the city: social control and participation in the planning, building and management of the cities, strengthening and autonomy of local public powers and popular organizations.

Bolivia

Context

With the largest indigenous population of South America, the political history of Bolivia is marked by a key event: the revolution of 1952. Articulated by the MNR, the urban poor, and the working class, it modified the old pattern of a servile labour relationship, allowing greater social mobility and expanding basic education as well as introducing universal suffrage and an agrarian reform and inciting the growth of the peasant union's movement. It is worth noting, however, that the peasants were seen as a class, little attention was given to their indigenous ethnic background.

In an attempt to promote decentralization, an Organic Law of Municipalities was enacted. Nevertheless, at that time the municipal governments were restricted to the urban areas of the main cities, and the law did not correspond to the pledge of autonomy coming from regional forces ("*departamentos*").

In 1985, the main political forces agreed upon anticipating national elections. The need for economic stabilization and a reduction of the political turmoil were the main focal points of the government between 1985 and 1993. In 1985, the government successfully launched the New Economic Policy (NPE) stabilization plan (the first generation of reforms). The economic success, however, was combined with a decision-making style characterized by a strong executive power with policies formulated by technocrats. The process of decentralization set off by the Organic Law of Municipalities had still not materialized.

On the other hand, with the return to democracy different social groups intensified their pressures, most notably the popular health committees, the civic committees, and indigenous movements. Regional demands for decentralization became more intense, generating a national debate with the participation of Regional Civic Representations, political parties, the congress, and the army. In 1992, a political agreement was reached, setting the thematic bases for the next administration (the second-generation reforms): (i) the establishment of a transparent electoral board, (ii) constitutional reform, (iii) educational reform, and (iv) decentralization.

In 1999, the political parties proposed a constitutional reform in order to incorporate mechanisms of direct popular participation in public affairs. In August 2002, in the last days of Jorge Quiroga's administration, the "Law on the

Need of Reforms" ("Ley de la Necesidad de Reformas"), required for the beginning of a constitutional reform process, was enacted.

The indigenous organizations have played a key role in pressurizing the government, and the proposed reform introduces the mechanism of popular referendum, and popular legislative initiative. The new elected Congress has already started discussions regarding the proposed reforms.

Key Terms

Participation: the issue in Bolivia is intertwined with the process of decentralization and territorial redistribution, taking into account the situation of the indigenous population. It evolved from social mobilization to a political willingness to reform the public administration. Nevertheless, the emphasis on administrative and financial issues has caused a specialization of the participation to certain issues.

Decentralization: the decentralization promoted during the 1990s was conducted under a fragile State that was unable to coordinate the different policies or create a coherent plan of development.

Organizaciones Territoriales de Base (OTB's): the LPP defines these territorial base organizations as the subjects of the popular participation process. As cells organized within and by the communities of a specific territory, they are recognized as legitimate actors to participate in planning local development. More than 15,000 OTB's have already been identified.

Chile

Context

Chilean political history is remarkable among other Latin American countries for being the first attempt to build a democratic socialist government (the so-called "Chilean path to socialism"), with the free election of Salvador Allende as President in 1970. Winning in a very competitive dispute within the traditional context of a highly polarized political party system, the Allende administration was interrupted in 1973, with the military coup that led General Augusto Pinochet to power and started a period of 17 years of dictatorship.

During that period, the popular mobilization and political activism that had characterized Chilean society in the previous decades were strongly repressed. The military government also changed the economic orientation of the country and Chile became an early starter in the introduction of free market reforms.

In the 1980s, the social discontent with the military and increasing external pressures on the issue of human rights violations favoured a process of opening up the system, whilst being carefully conducted by the military. In 1980, Pinochet enacted a new constitution, which includes a series of antidemocratic clauses.

In 1988, with the mobilization of the society (such as shantytown movements) and political activists, a plebiscite was convoked to decide whether General Pinochet should stay in power for eight more years. With 58% voting for the “No” the opposition movement was strengthened and the re-emergence of competitive politics was favoured.

Key Terms

Participation: the main reasons used by the government to justify the *Instructivo Presidencial* were that participation is key to democracy since it allows the full exercise of citizen rights, strengthens civil society, and at the same time grants greater legitimacy to public policies.

Decentralization: unlike other Latin American experiences, decentralization in Chile was conducted by the military, with the transfer of specific attributions and resources linked to specific expenditures. As a result, Chilean decentralization is not seen as a legitimate instrument to expand participation, but as a legacy of the dictatorship.

Citizen control: the term became popular under the Lagos administration and from the government’s point of view it consists of giving citizens more control over public actions. This mechanism can be used, on the other hand, to transfer the State’s responsibility for the good functioning of public services, since the now “empowered citizens” become responsible for this duty.

Mexico

1. Federal District

Context

Until 1997, Mexico’s president directly appointed the government of the Federal District (DF). In 1997, the *Partido de la Revolución Democrática* (Democratic Revolution Party – PRD), an opposition party to the *Partido de la Revolución Institucional* (Institutional Revolutionary Party – PRI) that controlled nearly all government spheres in Mexico for seven decades, won the Federal District’s first direct election with the candidacy of Cuauhtémoc Cárdenas. Before Cárdenas’ victory, popular participation had basically no available forum or a legal framework to effectively support it. A law regulating participation was voted in the local legislature in 1995, when some opposition parties and social movements (consolidated as a consequence of the 1985 earthquake in the DF) gained strength. This law called for the election of “block heads” (representatives of a city block) and elected, above them, 365 citizen counsellors gathered in 16 councils, one for each *delegación* (the political subdivision of the DF).

In 1999, the Cardenas government implemented the new *Ley de Participación Ciudadana* (Citizen Participation Law), allowing the election of Neighbourhood Committees based on the territorial limits of neighbourhoods and large public housing projects. This was undoubtedly the most innovative aspect of the legislation: the recognition of traditionally cohesive social cells that shared an identity as the base for local participation. 1,350 Neighbourhood Committees were created at the time.

Participation: the interaction among civil actors and between them and the government.

Key Terms

Participation: Vertical channels of participation are privileged in the federal district's Participation Law over horizontal ones (links within the community), maintaining the image of the government as the main responsible agent for conflict solving.

Governance: This item does not have a major role in the district's participatory process, most likely because the *delegaciones* (the closest unit to municipalities in the DF) are directly assigned by the DF mayor. Perhaps the only item to be highlighted is the rejection of the opposition's proposal to have a general committee (elected from the neighbourhood committees) overseeing the delegation's activities. Such rejection was probably due to the government's fears of the negative effects on governability, given that while delegates were not publicly elected, committee members were, granting the latter greater legitimacy.

Decentralization: This is a main issue in the case of the DF. The federal district is not a state and for this reason it does not receive federal transfers, that is, the DF is not benefiting from the decentralization process taking place in Mexico. This is the reason the government is calling for the Political Reform of the Federal District.

2. Oaxaca

Context

The indigenous claims for autonomy gained space in the national public debate as a consequence of the Zapatista uprising in the Mexican state of Chiapas, and the so-called "San Andrés Dialogue" between the *Ejército Zapatista de Liberación Nacional* – the Zapatista National Liberation Army (EZLN) and the Mexican federal government, held between October of 1995 and February of 1996.

Nevertheless, due to constitutional reforms in Oaxaca regarding the recognition of indigenous practices and customs ("*usos y costumbres*," in 1995 and 1997), the discussion was progressively limited to this concept. The two fundamental positions on each side of the debate were: on one hand, indigenous practices and customs were oppressive, being particularly detrimental for women; on the other hand, the positive aspects of indigenous practices – such as the creation

of consensus, the inclusive character of the electoral system, and the participatory feature of the *communitarian assembly* – were recognized. During this debate, women became very active in expressing their vision of the existence of a complementary relation between their indigenous rights and their civil rights.

The Mexican state Oaxaca has one of the country's largest indigenous populations; it has the largest number of municipalities (a total of 570) and the most area devoted to communal land. Sixteen ethnic-linguistic groups live in Oaxaca, comprising 18.29% of the country's indigenous population and 52.72% of the state's population. The state's municipalities head the list of the most marginalized localities.

Municipalities in Oaxaca are organized, based on the administrative category of the population, in heads of the municipality (*cabeceras municipales*), municipal agencies, and police agencies. The enormous fragmentation of Oaxaca's territory has made it possible for indigenous people to reach government posts, yet it has also caused the atomization of the communities.

Indigenous destitution is related to Mexico's centralized structure and the unequal distribution of economic resources among the states. Additionally, Mexican policy has been characterized by the search for cultural uniformity and the lack of recognition of diversity. One of the consequences of this logic is the lack of recognition of diversity, an issue particularly relevant for indigenous communities.

Participation: In the case exposed, participation is closely related to electoral processes. It refers to the possibility of indigenous communities to adopt their own practices and customs in the election of their authorities. Among the challenges that have emerged with the indigenous right to participate according to local practices and customs, one may mention women's status within their communities. In 18% of the municipalities with elections regulated through local practices and customs, women do not participate, and in most of them women are not eligible as authorities. Furthermore, the problem of the rights of indigenous communities located outside the head of the municipality should also be noted.

Key Terms

Governance: This issue was of great importance in two moments during the reform in Oaxaca. Firstly, the PRI's fear of the advancement of opposition parties within the state created the impulse for the legal recognition of indigenous practices, in an attempt to maintain governance in the state and avoid indigenous movements such as the one happening at the same time in Chiapas. Secondly, governance issues gain importance as multicultural municipalities demand a clear definition of the process that determines their electoral system (whether practices and customs or constitutional).

Decentralization: In this case, the term decentralization is linked to financial resources. The transference of resources from the federal level to the state

level and from the state level to the municipalities has encouraged indigenous communities inside and outside the head of the municipality to claim the right to decide as a means to access these resources. It should also be noted that one portion of the decentralization process is still incomplete: the distribution of power within multi-cultural municipalities.

Democracy: Indigenous peoples are finally exercising their democratic right to elect their authorities according to their practices and customs. There are still democratic issues to be solved, such as women's and immigrant's (members of the community not born in it) rights to participate and the communities' right to decide outside the head of the municipality.

Uruguay

Context

Montevideo concentrates 44.5% of Uruguay's population and 63% of the gross value of its industrial production. Uruguay's political party system is relatively strong and is characterized by its stability, as well as the persistence and professionalism of its political members. Electoral participation reached 94% of the registered voters in the past election. A very influential factor in Uruguay's political life was certainly the experience of a military dictatorship (1972-1985).

In 1990, the *Frente Amplio del Uruguay*, a center-left political coalition that made it to Montevideo's government for the first time in the country's history, proposed a new model of political administration in the municipality.² Their program included a democratic proposal of intra-municipal decentralization, where the institutionalization of citizen participation was the main component. This proposal was to be implemented where no suitable institutional framework was available and no social claim had been raised.

Key Terms

Governability: understood in two different ways. At the national level, governability refers to the possibility of social and political agreements that lead to the approval of resolutions and initiatives coming from the Executive power; an exercise in legitimization. At the local level, it refers to the possibility and actual ability to develop a government plan that is based on participatory decentralization and follows previous electoral compromises. Citizen participation is a means to achieve governability.

Decentralization: The term was originally related to the so-called "state reforms" and was understood as the reduction of the state and/or the decentralization of operational services (the term used in Spanish for this particular kind of decentralization is "*desconcentración*," in order to distinguish it from the term "*descentralización*", which is associated with State reform). The 1990 coalition coined the term "participatory decentralization." Now decentralization is

² In Uruguay municipalities are known as *Intendencias*.

understood by society specifically as the participatory and democratic process of intra-municipal decentralization. The term has a very positive connotation due to the high rates of approval of the 1990 coalition government and is increasingly related to the term *governance*.

Democracy: As is usually the case with countries that experienced a dictatorship, democratization is synonymous with freedom of association, freedom of expression, and direct government election. Nevertheless, recently the crisis in the credibility of the system of representative democracy has led to the emergence of concepts such as direct democracy and participatory democracy. This term is increasingly being associated to the notion of public space as a constitutive element of a new active citizenship.

3 A. National laws specifically related to participation (rights to participation, to information, to recall and to engage with government)

Brazil

Legal and Policy Frameworks

The intense social mobilization of the 1970s and 1980s guaranteed the promulgation of a democratic Constitution in 1988, having among its principles decentralization and the recognition of popular participation in public management as fundamental to the development of democracy (thus combining representative and direct democracy). The constitutional mechanisms for participation include the plebiscite, the referendum, and the popular initiative ("*iniciativa popular*"), with the latter allowing citizens to directly deliver law proposals to the Legislative branch in all three levels of government.

The legal framework for citizen participation is basically to be found in the following mechanisms:

At the federal level:

- The *Statute of the City*, a federal law of urban development from 2001, which sets the instruments and the orientation towards a democratic (participatory) management of the cities,
- The Children and Adolescents Statute (Law n.8069/90), which establishes national, state, and municipal councils and tutelage councils.
- The Unified Health System Organic Law (Law n. 8.142/90), creating a public health system known as *Sistema Único de Saúde* (SUS), which counts on citizen participation in national, state, and municipal health councils. The counsellors from the civil society are appointed by the citizens who participate in the health conferences held in the three levels of government.
- The Social Assistance Organic Law (Law n. 8.742/93), establishing a structure similar to that of the SUS.
- The Environmental National Policy Law, which creates the Environmental National Council (CONAMA).

At the state level:

- The state-level constitutions determine the mechanisms for participation in state management and for metropolitan administration. In the state of São Paulo, a metropolitan council was created as a management board integrated by representatives of the municipal governments, municipal legislatures, and civil society organizations.
- The *Statute of the City* (federal law) deserves special attention, as it determines that the entities in charge of managing metropolitan and highly populated urban areas must include the participation of the population and associations representing different sectors of the community.

At the municipal level:

- The Organic Municipal Laws (OML) are the main legal instrument to regulate popular participation at the local level. In the municipality of São Paulo, the OML defines the “*Sub-Prefeituras*” as neighbourhood management entities, with normative and control capacities and their own resources. Each administrative region of a *Sub-Prefeitura* must count with a Representative Council made up of community members.
- Following the constitutional provisions, the municipalities also generate their own legislation, creating municipal councils for the administration of policies related to health, social assistance, and children and adolescents.

As described above, the new kinds of councils constitute a fundamental instrument for promoting the interaction and effective participation of citizens in the formulation of public policies. The formation of the councils according to a legal provision is also important, for it guarantees that the councils’ decisions will be binding for the public administrators.

In its goal to democratize public management, the *Statute of the City* legalizes various mechanisms to promote popular participation, such as:

- Urban Development Councils in the national, state and local level
- *Public audiences and consultations*, by which civil society organizations may request public hearings with the executive and legislative branches to discuss issues related to urban policy.
- *Conferences*, aiming at mobilizing the government and civil society to discuss, evaluate, and formulate tools to improve public policies. It is a crucial opportunity to establish partnerships, find solutions to collective conflicts, and legitimate actions and measures related to the urban policies.
- *Popular initiatives*, with the citizen having the right to propose plans, programs, and projects related to urban development.
- *The participatory budget*: the Federal Constitution guarantees the right of citizens, political parties, associations, and labour unions to denounce irregularities or illegal actions identified in public accounts. To be able to exercise control over public spending, citizens need to participate in the elaboration and execution of the public budget, as well as in the definition of priorities for the use of public resources. Article 44 of the *Statute of the City* conditions the approval of the municipal annual budget to its previous submission to public audiences and consultations, recognizing

the mechanism of the participatory budget, which had already been implemented in some municipalities.

In the participatory budget, the decision of the priorities and destinations of the resources is made jointly by technocrats and local authorities and individuals, communities, social movements, and civil society organizations, which participate directly in meetings to elaborate the public budget.

Evolution

The co-managed councils ("*conselhos gestores*") related with the implementations of social policies are the main institutional space for participation, rooted in a process of intense social participation. Due to this democratic origin, they are more resistant to the impact of different levels of political will. In a universe of 5,561 municipalities, 5,000 municipalities in Brazil already have more counsellors than municipal representatives ("*vereadores*"). They have served as an important space for the elaboration of policies with a high level of legitimacy.

Of the 65,792 municipal representatives in Brazil (Election 2000, Electoral Superior Tribunal, 05/04/2001), 6,991 are women. There are also 319 women currently elected as mayors.

With regard to the Health Councils, it is estimated that there are 87.212 counsellors in Brazil, considering local and municipal counsellors (National Health Council 1999) but without including district counsellors. The number of municipal counsellors in the state of São Paulo is estimated in 12,900, in a universe of 645 municipalities. In the city of Sao Paulo, which is divided into 41 health district councils, there are about 1,032 district counsellors (Health Municipal Council, 1999).

Women representation in the Health Unified System (SUS) is the following:

- *National Health Council*: 11 women, from a total of 32 members (Senado Federal, Câmara dos Deputados, Centro Feminista de Estudos e Assessoria - CFEMEA)
- *Health Council of the state of Sao Paulo*: 11 women, from a total of 30 members (CESSP 2002)
- *Health Council of Municipality of Sao Paulo*: 15 women, from a total of 32 members (CMSSP 2002)

These new institutionalized spaces have fostered the learning by the citizens of the policy-formulation process and promoted more transparency in public administration.

Still, both in the co-managed councils and in the participatory budget process, the challenges are similar. The lack of a basic infrastructure, the need to improve the technical knowledge and leadership skills, and scarce resources for hiring independent specialized consulting, aggravated by regional disparities, create dependence on the government in terms of access to information and material conditions for a fair dialogue. Popular participation can therefore end

up limited to peripheral issues, without any real impact on decisions such as privatization and macroeconomic policies.

The articulation of local and national networks and Forums from civil society in special the National Urban Reform Forum and National Popular Participation Forum based in the concept of the right to the city are pushing the local Governments with progressive and democratic Administrations to have a strategy to integrate the public sectors and the innovative local public space (co- managed councils, sectors councils, communities and neighbourhood councils).

Bolivia

Legal and Policy Frameworks

The administration of Gonzalo Sánchez de Lozada, inaugurated in 1993, initiated the reforms enacting the Popular Participation Law of 1994 (*Ley de Participación Popular (LPP)*). Having set as its goal the improvement of the living conditions of men and women in Bolivia, the LPP's key innovations were the following:

- It recognized social organizations already existing (including indigenous communities, with their own practices and customs) and the importance of their participation in local governance;
- It expanded the jurisdiction of the municipalities. Every rural and urban area was then placed under the political-administrative jurisdiction of one municipality, in a universe of about three hundred municipal governments. It also determined the automatic transfer of 20% of the national resources to the municipalities, distributed on a per capita basis, and expanded the attributions of the local governments.

The decentralization promoted through the LPP conflicted with the vision of decentralization defended by regional forces, such as the civic committees in the "*departamentos*" (intermediate units between the central and municipal levels). This in turn led to the enactment of the Administrative Decentralization Law, which, despite delegating certain technical administrative issues to the *departamentos*, did not generate an actual decentralization of power, as the executive chief of the *departamentos* continued to be designated by the president.

The Constitutional Reform of 1995 also incorporated important demands. One that deserves special attention is the recognition of the country as a multiethnic and multicultural nation. It marked an important victory for indigenous people, who had organized a 600-kilometer walk claiming their rights to territory and dignity ("*marcha indígena por el territorio y la dignidad*").

With the deepening of the decentralization process – a new Law for the Municipalities was enacted in 1999 – and the release of resources previously destined for the payment of the external debt, the government began a national dialogue to discuss the priorities in the destination of these resources. A

strategy for the reduction of poverty was elaborated. In 2001, the National Dialogue Law was enacted, institutionalizing a consultative mechanism between the government and the civil society, with consultations occurring every three years, in order to define priorities in the fight against poverty.

Evolution

While before the LPP the main cities benefited from 92% of the shared resources (“*coparticipación*”), now 61% of the resources are transferred to other departments. The increase in the national resources transferred to the municipalities – from 10% to 20% – combined with the transfer of certain taxes to the municipal administration raised the municipal funds, with especially noteworthy improvement in the rural areas. In the social areas, the municipal governments have substantially increased their investment in health, education, and basic sanitation. The establishment of a new relationship between the local government and civil society is visible in the participation of about 14,000 OTB’s, citizens who integrate the Vigilance Committees and who participate in local planning, and the democratic elections of mayors and members of the municipal councils.

Yet these developments are neither uniform nor continuous. The mechanisms created by the LPP, for instance, have worked well in rural communities, whereas in municipalities with a large concentration of indigenous people the dependence on the mayor and patronage has kept power in the hands of the local government. In urban municipalities, the picture is even worse, due to the complexity involved in dealing with larger populations with a different sense of citizenship and other kinds of social demands.

In terms of support structures, at the municipal level mechanisms were created to allow greater participation in the municipal development plan and in the planning of annual operations (“*Programación de Operaciones Anual*”). International agencies have also contributed to the strengthening of citizen participation through donations, particularly Holland and Germany.

Chile

Legal and Policy Frameworks

In 1989, Chileans voted and elected the candidate from the Union of Parties for Democracy (“*Concertación*”) – a coalition of center-left and leftist political parties – for the presidency. Since then, the *Concertación* has won the presidential elections. Nevertheless, it has followed the neoliberal orientation set by the military and made little progress in terms of effectively incorporating participation, generating a climate of political disenchantment and demands from academics, non governmental organisations (NGOs), and international organizations for spaces of participation.

At the national level, Chile still lacks a legal instrument for participation, facing the consequences of a pact for the transition to democracy that hampers both the construction of a more democratic constitution and the approval of legislation related to citizen participation.

To date, though Chileans are now allowed to freely elect their representatives at the municipal and national levels, the "Intendentes" (administrators of the regions) and the "Gobernadores" (administrators of the provinces, intermediary units between the regions and the municipalities) continue to be appointed by the president. Also, the composition of the Senate is still influenced by an authoritarian article of the Constitution, which guarantees places in the Senate for presidents since 1980 as life senators, and includes 9 appointed senators, including representatives of the Navy, Armed Forces and Air Forces.

The only instrument of direct participation constitutionally defined is the plebiscite, which is also included in the Organic Law of the Municipalities.

In the administration of Ricardo Lagos, elected in 2000, the issue of participation has received more attention. He enacted an "*Instructivo Presidencial*," an executive resolution with no binding effect, recommending all the ministries to incorporate mechanisms for citizen participation, such as: (i) transparency and accessibility to their policies and programs, (ii) the incorporation of citizen participation as a variable in the evaluation of policies and programs, (iii) effective ways of responding to citizen complaints and petitions, (iv) the elaboration of strategies to strengthen civil society organizations, in agreement with those groups, (v) guarantees of equality of opportunity for the participation of both men and women, and (vi) internal reforms to improve communication among public servants and generate institutional commitment.

The *Instructivo* also determines that regional governments must formulate a regional plan for citizen participation and incorporate it into the strategy of regional development.

At the local level, citizen participation is regulated by the Constitutional Organic Law of the Municipalities (Law N. 19.602), a national law passed by the Congress in 1999. The new mechanisms for local participation are:

- The creation of the "*Ordenanzas de Participación Ciudadana*," municipal resolutions that are to be elaborated by each municipality to promote community participation, taking into account the territory, population distribution, and main activities of the community, among others.
- The definition of new attributions to the Communal Social Economic Councils ("*Consejos Económicos Sociales Comunes*" – CESCOS). The CESCOS are the main space for the participation of organized local communities. Presided by the mayor, it is a consultative body in the municipal administration and is heard in topics such as plans for local investment, development, and regulation, the coverage and quality of public services, and the annual municipal public account ("*cuenta pública anual del alcalde*").

- A summary report of the annual municipal public account must be disseminated to the community.
- The number of citizens required to call for a plebiscite is reduced from 15% to 10% of the citizens, and they can voice their opinion on a variety of public policies, such as the plan for development and the plan for investment.
- Public audiences with the mayor are due when more than 100 neighbours so require.
- The creation of ombudsman offices (“*oficinas de partes y reclamos*”).

Evolution

At the national level, despite the fact that the *Instructivo Presidencial* is not binding, it operates as a strong “recommendation” to the state bureaucracy. Mechanisms of evaluation and follow-up have been established, and it is expected that all executive institutions have adopted the *Instructivo* by January 1, 2003.

To stimulate communication and citizen participation, the following channels were established:

- a) the development of web sites, distribution of printed material, and installation of boxes for the collection of complaints and suggestions;
- b) the elaboration of mechanisms to provide precise and good quality information to the media, and public networks that participate in decision processes;
- c) work on law projects that aim to guarantee public liberties;
- d) the conduction of polls and the implementation of voluntary programs in order to foment solidarity;
- e) the implementation of the “Plan for the Strengthening of the Civil Society,” funded by the Inter-American Development Bank (IDB), elaborated with a citizen council and focused on the improvement of the legal framework for the incorporation and operation of community-based organizations, the assessment of funding opportunities for such organizations, the training and improvement of the knowledge related to public management, leadership, and networking, and the design of support structures to develop the cooperation between the State and civil society.

Regarding the “*Ordenanzas de Participación Ciudadana*,” the situation seems to favour a disillusioned perspective. Though Law N. 19.602/99 established that all municipalities should have their own *Ordenanzas* enacted by September 1999, various researches have identified that of the 352 municipalities existing in the country, by December 2000 only 50 had enacted their *Ordenanzas*. In many cases the municipalities restrict themselves to simply reproducing the general proposal distributed by the Chilean Association of Municipalities, without any innovation or adaptation to their realities. Moreover, they rarely adopt mechanisms of dissemination of the information to the community.

The central government initiatives have not significantly raised the level of participation through institutional channels. Social organizations perceive them as formalist tools, as citizens are not empowered to participate in elaboration

and decision processes, lacking local spaces that they consider truly democratic.

But while formal channels still need to evolve to become an effective and credible mechanism for social participation, new social groups have organized themselves to deal with various social issues. Youth groups and women have emerged as very active actors, though in many cases they operate informally (outside the legal channels).

Mexico

Federal District

Legal and Policy Frameworks

The current Participation Law, which was approved in 1998 and came into force in 1999, can be divided into two sections: i) occasional forms of participation, and ii) permanent forms of participation.

Among the occasional forms of participation are:

- a) plebiscites – with the signatures of 1% of the electorate, citizens can call for a plebiscite to express their opinion regarding executive decisions; results must necessarily be considered;
- b) referendums – a participation mechanism used to comment on legislative decisions; 1% of the electorate or two-thirds of the Legislative Assembly can call for it;
- c) popular initiatives – through this mechanism, the federal district's citizens can present to the Legislative Assembly projects for the creation, derogation, abrogation, or modification of laws; they also require the support of 1% of the electorate;
- d) neighbourhood inquiry – may be called for by the heads of the government dependencies – the federal district's decentralized political-administrative organisms – with the objective of asking citizens for their opinion.

In cases a, b and c, results of these participation mechanisms must be obligatorily considered in the decision-making process. It should be noted, however, that these mechanisms are established by the local legislation of the Federal District, therefore, they are restricted to its jurisdiction. Despite an intense debate on the need of a constitutional reform to create mechanisms of direct citizen participation, the Mexican Constitution does not contemplate any of the mechanisms above.

Among the permanent forms of participation are the Neighbourhood Committees. These are citizen participation cells whose goal is to connect citizens to the political-administrative machine in order to supervise, evaluate, and administrate citizen demands in topics such as public services, modifications to the regulations for land use, the use of public space, and public security programs.

Evolution

While in the 1995 Participation Law the requirement to become a candidate was the collection of 4% of the electorate's signatures, in the 1998 Law the representation committees were based on collective organizations and not on individualized candidacies. In 1995 the candidates became part of a centralized organism, the *Consejo Delegacional*, which distanced them from the citizens they were representing. In 1998, the territorial base was defined as a neighbourhood or a public housing facility, maintaining the identity of the representative with the citizens being represented. In total 1,360 territorial units were formed, in effect making the system inoperative.

The reforms necessary for the proper functioning of the Participation Law initially proposed by Cárdenas, and subsequently supported with some modifications by Andrés Manuel López Obrador, were subordinated in both administrations to the approval of the Political Reform of the Federal District. While the reforms in the Participation Law were the responsibility of the local assembly, which had a PRD majority, the political reform of the DF depended on the national congress, in which the PRD did not have a majority. In this way, the political momentum of Cardenas' new government was lost and the participatory impulse was diminished.

Additionally, PRD officials reproduced some of the centralized practices of the PRI. *Delegados* (top officials of the DF territorial sub-divisions assigned by the mayor of the DF) fell into vertical practices such as public audiences and territorial tours, where numerous social demands were presented to them without any order or coherence.

Metropolitan middle-class citizens hold commercial relationships with their neighbourhood representatives, thinking of them as service providers and ignoring the civic connotation of their function. This generates frustration in the representatives, who become administrators rather than representatives and spend long hours at political-administrative offices asking for a service or public work, losing contact with their neighbours and as a result losing their legitimacy. Some representatives, on the other hand, have become local leaders, using the power transferred to them for their own interests. In this way, neighbourhood committees perceive the low influence they exert within the community and search for support in those associations that the committees were meant to counterbalance: private neighbourhood associations and popular organizations.

In 2000 a second PRD government was elected through the candidacy of Andrés Manuel López Obrador. This government gave each committee 50,000 dollars, with the condition that they determine what it would be used for within two weeks. Citizens were shown to lack the technical capacity to determine in such a short time appropriate ways of spending this amount of money. Nevertheless, the fact that there were financial resources being assigned awakened the impulse to participate.

López Obrador proposed the creation of Neighbourhood Assemblies, whom the Neighbourhood Committees should inform and to which they should be

accountable. He also proposed the formation of Committees of Vigilance out of the Neighbourhood Assemblies, one for each *delegación*. Both measures would only diminish the power of the Neighbourhood Committees. Yet, as we have noted, this law has been archived, subject as it is to the Political Reform of the DF.

In summary, there are a large number of actors involved in the construction of a participatory practice and frequently the private interests of these actors do not coincide. Furthermore, social considerations at some point become political, distorting the outcome of the participatory exercise. Recently, the issue that seems to be able to generate more mobilization and participation is the discussion on public security.

Oaxaca

Legal and Policy Frameworks

General regulations regarding the organization and functioning of municipalities are contained in article 115 of the federal Constitution and in articles 59 and 92-119 of Oaxaca's Constitution. It is specified that the *ayuntamiento* (government organism in charge of the municipality's administration) is elected through the citizens' direct vote.

Before the 1995 reform, however, government officers were elected through indigenous mechanisms, although they had to register in a political party and formalize the process through the direct vote in a constitutional election. The PRI, the political party that for seven decades dominated Mexican political life, allowed indigenous groups to elect their candidates as long as they were registered in the PRI. The influence of this party in indigenous electoral processes helped to consolidate authoritarian groups, known as "*cacicazgos*," that have inhibited the development of democratic relations within the state. These arrangements were stable for many years, but during the 1980s conflicts arose when some indigenous groups began to ally themselves with opposition parties in order to participate in local elections. This interest has grown since 1988, when opposition parties won many votes and the possibility of actual democratization became more feasible.

These events became a menace for local governability, and the fact that the PRI was confronting stronger opposition has been cited as one of the reasons for the recognition of indigenous practices and customs. The recognition of indigenous practices and customs was the means to refrain the progress of opposition parties, particularly that of the leftist PRD.

The Mexican constitution recognized the nation's multi-ethnicity in 1992, through the modification of its fourth article. Oaxaca's constitution and local laws have been reformed since 1990 to include aspects related to indigenous practices and customs. Nevertheless, the formal regulation of these laws was not made until 1995. In this way, it became possible for indigenous groups to participate in local elections without the intervention of political parties. The objection made to these laws, however, was that indigenous groups still had to

confirm the selection of their authorities registering them as *communitarian candidates* and electing them in constitutional elections through the universal, free, secret, and direct vote of the members of the community. During 1997, the local congress approved numerous reforms. Some of the key aspects of these reforms were:

i) the recognition of the communitarian assembly and the institutions and procedures used by communities for the election of their authorities, as well as the governing periods determined by their customs; ii) the communitarian assembly would be in charge of the electoral process according to indigenous practices and customs; iii) elections no longer needed confirmation through a direct vote in constitutional elections, requiring only validation by electoral authorities; and iv) municipal authorities elected through common law processes would not be affiliated to a political party.

In May of 1998, the *Ley de Derechos de los Pueblos y Comunidades Indígenas del Estado de Oaxaca* (Law of the Rights of Indigenous Communities and Peoples of the State of Oaxaca) was approved, ratifying the electoral legislation previously analyzed. A limitation of these laws is that there is no procedure defined to determine who has the authority to decide how elections are to take place, whether the constitutional procedure or indigenous practices and customs. This issue is particularly important in bi-cultural municipalities, where the community living closer to the head of the municipality is more empowered to determine the kind of regime to be used and becomes both judge and interested party. A second limitation is the lack of an institution with the capacity to solve conflicts within a municipality.

Evolution

The recognition of the uses and customs of indigenous communities is a first step toward recognizing the historic claims of indigenous communities. This process transcends the indigenous communities since further steps toward autonomy would require structural reforms in the state and national levels.

Flaws detected in the reformed laws are being corrected and indigenous communities are still active, pursuing better legal frameworks to elect their authorities according to their own practices and customs. Furthermore, this movement feeds indigenous impulses to aspire to further goals, rather than simply the electoral, in the direction of the recognition of their practices and customs.

Uruguay

Legal and Policy Frameworks

Uruguay's legal regime is unitary, organized in departments (relatively autonomous political jurisdictions). Montevideo is at once the country's administrative capital and one of the 19 departments in its administrative

division. The 1917 Constitution guaranteed departmental autonomy, granting substantial administrative, jurisdictional, and financial autonomy to the departments.

Before the reform, at a departmental level, in addition to the *Intendente* (the municipality's maximum authority) and the Departmental Council (the municipality's legislative body), the Constitution – through its articles 287 and 288 – recognized occasional local government organisms called Local Councils. These Local Councils covered regions smaller than departments, usually in rural areas, basically transmitting citizen demands and acting as administrators, often adjusting to the predominant logic of patronage. By law, the Local Councils were selected by the *Intendente* and their rights (autonomy and electivity, for instance) could be broadened with the approval of the National Congress.

This was the legal framework in which the 1990 proposal for participatory decentralization came to light. The three main elements in the proposal were: i) the division of the territory into 18 zones, with Zonal Communal Centers with administrative, operative, and technical support capability available in each; ii) the creation of institutional channels for citizen participation through the institutionalization of the Local Councils and the creation of Deliberating Assemblies with the function of representing civil society; and iii) the decentralization of operational services.

The need of building consensus with opposing political parties led to a very complex structure that required the following additional mechanisms: i) agreements to make feasible the co-administration of services and works by local governments and citizen organizations; and ii) the formalization of the administrative commitments by the *Intendente*.

In addition to the creation and strengthening of local democratic culture, the strategic objective of these reforms was the achievement of governance through the increase in both an understanding of people's needs and the control of government projects and programs.

Evolution

As the proposal is shared with the citizens, they demand that the decentralization process involve not only the transfer of financial resources but also the transfer of decision power and attributions. The initial proposal thus fosters countless neighbourhood demands, which in turn legitimate the process.

Local governments are no longer seen as administrators of “what is already there,” but as governments with short and long-term programs and policies. Democracy begins to be thought of as a participatory process.

Results of the joint effort of the government and civil society – such as improvements in primary care services – are beginning to be perceived. In 1991, nearly 200,000 citizens participated in the first Participatory Budget

experience, whose results became a precursor for the elaboration of the Strategic Plan and the subsequent creation of the Central Planning Unit.

In 1992, two new organisms were created: i) the Local Councils, which would express the local representation of the political parties; and ii) the Neighbourhood Councils, which would elect their representatives from religious, athletic, or union movements. Neighbourhood Councils are subordinated to the Local Councils. These Neighbourhood Councils would later ask and obtain the right to propose initiatives and raise considerations regarding any government decision. In 1993, these new structures began to operate. In 1995, Neighbourhood Councils intervened and coordinated citizen participation in the elaboration of the *Plan de Ordenamiento Territorial* (Territorial Ordering Plan), where some of the inconveniences of formalizing popular participation – such as excessive bureaucratization – are perceived for the first time.

At present, other municipalities begin to develop their own intra-municipal decentralization programs, clearly as a consequence of Montevideo's process. Montevideo's municipality is currently undergoing a structural consolidation although this is accompanied by a decrease in participation, since activities are limited to public works and social and cultural issues. Nevertheless, citizen participation now has a concrete meaning rather than merely the exercise of the right to vote. The main social actors in this process are:

- territory-based social organizations, specially the neighbourhood councils;
- NGOs;
- Local institutions such as churches, clubs and educational institutes;
- Sector-based movements, mainly those with a national amplitude;
- economic actors (e.g. banks, commerce, production); and
- citizen networks ("redes ciudadanas de baja estabilidad") consisting of less structured groups, with special participation of women and young people.

3A. Legal Framework – Summary Chart

	Bolivia	Brazil	Chile	Mexico D.F	Oaxaca	Uruguay
Focus	<ul style="list-style-type: none"> Rural, indigenous, and urban municipalities, but implementation fairly satisfactory only in rural areas. 	<ul style="list-style-type: none"> Emphasis on urban areas. 	<ul style="list-style-type: none"> Emphasis on urban areas, despite important conflicts related to indigenous rights in the south (Mapuche). 	<ul style="list-style-type: none"> Emphasis on urban area, with a highly-concentrated population. 	<ul style="list-style-type: none"> Indigenous communities. 	<ul style="list-style-type: none"> Mainly urban population, with innovations spreading from Montevideo (capital) toward other departments.
"Catalysts"	<ul style="list-style-type: none"> Military regime 1964 – 1982. Increasing pressures coming from the civic committees, popular health committees, and political parties. Political Agreement in 1992 Indigenous mobilization: "<i>Marcha indígena por el territorio y la dignidad.</i>" New government, focusing on the modernization of the public sector. 	<ul style="list-style-type: none"> Military regime 1964 - 1985. Emergence of new social movements already in the 1970s. Growing pressure against the military regime. Intense social mobilization and participation in the elaboration of a new and democratic constitution. Mechanism of popular amendments, through which civil society is allowed to propose amendments during the elaboration of the constitutional text. 	<ul style="list-style-type: none"> Military regime -1973-1989 Exception – barriers: the transition process to democracy meant that authoritarian enclaves continued to exist even after 1989 (e.g. in the constitution). Popular movements which strongly fought for democracy did not participate in the pact. Negotiations with political parties. More recently, pressures from NGOs, international agencies, and academics, combined with political will, have pushed for the establishment of participatory mechanisms. 	<ul style="list-style-type: none"> 1997: for the first time in more than seven decades, an opposition candidate, from the PRD, wins the elections for the <i>Federal District</i>, breaking the hegemony of the PRI The new government declares its intention of promoting democracy and citizen rights. The presidential elections of 2000 break the PRI hegemony, putting an end to seven decades of a civilian-led authoritarian regime. 	<ul style="list-style-type: none"> Zapatista uprising in Chiapas (1994) The "San Andrés Dialogue" (1995-1996) between the EZLN and the Mexican federal government. Increasing demands from the indigenous people in Oaxaca. The penetration of opposition political parties. Municipal disputes and the declaration of autonomous municipalities in Chiapas. 	<ul style="list-style-type: none"> military regime 1972-1985. A center-left coalition wins the elections for the Montevideo government. It proposes an intra-municipal decentralization with the institutionalization of citizen participation as a key component to develop democratic governance.

	Bolivia	Brazil	Chile	Mexico D.F.	Oaxaca	Uruguay
Legal Framework	<ul style="list-style-type: none"> • Unitary System – National Government and Municipal Government • Constitutional Reform 1995. • Recognition of the political rights of the indigenous group according their uses and customs • Political Decentralization – LPP 1994. • Law of the Municipalities 1999. • National Dialogue Law 2001. • Proposal of constitutional reform, introducing the referendum and popular initiative, currently under discussion in Congress 	<ul style="list-style-type: none"> • Federalism System: Federal, State and Municipal Government • Direct and Representative Democracy System and Political Decentralization in 1988 Constitution • Direct mechanisms: plebiscite, referendum popular initiative, co-managed councils. • Decentralization in Federal laws related to social policies and incorporating participation in the councils(Health, Social Assistance, Children and Youth) • Recognition of the rights to participation of popular movements, organizations and civil populations in the Governments • 2001 "<i>Statute of the City</i>: systematized participation in urban areas. It recognizes the right to the city, • National, States and Municipal Urban Policy Councils • Conferences of the City • The democratic management of the city includes the mechanisms of local participatory budget and planning. 	<ul style="list-style-type: none"> • Unitary System National Government and Municipal Government. Intermediate levels: regions and provinces • Plebiscite • Lack of legislation for participation at the national level. • <i>Instructivo Presidencial</i>, 2000, a non-binding executive resolution recommending the administration to incorporate participatory mechanisms. • National Constitutional Organic Law of the Municipalities, 1999. 	<ul style="list-style-type: none"> • Federalism System - Federal, State and District, Municipal Government • The Constitution does not provide any direct mechanism of participation. • Federal District (Mexico City) Citizen Participation Law approved in 1998. • 2001: amendment proposals to that law were submitted. 	<ul style="list-style-type: none"> • Mexican Federalism system - State and Municipal Government • Reform of Oaxaca's constitution and its electoral procedures code (1995), enabling indigenous people to participate in local elections according to their practices and customs, without the direct intervention of political parties. 	<ul style="list-style-type: none"> • Unitary System – National Government and Departments (municipal government) • Direct mechanisms: plebiscite, referendum, popular initiative. • Constitution: grants financial and administrative autonomy to the Municipalities (Departments) • National Agreement 1992 • Creating formal spaces for popular participation at the municipal level. Through a participatory process, new channels of participation were put in place: 1) neighbourhood councils, with consultative and control functions over the local councils and the <i>Intendente</i>, and 2) local councils, with executive power and whose composition shall include representatives of different political parties.

3B. Local Governance and Citizen Participation Interaction

	BOLIVIA	BRAZIL	CHILE	MEXICO D.F.	OAXACA	URUGUAY
Local Legal Framework	<p>National Law of the Municipalities (1999):</p> <ul style="list-style-type: none"> - rights of association of the OTB's: territorial base organizations; - participation in the delivery of public services; - participation in the local planning; - Public consultation and public hearing 	<p>Each Municipality has its Municipal Organic Law since 1990, including:</p> <ul style="list-style-type: none"> - right to the city; - referendum; plebiscite, popular initiative; - rules to implement social policies; - public consultation and public hearing; - delegation of municipal powers to sector councils or committees; and Neighbourhood committees or councils 	<p>National Constitutional Organic Law of the Municipalities, 1999:</p> <ul style="list-style-type: none"> - “<i>Ordenanzas de Participación Ciudadana</i>” municipal resolutions to promote community participation; - Attributions to the CESCOS; - plebiscite - public hearing - ombudsman offices 	<p>Federal District Citizen Participation Law, 1998:</p> <ul style="list-style-type: none"> - Direct mechanisms: referendum, plebiscite, popular initiative, neighbourhood consultation - public hearing - neighbourhoods committees 	<p>Law regarding the rights of Indigenous Communities and Peoples of the State of Oaxaca, 1998</p> <ul style="list-style-type: none"> - Recognition of the village assembly and the institutions and procedures used by communities for the election of their authorities; - The governing periods determined by their uses and customs; - Municipal authorities elected through common law processes would not be affiliated to a political party. 	<p>Primer Act of the Department of Montevideo, 1990:</p> <ul style="list-style-type: none"> - division of the territory into 18 zones, with administrative, operative, and technical support; -Institutionalization of the Local Councils and the creation of Deliberating Community Assemblies - Institutionalization of the neighbourhood councils

	Bolivia	Brazil	Chile	Mexico D.F.	Oaxaca	Uruguay
Indirect Forms of Participation (elections)	Free elections at the municipal and national levels.	Free elections at the municipal, state and federal levels.	Free elections at the municipal and national levels, but the president is constitutionally in charge of appointing the <i>Intendentes</i> (regions) and <i>Gobernadores</i> (provinces).	Free elections of municipal, state and federal levels	Free elections of municipal, state and federal levels. Local authorities elected according to indigenous practices and customs	Free elections at the departmental and national levels.
Direct forms of citizen participation	<u>OTBs</u> : territorial base organizations; Number: 15.000	Neighbourhood assembly Popular Movements assembly Conferences of the City about sectorial policies (health, housing, social assistance, urban development, sanitation) Assembly of Participatory Budget Public Meetings of Networks and Forums(NGOs, popular movements professional associations, base communities	Neighbourhood assembly Popular Movements assembly	Neighbourhood Committees	Indigenous movements assemblies Village assemblies of the indigenous group	Deliberating Assemblies of the civil society Thematic Commissions Co-management: - local councils - neighbourhood councils - co-management commissions (e.g. health, social programs)
Join Action, citizen with local government	Vigilance Committees Participatory Local planning	Co - managed Councils - (sectorial councils): mandatory according to national laws: Health , Social Assistance, Children and Adolescents , Urban Policy Optional: Housing, Environment, Women Neighbourhood committees and councils Participatory budget Participatory planning	CECOS: Consultative body for local investments, development, regulation, annual municipal public account	Neighbourhood Committees Supervise, evaluate and administrate citizens demands Budget elaboration process Public opinion about public programs and public services	Indigenous Municipalities And Indigenous Municipality Agency-Local authorities elected according to indigenous practices and customs Village Government by customary indigenous law Public meetings with Local Authorities	Montevideo: Innovative public spaces - Neighbourhood Councils with support of the Zonal Communal Centers - Local councils - Co-management commissions (e.g. health, social programs) Participatory process: - Participatory planning - Participatory budget

LogoLink Research – Legal Frameworks for Citizen Participation
Latin America Regional Report

<p>Transparency and Accountability</p>	<ul style="list-style-type: none"> - Public consultation and public hearing. 	<ul style="list-style-type: none"> - Ombudsman offices - Public hearings, public consultations and public debates (Statute of the City) 	<ul style="list-style-type: none"> - Public hearing - Ombudsman offices 	<ul style="list-style-type: none"> - Neighbourhood consultations - Public hearings 	<ul style="list-style-type: none"> - by law, <i>Intendentes</i> are required to present an annual report to the local legislative and the Accounts Tribunal, regarding the budget execution and the compliance with the government plans and programs
--	---	---	---	--	--

4. Lessons and conclusions

The most notable common feature that emerges from the country studies is the fact that the concern with the elaboration of legal frameworks for citizen participation gained relevance after periods of authoritarian regimes. Even in Mexico, the seven decades of dominance and control by the PRI created a non-democratic political system, once described as the "perfect dictatorship."

Under dictatorship, Latin Americans were divested of their basic civil and political rights. With freedom of expression and association denied, the development of an active participation through more traditional channels (political parties and labour unions, among others) was harmed. But despite these difficulties, different social groups found new ways of organizing themselves, becoming a new social force that would influence policy formulation under democracy.

It is with the return to representative democracy that opposition political forces and social mobilization increased their actions to guarantee a formal space of participation. In this sense, the legal provisions for participation represented an important development and starting point for pushing the democratization process forward.

Comparing the legal and policy frameworks and their implementation in the countries analyzed, we noted that:

- Political will, combined with the arrival of progressive parties in power, contributed to raise the debate on citizen participation and eventually led to the establishment of institutional mechanisms. That was the case in Montevideo, with the arrival of the center-left coalition *Frente Amplio del Uruguay* to power for the first time in Uruguay's history; in the Federal District in Mexico, with the rupture of the PRI's hegemony; and in Chile, under the administration of Ricardo Lagos. In Brazil too the role of the Workers Party (PT) in local governments has provided innovative experiences of popular participation such as the participatory budget
- Though the legal mechanisms may arise as a consequence of social demands, citizens usually do not participate in the elaboration of the regulations, neither are they consulted before their promulgation.
- The Brazilian case is unique in the combination of opposition political forces to a strong popular mobilization that successfully pressured the conservative forces to accept certain constitutional rights to the participation. The elaboration of the Constitution of 1988 can be considered a very participatory process, that led to the incorporation of legal provisions and an orientation for participation at all levels of the administration. More recently, Bolivia too experienced a more active participation, with the elaboration of the National Dialogue Law (2001).
- In some cases, the frameworks originated from a top-down process, as in the case of Uruguay in 1990 and Bolivia with the Popular Participation Law

(1994). In Chile, the few initiatives resulted more from the political willingness and pressures from NGOs, international agencies and academics, but frequently these actors are not well connected with the popular movements.

- Due to an overly legalistic tradition in Latin America, the organizations and actions of popular movements and, as a result, a more serious consideration of their demands, sometimes require the institutionalization of mechanisms for participation. That is the case in Uruguay, Chile, Brazil and Bolivia.
- In every case, the legal mechanisms for local participation are connected to administrative decentralization. Comparatively, in Uruguay and Brazil, the municipalities have more responsibilities and autonomy of resources, while in Mexico and Bolivia (where there have been efforts to provide the municipalities with their own sources of funds) there is a higher dependence on other levels of the administration that are in charge of transferring the resources. In fact, in the case of Mexico one can talk about "de-concentration" and not decentralization.
- The government initiatives for citizen participation at the local level have coincided with the adoption of the neoliberal framework, creating a perverse logic according to which the reduction of State functions promoted by the neoliberal discourse matches the delegation of attributions to the citizens.
- Though innovations such as the participatory budget are occurring, the provisions for local participation are usually related to social policy, while the discussion of key themes like the macroeconomic policies continue to be centralized and restricted to technocrats. Nevertheless, some local governments have coordinated valuable experiences for the promotion of local development.
- There is a recognition that legal instruments can actually work as catalysts for other movements, generating a process of permanent adjustments. It also favours popular learning about the public policy formulation process, which can contribute to the deepening of democratic governance.

4A. Implementation: Enabling and inhibiting factors

As Section I demonstrates, legal and policy frameworks to promote citizen participation may originate from different events and actors. While in some countries social movements were fundamental in pressuring for the opening of the political system, in others the decision to "create" participation came from the top, as in the case of the Bolivian Popular Participation Law.

Despite the formalization of channels for participation, informal movements and popular organizations continue to exist. The national urban reform popular movement and the Landless Movement in Brazil and the indigenous articulation

in Mexico are examples of how non-governmental actors constantly find new ways to organize and pressure for the full exercise of citizenship.

From the government's viewpoint, we identify a shift in the discourse, from a restricted interpretation of democracy to a conceptualization of democratization as a process that requires citizen participation and not only periodical manifestations in the ballots. The creation of local councils and spaces of debate between public authorities and citizens, even with all the difficulties and inequity in power distribution, continues to be an important change. It has generated a dynamic by which citizens are gradually learning more about the mechanisms of public management. This learning certainly contributes to the emergence of a new political culture, with authoritarian behaviours facing more resistance. In this context, words such as transparency and legitimacy acquire a new dimension, becoming part of the citizen's understanding of democracy.

In countries with previous experience with democracy, the articulation of actors may be easier. On the other hand, as the Chilean case shows, the centralization of the debate in the political parties may frustrate direct popular participation. There, too, despite the poor policy framework, social actors have been articulated around new themes, such as gender and indigenous rights.

After evaluating the context and the evolution of participation in the five Latin American countries, it is possible to list some factors that seem to foster participation and others that refrain its expansion.

Enabling factors

- Participation is more effective when citizens contribute to the design of the legal framework and laws are produced through a democratic process. These frameworks tend to present fewer flaws and are capable of better reflecting citizens' interests, being therefore more likely that they will be put in practice.
- Decentralization processes: developing nations in general and Latin American countries in particular have been experiencing political reforms aiming at the decentralization of resources. Although some of these reforms have been initiated by right-wing governments, social movements, usually led by leftists, have been able to benefit from this process. Without entering in the discussion concerning the virtues and problems of decentralization – a process which has in some cases been accompanied by a reduction in the governments' size, level of intervention, and responsibility – the phenomenon has created some favourable conditions for the development and consolidation of social movements. At the local level, it has made easier the introduction of mechanisms that efficiently integrate citizens' opinions into the decision-making process. At the same time, it is also easier for citizens to form an organized collectivity capable of demanding accountability from its authorities. The decentralization of resources and responsibilities – from the federal to the local level and even within the local level – has represented a tangible incentive for social movements to

organize in order to have their voice heard, forcing the creation of legal and policy frameworks that regulate and properly channel popular participation.

- The prior existence of social mobilization and popular demands for participation are determinant factors in the success of movements. However, political will has been proven to be equally necessary for productive participation.
- The territorial identification of participatory groups also proved to be more efficient in stimulating citizen involvement, since leaders gained legitimacy as they were closely related to those being represented.
- Some actors were decisive in the consolidation of participation movements in Latin America, giving embryonic organizations the necessary infrastructure, know-how, support, stimulus, and capacity to articulate concerns. This is the case with NGO's, progressive churches, progressive political parties, popular urban movements and NGO', labour unions, professional associations, women's movements, indigenous movements, and donors (bilateral and multilateral cooperation agencies). It should be noted that in some cases these actors played more than one role, at times fostering participation and at others even inhibiting it, typically when the movement ceased to suit their interests.
- The local authorities has a fundamental role to stimulate and to open popular participation in the making decision process ,and change the priorities of the public policy to combat social inequality, with support from the civil society.
- Where social and political commitment to participation does not exist, legal frameworks may stimulate it.
- The spread of information also proved to increase participation, and consequently the media's role becomes crucial for the consolidation of participatory practices.
- Training programs that help citizens exercise their political rights and their right to decide over administrative and legislative themes are decisive. As many of the experiences presented here demonstrated, participation faces an impasse whenever technical decisions have to be made and citizens discover they are not prepared to decide on certain topics.

Inhibiting factors

- Legal frameworks might themselves be inhibiting factors. However, from the citizen's viewpoint, institutionalization can actually operate as a way of reducing the spaces of participation to those "allowed" by the State. The reduction, by the Mexican government, of the indigenous demands to a practices and customs issue, is an example of how agreements can actually disperse the attention from the main themes.

- The proliferation of committees has proved to be counter-productive. In Mexico's federal district, the existence of more than 1,300 committees made it impossible for the government to coordinate social demands and include these demands in the design of urban policies. It should be noted that there is a trade-off between the size and number of organizational cells. As noted, while the proliferation of committees is harmful, excessively large committees present the problem of distancing represented citizens.
- Urban participation also proved to be difficult to foster in Bolivia and Mexico. In the case of Mexico's federal district, the individualistic and defensive characteristics of the inhabitants of an enormous urban conglomerate made them refrain from participating.
- The presence of an authoritarian culture, in a community that traditionally does not defy it, is a powerful inhibiting factor. This phenomenon is of particular importance in rural participation movements in Latin America, where the presence of *caciques* is quite common.
- Rivalry between key organizers of participation movements, as well as the radicalization of similar but not identical positions, may weaken the organizations and hinder progress.
- When elaborating legal frameworks for participation, there is the possibility of creating a dangerous situation, in which the state is not held accountable for its functions, using a discourse of popular empowerment. In the Chilean case, where the neoliberal experience began already in the 1970s, there has been an atomization of civil society, under the logic of the market. Citizens are thus seen as customers, who must demand from private actors good quality "services." But what kind of citizenship has been developed?

4B. Final comments

As this regional report shows, from their conception to their application, legal and policy frameworks have been experienced in many different ways. Legal frameworks that tend to have better results are those based on social demands, created in conjunction with the interested social actors, and supported by the political will of the authorities. Similar legal frameworks can present radically different results, depending on the context in which they are developed. In cases where citizen mobilization is incipient, the creation of a legal framework, as weak as it may be, may stimulate participation and provoke its subsequent improvement. In other cases, where a large variety of popular movements are already working, a flawed legal framework may trigger a decrease in the participatory impulse if the decisions are not executing by the Governments.

As the hypothesis supporting this research had suspected, legal frameworks are a necessary step for the development of participation relating with other conditions like capacity and knowledge of the social leaders about public policy. In fact, there is a consensus among the researchers that citizen participation can and does occur despite the existence of institutionalized channels if the

social leaders and popular movements obtain capacity and knowledge. The Latin American experiences help us identify some ways of combining participatory legal framework, accountable local authorities committed with the implementation of a democratic management, and empowered social groups and popular movements.

In some cases, such channels can even restrict participation by creating legal spaces where selected social actors negotiate, without integrating other groups and therefore risking the reproduction of paternalistic relationships.

What appears as a fundamental factor in the promotion of participation is the willingness of the different social actors to increase their participation in the government. Political will is also a positive variable, but it is important to emphasize that citizen agency is the key force to promote democratic participation. For societies that have experienced the total violation of the rule of law during authoritarian regimes, the right to be involved in the formulation of public policies, combined with the control over their freely elected representatives, is the basis for the construction of a more solid democratic system.

Local citizen participation is a continuous exercise that tends to cause constant instability in the public space. But as the governmental and non-governmental actors continue the experience, it can actually contribute to local governance, considering that a participatory democratic governance cannot be conceived excluding the capability of political actors to dialogue with society and respect citizens' demands.

As this conclusion points out, citizen participation and local governance cannot be examined from a single angle, nor can it be generalized, especially in a region as large as Latin America. The few countries studied for this report are an example of the difficulties in comparing legal and policy frameworks without a deep understanding of the social, political and cultural patterns in which they emerge. Moreover, we did not include any Central American country, what we hope to do in future research.

We conclude suggesting the implementation of initiatives focusing on the construction of a more detailed picture of citizen participation and local governance in Latin America, optimizing the knowledge that has been produced throughout the region by different institutions and researchers but that is still very scattered.

Bibliography

Bello, D. and M.A. Rodríguez, 2002, 'Estado de la participación social en Chile', unpublished paper

do Carmo, M. 2002, 'Participacao cidadã no Brasil hoje', unpublished paper

Caruso, A., 2002, 'Informe preliminar: Participación ciudadana en los ámbitos de gobierno local: La incidencia de los marcos legales y políticos', unpublished paper

Renjel R., L. M., 2002, 'Marcos legales y políticas para la participación ciudadana en gobiernos locales: El caso de Bolivia' unpublished paper

Sanchez, C., 2002, 'La participación ciudadana en el gobierno local del Estado de Oaxaca: El caso de los municipios indígenas', unpublished paper

Saule Jr., N., 2002, 'Marco Legal da participacao popular no Brasil', unpublished paper

Zermeño, S., 2002, 'La participación en el Distrito Federal: La normatividad y sus resultados', unpublished paper

Zermeño, S., 2002, 'Dos ejemplos de participación social en México: El Distrito Federal y Oaxaca', unpublished paper