

LEGAL FRAMEWORKS FOR CITIZEN PARTICIPATION: SYNTHESIS REPORT



APRIL 2003

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LogoLink is a global network of practitioners from civil society organisations, research institutions and governments working to deepen democracy through greater citizen participation in local governance. LogoLink encourages learning from field-based innovations and expressions of democracy which contribute to social justice.

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While gratefully acknowledging the tireless efforts, enthusiasm, patience and dynamism of all the researchers involved, we would be ignoring a principal message of this research if we failed to note here that, as anticipated at the outset, the project is but an early step towards understanding and making better use of legal frameworks for strengthened citizen participation in local governance. We look forward to future collaboration with our LogoLink partners and others in taking further steps in that direction.

1. INTRODUCTION

Which factors contribute to effective citizen participation in local governance? This is one of the central questions underpinning the work of LogoLink, the Learning Initiative in Citizen Participation and Local Governance.¹ The experience of LogoLink partners and other actors devoted to promoting citizen participation suggests that national and local laws and policies mandating citizen participation are important enabling conditions for participation to ensue. While this is fairly widely recognized, there has been little systematic research to date into the legal frameworks and policies that exist, their nature and scope.

The past two decades have seen a spate of legislation and policy-making that provides for new opportunities for citizen participation. Much of this has taken the form of constitution-making and decentralization processes, often against a backdrop of transition from authoritarian to democratic governance regimes. There are some common tendencies that can be observed in these processes in different parts of the world, but some countries have gone further than others in terms of promoting participation. There is a sense among informed observers that discourses of decentralization and citizen participation have been framed differently in different countries and regions, with concomitant differences in practice and impact.

The lack of systematic research on legal frameworks, the contexts in which they have emerged and the different ways in which they are applied, constitute the rationale behind the research project 'Frameworks for Citizen Participation in Local Governance', the findings of which are synthesized in this report.

1.1 Background and scope of the project

LogoLink is a global learning initiative aimed at strengthening citizen participation in local governance. Funded by the Ford Foundation's Governance and Civil Society Programme and coordinated by the Institute of Development Studies (IDS) at the University of Sussex, in conjunction with four regional partners in East Africa, Latin America, South Asia and South-East Asia,² it consists of a network of partners variously positioned in local governments and civil society in these four world regions. LogoLink provides spaces and encouragement for learning and action through exchange, reflection and research. In so doing, it seeks to respond to needs articulated by individuals and organizations that are attempting to promote and deepen participatory practice at the interfaces between local governments and citizens.

¹ For information on LogoLink see its website at <http://www.ids.ac.uk/logolink/>

² Centre for Basic Research (CBR) in Uganda, Instituto de Estudos, Formação e Assessoria em Políticas Sociais (POLIS) in Brazil, Society for Participatory Research in Asia (PRIA) in India and Institute of Popular Democracy (IPD) in the Philippines.

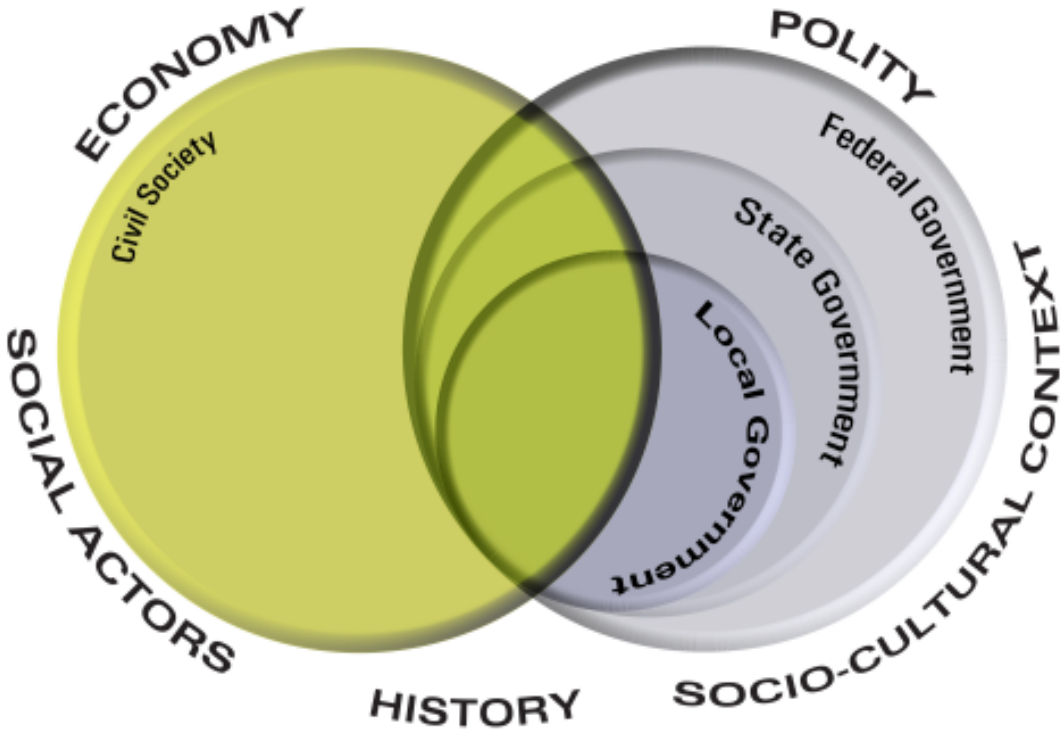


Figure 1.1

LogoLink conceptualizes and explains its objectives and areas of work in terms of the image in Figure 1.1, which offers a visual representation of the connections between civil society and government actors in the sphere of local governance.

LogoLink’s concern is with the intersection between the civil society and government circles, which represents interaction between civil society and government actors in local governance. The challenges that LogoLink seeks to address are how the intensity or effectiveness of the interaction might be improved, and/or the extent of it increased. One approach might be to bring more civil society representation into the government arena; another might be to bring more government actors into closer engagement with civil society. The context surrounding these two groups of actors in any given country or region – historical, political, economic, socio-cultural, and in terms of social actors – is a crucial determinant of how they currently interact and of the prospects for enhancing their interaction. Besides ‘external’ context, the interaction between civil society and government is also shaped by the internal composition and nature of each group of actors.

Legal and policy frameworks for participation are one aspect of the intersection between civil society and government. They make it possible for these actors to interact, regulate the terms of their engagement and affect the nature of their relationship by increasing the scope for one group to enter the other’s arena and, in some cases, introducing joint actions of governance that the two groups undertake together. Hence LogoLink’s interest in exploring frameworks.

The momentum for this research project came from two main sources. LogoLink partners in funding and research agencies, finding themselves and their grantees in a posi-

tion to influence the shaping of legal frameworks, sought reference material that would bring together existing frameworks and synthesize lessons that could be learnt from them. A similar resource was called for by partners in civil society in certain countries³ who, having little or no experience of legally sanctioned citizen participation, are faced with new opportunities to engage with their governments in drawing up or improving on laws and policies.

Box 1.1: Aims of the Project

- To conduct a comprehensive, comparative survey of legal and policy frameworks for citizen participation in local governance that operate in countries or states of federal republics in four regions (East Africa, Latin America, South Asia, South-East Asia);
- To synthesize existing knowledge about how these frameworks work in practice; and
- To draw lessons about the effectiveness of particular kinds of legal and policy framework for promoting citizen participation, including the importance of context in making models work or limiting their effectiveness, and the scope for transferring models into different country or regional contexts.

At a later stage, it was decided to commission desk research on selected countries in the North for comparative purposes.⁴

We started from the acknowledgement that while legal frameworks are enabling factors and exploring them is a worthwhile pursuit, they are insufficient to guarantee that effective citizen participation will take place. In many cases, what matters is not so much the introduction of legal and policy frameworks themselves but how fertile is the institutional and organizational ground on which they fall. How the frameworks actually work in practice, from the perspectives of those government and civil society actors who use them to engage with each other in local governance processes, is as vital a question as what they contain in the way of explicit provision and implicit permission for participation.

To assess and evaluate the application of frameworks in practice would be beyond the scope of this desk-based project. However, efforts have been made in the project design to make it 'grounded' and informed by practice, despite not including any detailed empirical or field-based work. Much of this grounding has come from the individual and collective knowledge of the key participants in the research; researchers based in LogoLink partner organizations, whose own positions as civil society activists and ap-

³ Notably Indonesia, in the course of transition towards a democratic governance model.

⁴ The research commissioned on the North did not follow the same process as the work in the four southern regions, since LogoLink has no regional partner in the North. The northern study was essentially a desk review, conducted at IDS simultaneously with the studies and regional workshops in the South, and was brought together with the work conducted in the four southern regions at the write-shop at IDS in August 2002.

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plied researchers have exposed them as much, or more, to the reality as to the letter of the law.

The project concept was developed in discussions with regional LogoLink partners in late 2001 and early 2002. Leading regional researchers, based at LogoLink’s regional partner organizations, contracted and supervised local researchers to conduct studies of selected countries in their regions or, in the case of federal republics, of selected states within the federation. A total of 18 cases were studied, selected according to a range of criteria including the existence of interesting case material, diversity of context and degree of progress to date. The cases are listed in Box 1.2 below.

Box 1.2: Cases Covered

South-East Asia

- Philippines
- Indonesia
- Thailand

South-East Asia

- Brazil
- Bolivia
- Chile
- Mexico DF (Distrito Federal or Federal District - Mexico City)
- Mexico (Oaxaca State)
- Uruguay

East Africa

- Uganda
- Kenya
- Tanzania

South Asia

- India (North-Uttar Pradesh)
- India (Central-Madhya Pradesh)
- India (South-Andhra Pradesh)
- Nepal
- Bangladesh

Selected countries in the North

- UK
- USA
- Switzerland
- Finland
- New Zealand

Case study research was carried out between March and July 2002, guided by the questions shown in Box 1.3.

Box 1.3: Key issues addressed in regional workshop discussions and reports

- What patterns exist across the region in terms of legal and policy frameworks?
- How do countries compare in terms of the frameworks themselves, the citizen groups that take them up and use them, how they are implemented, and the support structures that are in place for their effective implementation?
- According to existing research and key informant interviews, how do governmental and non-governmental actors at the local level(s) of governance experience these frameworks?
- To what extent can they be considered enabling frameworks for citizen participation? Are there forms of participation that have arisen in direct response to them? Are there forms which have arisen not because of them but in spite of them?

In June and July 2002, a regional workshop was hosted by each regional partner organization, where findings from cases were shared and discussed. These discussions addressed a set of further questions, and leading regional researchers subsequently drafted regional reports in which they focused on these issues from a cross-country or regional perspective.

In August 2002, the leading regional researchers, the researcher working on the North, and the IDS team came together at IDS for a 'write-shop'. Regional reports were shared and discussed together, and researchers sought collectively to identify patterns and lessons, with the assistance of selected regional specialists who commented on interim outputs. A large number of ways of analyzing and systematizing the mass of information gathered were considered. This in itself was an important part of the process of learning about the real significance of legal frameworks, and highlighted the difficulties and dangers of forcing the analysis and synthesis of findings without due regard for their country and regional contexts. It led to the revising of reports according to a simple, common frame of analysis, intended to facilitate synthesis of key findings without suppressing important regional and country variation. Towards the end of the write-shop, a seminar was held at which presentations were made to academics and civil society practitioners by each leading regional researcher. Wide-ranging discussions were held about the scope and limits of frameworks as enabling conditions for citizen participation.

The interim outputs available at the end of the write-shop were a set of 15 case study reports (all those listed in the Box 1.2 minus those in the North which were not written up as detailed, individual case studies), five regional reports (East Africa, Latin America, South-East Asia, South Asia and the North) and one sub-regional report (Mexico, which presents in comparative perspective the two Mexican case studies of Distrito Federal and Oaxaca). Country and case study reports do not all follow the same format, but regional reports follow a fairly homogeneous structure derived from preliminary synthetic work conducted in the course of the write-shop, intended to facilitate comparison across regions.

The present document synthesizes the collective learning generated throughout the project. Apart from the very briefly synthesized findings in Section 2, which we con-

sider necessary as easily accessible background and reference material for readers, it provides detail on individual countries or regions only insofar as this is needed to elucidate—in support of or in contrast with—general findings of interest that arise from all or some regions. Such findings are the main focus of this synthesis report. The synthesis, therefore, is not a summary of all findings: those interested in detailed findings are encouraged to consult case study and regional reports.⁵ Here we aim to take our analysis a step further and present what we consider to be reliable findings of the overall study about the significance, at supra-national and supra-regional levels, of legal and policy frameworks for citizen participation in local governance.

We expect the project's outputs to be useful to a range of diversely positioned actors with an interest in local governance: activists who seek to exploit the spaces opened up, explicitly or implicitly, by legal frameworks; academics studying the relevance and usefulness of laws and policies in this field; and funding agencies seeking to support engagement between civil society and local government officials with each other. To them we offer this compendium of frameworks and our best efforts to extract from our labours lessons which will offer them points of reference in their work.

Section 2 provides, mostly in tabular form and grouped by region, a summary of basic information from the country and case studies on the main issues and areas that emerged as categories for analysis of the information. Section 3 synthesizes and discusses our findings, in doing so expanding on the earlier discussion of key definitions and concepts, and locates the findings in a discussion of the importance of context for shaping legal frameworks and determining their significance. Section 4 identifies lessons and conclusions from the two previous sections, with a particular focus on what seem to constitute constraints and enabling factors for citizen participation in local governance. It gives an indication of the many areas and aspects of this field which, on the basis of our work, we feel would benefit from further research or action. The Annexes provide references and sources for the texts of those laws and policies which researchers have been able to gather, and point readers in the direction of other useful sources and contacts.

The remainder of this section sets out key concepts and definitions and discusses how they will be used in this report. We discuss various forms of democracy and participation, and set out our understanding of decentralization as the context in which democratic reform is occurring in most countries studied.

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⁵ A complete list of these, and how to access them, is provided in Annex 2. Several are (or will shortly be) available in the major language of the respective region as well as in English.

1.2 Key concepts, definitions and usage

One objective of this research was to capture and clarify the range of concepts and terms that relate to models of governance and citizen participation, and the meanings that are attached to them. We set out here standard definitions of the key terms and concepts culled from political science, governance and public policy literature. Political theoretical debates about the meaning and nature of democracy itself abound,⁶ and we do not seek to enter into them here, but to discuss in detail variant forms within broadly received notions of democracy as relevant to this research.

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Since our main interest is in the local level, let us start there. Most opportunities for citizen participation in local governance arise in contexts of democratic decentralization. **Decentralization** has been defined by Conyers (1990, cited in Nierras *et al.* 2002:15) as 'the transfer of power and/or authority to plan, make decisions and/or manage public functions from a higher level of government to a lower one'. Where the local authorities in question are democratically elected and wholly or largely independent of central government, it may be referred to as **democratic decentralization** (Manor 1997, cited in Nierras *et al.* 2002: 15). Under decentralization, however, there are important distinctions to be made between a range of different forms, the principal of which are federalism, deconcentration, devolution and actual decentralization (Nierrias *et al.*, 2002). The degree and kind of citizen participation that is possible is contingent on the form of decentralization in question.

In the words of another commentator (Blair, 2000: 21), **democratic local governance** is 'meaningful authority devolved to local units of governance that are accessible and accountable to the local citizenry, who enjoy full political rights and liberty'. It embodies the aspiration of making government at local levels more responsive to citizens and more effective in service delivery through building in participation and accountability. Participation 'promises to increase popular input into what local government does', and accountability 'increase[s] popular control over what local government has done or left undone' (*ibid*: 22).

Most definitions of democracy are unequivocal in asserting 'the people' as the locus of power in a democratic system, and the possibility of citizens exerting this power either by direct or indirect means. Thence arise a range of qualifying adjectives. **Direct democracy** is 'a context in which citizens have the right and opportunity [...] to be di-

⁶ The following definition of democracy is as good as any for our purposes, but we use it in the awareness that there are many, with subtle but significant differences: '[a] form of government in which supreme power is held by the people and exercised directly or through elected representatives. The word comes from the Greek for "people's rule". Although democracy comes in many forms, nowadays the concept generally implies majority rule, minority and individual rights, equality under the law, and civil rights and liberties' (Rohmann, 1999, cited in VeneKlasen with Miller, 2002: 29).

rectly involved in formulating and passing the laws and/or the constitution of their countries' (Gross and Kaufmann, 2002: 1). It presupposes 'the direct involvement of citizens in decision-making at the local level' with 'the citizenry itself [making] legislative decisions instead of delegating the power to elected representatives' (Bucek and Smith, 2000: 5). In terms of the relationship between citizens and the state, direct democracy means that 'traditionally excluded groups can gain access to the state, making decisions affecting their lives that would normally be made by their representative. It thereby increases the *control* citizens have over government' (Abers, 2000: 5; emphasis in original).

As such, direct democracy is often considered the purest form of democracy (Rohmann, 1999, cited in VeneKlasen with Miller, 2002: 29). It is contrasted with **representative democracy**, which 'as the main contender for and holder of formal decision-making rights, is very well established and its position [...] very solid and respected at the local level' (Bucek and Smith, 2000: 5), as well as at the national level. It is defined as:

the form of government in which legislation is enacted by representatives who are elected by the citizenry. In contrast to direct democracy, the majority delegates power to a minority nominated to act in their interest. The minority is mandated to do this either in response to the majority's express wishes or according to the representatives' own judgement. (Rohmann, 1999, cited in VeneKlasen with Miller, 2002: 29)

For Weber, democracy was 'primarily a means of producing an effective political leadership [i.e. representatives] in conditions of a modern bureaucratic society, and apart from their ability to dismiss the ineffective from office, voters are assigned little or no influence over decision-making' (Abrahamsen, 2000: 69). Schumpeter took this argument further, stating that democracy

does not and cannot mean that people actually rule in any obvious sense of the terms "people" and "rule". Democracy means only that the people have the opportunity of accepting or refusing the men [sic] who are to rule them [...]. [O]ne aspect of this may be expressed by saying that democracy is the rule of the politician. (1975, cited in Abrahamsen 2000: 69)

Representative democracy is thus an **indirect** way for citizens to exert power, and their satisfaction with it will depend on the effectiveness, probity and degree of accountability of the representatives chosen. The reliance on selection of representatives by majority election means that even with low levels of citizens' involvement in the only activity open to them, the electoral process, this model satisfies its – rather restricted – purpose.

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The case for representative democracy rests largely on bureaucratic efficiency and pragmatism: it has an advantage over other forms of democracy when it comes to reconciling differences between citizens' interests and preferences (Bucek and Smith, 2000: 4). It offers citizens less control than other forms, but Weber, Schumpeter and other democracy theorists (reviewed by Abrahamsen, 2000: 67–73) tend to be dismissive of the desirability or functionality of any greater citizen involvement than voting

for representatives. This, even though ‘a procedurally perfect democracy may remain an oligarchy: the rule of the rich over the poor’ (Przeworski, 1991: 34, cited in Abrahamsen, 2000: 75).

That direct democracy, and especially some forms of it, are currently gaining adherents is due to its different treatment of citizens and their roles. Direct democracy as a whole offers citizens greater control than representative democracy, but certain forms of it offer them other advantages too. **Participatory democracy** describes a way of going about direct democracy, rather than a third variant of democracy to add to the two above. Each form—direct and participatory—implies participation. Bucek and Smith (2000: 4) recognize that the distinction between them ‘is an overlapping distinction continually in transition in societal praxis. Direct and participatory democracy both concern non-elected citizens’ involvement in decision-making, or their participation in decision-making processes outside the main elected local government institutions’.

Participatory democracy can be differentiated from direct democracy in terms of outcome and also in terms of their respective roles in decision-making. Participatory democracy denotes contexts of direct democracy where mechanisms for political participation are used to provide ‘real possibilities for the enrichment of local political and administrative life, as well as for improvements in the responsiveness of public services to the needs of citizens’ (*ibid*: 15). These are contrasted with contexts of direct democracy, wherein ‘participation in local affairs [is] tokenistic, involving little more than consultation with public opinion in ways which produce results that can easily be ignored by those in formal positions of local authority’ (*ibid*: 14-15). As a further difference, the application of traditional forms of direct democracy culminates in the taking of formal decisions, freeing representative institutions of the responsibility for those decisions. Participatory democratic forms involve citizens in decision-making and deliberation, and although they do not usually lead to formal final decisions, are better than representative democratic forms at revealing people’s preferences. Neither approach, however, is desirable in its pure form without elements of the other: ‘Without sustained public pressure [as in participatory democracy], governments rarely fulfill the promises they make on election day. But without elections, it is difficult to reconcile the different interests and agendas that exist in civil society’ (Edwards, 2002: 3).

A further set of arguments for participatory democracy, which have particular resonance in southern countries where formally ‘representative’ democratic systems have co-existed with extreme inequality and deprivation, rests on the charge that in inequitable societies representative systems will inevitably reproduce social, economic and political inequities in terms of who can engage with and influence decision-making. It has been argued that the problem with representative democracy is not so much that it restricts citizen involvement to the vote, but that

the opportunities it creates for more extensive involvement and influence over decision-making are dependent upon a variety of resources, most notably time, money and education that are distributed unevenly between different sections of the population. In this way, the freedoms of speech and association may expand political activity beyond the vote, but at the same time these practices are also the means whereby the inequalities of civil society are transmitted to the political domain. (Beetham, 1992, cited in Abrahamsen 2000: 75)

Participatory democracy, as well as breaking this mould, can offer scope for fundamentally redressing these inequities through the participatory and deliberative process

itself. Cornwall and Gaventa (2001: 32) centre their definition of participatory democracy on poor people exercising voice 'through new forms of inclusion, consultation and/or mobilization designed to inform and to influence larger institutions and policies'. Fung and Wright (2001: 6-7) argue for **empowered participatory democracy**: the 'redesigning of democratic institutions so as to incorporate innovations that elicit the energy and influence of ordinary people, often drawn from the lowest strata of society in the solution of problems that plague them'.

Enmeshed in these definitions above is the concept of 'deliberation' as a mechanism that enriches participatory democracy. The promotion of deliberation arises from concerns both with citizens' rights to participate and with what democracy can do for people, as well as what people can do for democracy: **deliberative democracy** emphasizes 'eliciting broad public participation in a process which provides citizens an opportunity to consider the issues, weigh alternatives, and express a judgement about which policy or candidate is preferred. [...] It is distinguished from ordinary, thin modes of public involvement by the breadth and quality of participation' (Weeks, 2000: 360). Reminiscent of Bucek and Smith's criterion for distinguishing participatory democracy from direct democracy, Weeks thus captures as 'deliberation' that different, non-tokenistic quality of participation. Fung and Wright (2001: 6-7) define deliberation as the instituting of 'reason-based decision-making'. Abers' assertions (2000: 5-6) that 'participatory forums provide an environment in which people can gain skills, knowledge and organizing capabilities that help them both to control the state more effectively and to respond to problems themselves without the state's interference', and that participation can foster 'social consciousness and political community', also resonate with these notions of deliberation.

Defining deliberative democracy throws into relief a further possible form of engagement between local government and citizens, but one which refers more to how things get things done than to deciding what should be done. This rather loose category, whose key defining feature is that it is participatory but not centered on decision-making, we refer to throughout the report as **joint action**. It spans activities such as the co-management of publicly-funded programmes, certain forms of citizen involvement in local planning processes, and co-facilitation by citizens with government of participatory assessment or consultation.

While participatory, empowered and deliberative democracy are evermore current terms in political science and governance debates, as yet they are but aspirations. No country can claim to have instated fully participatory democracy. Most are starting from a representative democratic system and have begun to introduce modifications to this system which render it more participatory without discarding all its fundamentals. Moreover, in many countries different sets of actors are committed in different degrees to the modification of the representative system, making the very aspiration of participatory democracy a contested one, and the pursuit of it a political process in itself.

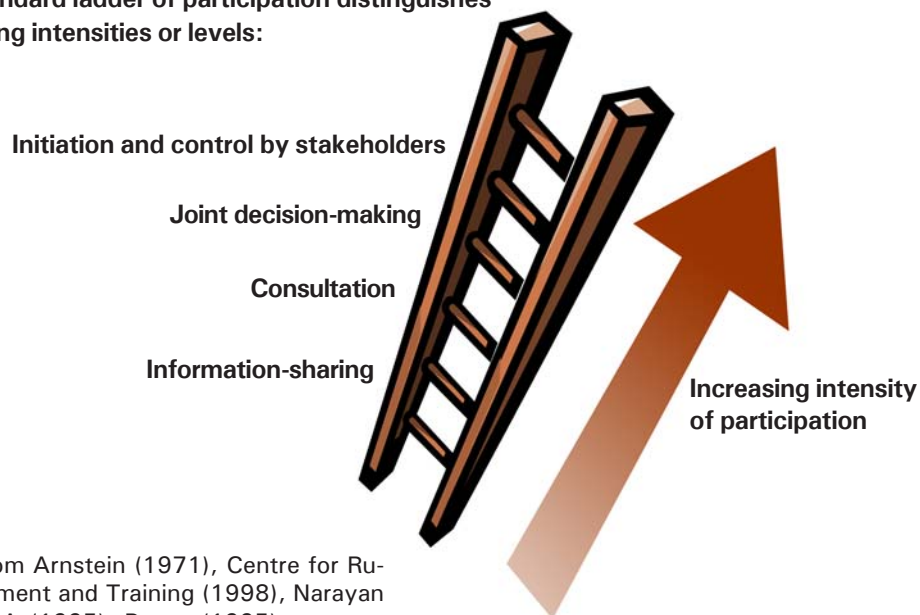
Having discussed all the major terms that have been used in our research to describe different variants of democracy, we now turn to a more disparate list of concepts that are nonetheless important points of reference for the remainder of this report. These are 'participation', 'political participation', 'accountability' and 'legal framework'.

Participation is now a hotly contested term in development discourse in several respects (see, for example, Cooke & Kothari, 2001; Cornwall, 2001). It is increasingly

recognized that the term encapsulates a wide range of approaches, from methodological tools to political philosophies (Cornwall 2001; Gaventa, 2001; Gaventa and Valderrama, 1999); is used to refer to a range of scales of social and political interaction from the micro to the macro; and has been invoked to support diverse political and ethical positions. Here, suffice it to note that critical observation of practice, along with conceptual advances, have refined understandings of the different ‘intensities’ or ‘levels’ of participation afforded to participants in a given instance. Various ‘ladders of participation’ have been devised, usually to describe – rather than prescribe – the range of kinds of engagement the term can denote (Arnstein, 1971; Centre for Rural Development and Training, 1998; Pretty, 1995).

In the specific context of citizen participation in processes of policy-making or political decision-making, the basic ladder can be elaborated to show what forms information-sharing, consultation, joint decision-making, and initiation and control by stakeholders might assume in that particular context (see, for example, McGee with Norton, 2000). For our purposes, it is enough to note two points. Firstly, what is referred to as ‘participation’ sometimes consists of no more than the provision of information from

A fairly standard ladder of participation distinguishes the following intensities or levels:



Adapted from Arnstein (1971), Centre for Rural Development and Training (1998), Narayan (1995), ODA (1995), Pretty (1995).

Figure 1.2

one actor to others, with the latter referred to as ‘participants’, and often consists of one actor consulting others on their views without any obligation to incorporate the views expressed. Secondly, the power relations between ‘participants’ or stakeholders and the politically transformative potential of their interaction differ considerably between one level of intensity and another.

The increasing use of ‘participation’ and ‘participatory’ in describing models of democracy begs a scrutiny of the older term ‘political participation’ and how it differs from these newer usages and visions. **Political participation**, according to Gaventa and Valderrama (1999), involves the interactions of the individual or organized groups

with the state. The term itself, and the range of approaches used to promote political participation, usually refer to indirect participation rather than direct participation, being oriented towards influencing and holding accountable the representatives in government rather than participating actively and directly in the process of governance itself. On the other hand, the argument advanced by the Brazilian Workers' Party (cited by Alvarez, 1993: 206) that 'participation is a political activity [...] and [...] should involve, therefore, the power to decide on policy and control its execution', implies that it is time to reframe and adjust the meaning of 'political participation' to take account of the recent infusion of participatory terms and approaches into models of direct democracy.

~

The discussion of representative democracy above makes it clear that one way in which more participatory forms of democracy can complement and enhance standard representative forms is in increasing the accountability of elected representatives to their constituencies. Indeed, in several of the countries studied in this research, accountability mechanisms, introduced through law, are serving as important vehicles for enhancing representative democracy, as Section 2.5

Accountability...is 'the means by which individuals and organizations report to a recognized authority (or authorities) and are held responsible for their actions'

~

shows. **Accountability** in a technical and institutional sense is 'the means by which individuals and organizations report to a recognized authority (or authorities) and are held responsible for their actions' (Edwards and Hulme, 1995: 8). A more political definition of it is that 'officials [who may on the one hand be politicians, or on the other, bureaucrats] must explain - ie "account for" their actions [...]; that officials must "take responsibility" for their actions [...]; that elected officials will be made accountable by voters through elections [...]' (Goetz & Jenkins 1999: 607). In either case, it implies both a measure of '*answerability* (providing an account for actions undertaken) and *enforceability* (punishment or sanctions for poor or illegal performance)' (Goetz and Jenkins, 2001, cited in Newell and Bellour, 2002: 1-2).

A recent review of its origins, contexts and implications emphasizes the political dimension:

[T]he ability to demand and exercise accountability implies power. The right to demand and the capacity and willingness to respond to calls for accountability assumes relations of power. Indeed the very function of accountability is to ensure that those that wield power on behalf of others are answerable for their conduct. [...] [t]hese power relations are in a state of flux, reflecting the contested basis of relations between the state, civil society and market actors. (Newell and Bellour, 2002: 1)

Edwards (2002: 3) discusses accountability in relation to particular forms of democracy: 'Accountability to a constituency [...] is the "bedrock" of representative democracy, requiring formal procedures like elections to ensure that decisions are fairly reached'. On the other hand, 'Voicing an opinion is the bedrock of participatory democracy (we used to call it "freedom of speech"), and those who speak out do not need to be formally representative of a constituency'.

Finally, before moving on to look at how these forms and approaches are manifested, enhanced or constrained in legal frameworks around the world, let us state what we mean by legal frameworks. **Legal frameworks** are laws and policies at multiple lev-

els—federal, national and local—that operate interdependently and together can be considered to constitute an overall ‘framework’ within which citizen and government action take place. We include in this definition constitutions, which provide a usually more stable and immutable backdrop to often more transient laws and policies, and which generally establish the rights, freedoms and entitlements of citizens, including any relating specifically to political activity and participation. Also included is decentralization legislation that shapes what happens at the local level, including the relationship between citizens and local government actors. Our working definition does not exclude the possibility that there are additional areas of legislation beyond constitutions, laws and policies that make specific reference to participation, which are potentially pertinent to the existence and effectiveness of provisions for participation. We return to this point in Section 3.

What is the relationship between these different forms of democracy and the relevance of these definitions to our research on legal frameworks for citizen participation? In general, there is a tendency in political, governance and policy circles to extend citizen participation in local governance (Bucek and Smith, 2000: 3). This tendency arises from the fact that ‘the ability of representative democracy to manage the complex political demands of pluralistic societies’ is increasingly called into question (Edwards, 2002: 3). Thus, the search is on among political reformers for ‘the best combination of complementary procedures of representative and participatory democracy (including direct democracy)’ (Bucek and Smith, 2000; see also Fung and Wright, 2001; Gaventa, 2001; Gross and Kaufmann, 2002). Indeed, ‘[s]uch innovations are badly needed to revitalise local democracy, under threat from disenchantment with representative institutions and a loss of accountability for government functions that have been delegated to appointed agencies’ (Bucek and Smith, 2000: 14).

Different forms of democracy are associated with different sets of actors. Edwards (2002: 3) points out that, while both direct and participatory democracy and electoral (representative) democracy are needed if politics is to function in the public interest, participatory democracy is the ‘natural territory’ of non-governmental organizations (NGOs), whereas representative democracy is the natural territory of governments. These distinct identifications no doubt partially explain the gradual and hesitant character of progress towards enhancing democracy as a whole, or democratic local governance more specifically, by rendering it more participatory. But they also reveal the potential for accelerating the process by fostering closer interaction between the two sets of actors.

Some of the ‘badly-needed innovations’ in democracy are already enshrined in legal frameworks. Others are not yet, being either too incipient and/or pioneered and promoted by actors that operate in realms far removed from the legislative process and have little interface with it. In either case, a review of legal frameworks permits us to identify and compare those that are already the subject of legislation or policy, to reflect upon those that are not, and to some extent to assess the gap between relatively progressive frameworks and practice on the ground. By approaching the topic from the premise that legal frameworks, while important, are not sufficient to generate meaningful citizen participation, we aspire also to complement the search for the best combination of measures of representative and participatory democracy with some insights into what else might be needed, besides these measures, to improve the intensity or effectiveness of the interaction between citizens and government actors at the local level.

2. SUMMARY FINDINGS OF THE CASE, COUNTRY AND REGIONAL STUDIES

This section summarizes findings relating to our descriptive research questions as presented in Box 2. They are further organized into subsections covering historical context and regime types, constitutional frameworks and rights, national laws relating to citizen participation, local governance and accountability measures. These summary tables provide direct responses to the descriptive questions the research sought to answer, and offer readers background information to the debates held in the research team, which generated most of the analytical and synthetic material in Section 3.

Box 2: Descriptive Research Questions

- What are the key terms and concepts used in legal or policy documents relating to citizen participation in each country, and what do they mean in this country context (for example, 'participation', 'decentralization', 'democratization')?
- Which legal and policy frameworks exist at central and local government levels for promoting citizen participation in local governance, and what are their stated objectives?
- How have these frameworks emerged and evolved (historical, political, economic and social contexts)?

There are cases where information is not available, particularly – although not exclusively – on the countries of the North, due to the differences between the research on the North and the other studies. Lack of information is indicated with '–'.

2.1 Historical context and regime types

The cases covered in the research are all 'democracies', or states in democratic federal republics. While they have developed in very different circumstances, following different historical trajectories, all have instituted at some point in their history a form of representative democracy. Below we briefly summarize regional patterns and the history and nature of democratic development in each case.

Latin America

A common history of Spanish colonialism, ending in the nineteenth century, is shared by Bolivia, Chile, Mexico and Uruguay. Brazil was a Portuguese colony until the early nineteenth century, and its population is relatively more ethnically mixed due to the large numbers of indigenous groups that survived the colonial period and the substan-

tial importation of African slaves under the Portuguese. Post-colonial political history across all five countries includes periods of authoritarian rule of varying lengths in the twentieth century and the evolution of democracy commencing at some point in the second half of the twentieth century. These transitions were marked by the interplay of military coups, authoritarian regimes and revolutionary (often guerrilla) movements. In the transition from authoritarianism to democratic states of law, the mobilization of a range of actors in civil society was a key driving force. It supplied the pressure for the (re-) instatement of the formal institutions of democracy, the freedom to elect political representatives and in some countries the introduction of new mechanisms of direct democracy. The following table shows the timing and length of military regimes and key watersheds in the transition to democracy, including the development of civil society and opposition movements and the roles they played in this process.

Table 2.1.1: Historical context and regime types - Latin America

Bolivia

- Independence from Spanish colonial rule in 1825.
- Military regime 1964–82.
- Increasing pressures coming from the civic committees, popular health committees and political parties.
- ‘Political Agreement’ in 1992 among diverse political groupings opened way for electoral and constitutional reform process. Indigenous mobilization in 1992 (Marcha indigena por el territorio y la dignidad), forceful reminder of diversity and multi-ethnicity of the Bolivian population, helped provide impetus for these reforms.
- 1993: new government, focusing on the modernization of the public sector.

Brazil

- Independence from Portuguese colonial rule in 1822.
- Military regime 1964–85.
- Emergence of new social movements already in the 1970s and exerted growing pressure against the military regime.
- Intense social mobilization and participation in the elaboration of a new and democratic constitution in 1988. Constitutional reform process included extensive use by social movements of the mechanism of ‘popular amendments’, through which civil society is allowed to propose amendments during the elaboration of the constitutional text.

Mexico D.F.

- Independence from Spanish colonial rule in 1821.
 - 1929–97: post-revolutionary, authoritarian and single-party government by Partido Revolucionario Institucional (PRI)
 - 1997: for the first time in more than seven decades, an opposition candidate, from the Democratic Revolution Party (PRD), wins the elections for the capital (Distrito Federal), breaking the hegemony of the PRI.
 - New government declares intention of promoting democracy and citizen rights.
 - Presidential elections of 2000 break PRI hegemony, ending over 71 years of civilian authoritarian regime.
-

Table 2.1.1 (continued)

Oaxaca State, Mexico

- Independence from Spanish colonial rule in 1821.
- Zapatista uprising in Chiapas (1994) placed demands for indigenous people's autonomy high on national political agenda. Attempts to quell uprising followed, via 'San Andrés Dialogue' (1995–96) between Zapatista National Liberation Army (EZLN) and Mexican federal government.
- Increasing demands from indigenous people in Oaxaca and penetration of opposition (non-PRI) political parties in the state.
- Municipal disputes and declaration of autonomous municipalities in Chiapas.

Uruguay

- Independence from Spanish colonial rule in 1828.
 - Military regime 1972–85.
 - 1990: centre-left coalition wins elections for the Montevideo Government. Proposes intra-municipal decentralization with institutionalization of citizen participation as key component to develop democratic governance
-

South Asia

All three countries are democracies of varying ages (India a federal democratic republic since 1947, Bangladesh since 1971 and Nepal since 1990), wherein the institutions of liberal democracy co-exist with South Asian traditional social norms in an 'uneasy, ambiguous and contradictory relationship' (Rai, 2002: 3). The states of India and Bangladesh were born out of independence and secession movements; in India's case, the Gandhian struggle for independence from British colonial rule in 1947 and in Bangladesh's, the secession of Muslim Bengali East Pakistan from West Pakistan in 1971. Nepal became a nation-state in 1768 when King Prithvi Narayan Shah brought a number of existing small principalities under his control in a centralized monarchy. All three countries' present regimes are something between elite democracies and participatory democracies, having numerous constitutional and legal provisions for direct democracy and accountability mechanisms yet suffering restrictions to democracy in practice, many of which come from the undemocratic traditional social norms underpinning the political systems.

Table 2.1.2: Historical context and regime types - South Asia

India

- Britain formally assumed administration of India as a colony in 1858 after centuries of imperialist domination through trade channels.
 - Mahatma Gandhi's independence movement promoted idea of popular participation in governance; after independence in 1947–50 this principle recognized by Federal Government of India. Many innovations in various states.
 - 1980s: failed attempts to amend constitution in favour of popular participation.
 - 1993: Constitutional Amendment Act passed, establishing local governance by new village-level councils (panchayati raj) and municipalities. Momentum came from ruling political party, which enacted 73rd and 74th Amendments, not from pressure from below.
 - Little or no influence of external actors behind these legislative developments, although influence of worldwide political and economic trends cannot be dismissed.
-

Table 2.1.2 (continued)

Bangladesh

- Part of India until independence, so same history of British colonial rule from 1870 until partition in 1947. Part of Pakistan 1947–71. Basic Democracies Order, establishing basic units of elected local government as an electoral college for approving General Ayub Khan’s rule, passed in 1959. After independence from Pakistan (1971), three-tier elected system of local government was started, but no elections were held. Military rule of President Ershad (1982–90) abolished village-level councils but considerably increased powers of local governments through the Upazila system. President Ershad’s rule ended with the restoration of democracy in 1991. The Upazila system was abolished by the Bangladeshi National Party Government, but no successful alternatives were established until the election of the Awami League in 1996 and the subsequent Local Government Acts 1997, 1998 and 2000, with momentum coming from government rather than from below.
 - Moves towards democratic decentralization occurred in national context of structural adjustment and state rollback, influenced by external actors, especially creditor and donor agencies.
-

South-East Asia

The establishment of the institutions of democracy and democratic practice vary greatly from one country to another. While none have attained the status of fully-fledged participatory democracies, each has introduced modifications in this direction to different degrees. All three have recently emerged from authoritarian periods, but the impact of the authoritarian experience on citizen participation varies according to the nature and length of the authoritarian regime and the source of stimulus for democratic transition. In a sense, there has been more—and more effective—citizen ‘participation’ in South-East Asia than any other region. In 2001, massive demonstrations forced out an elected president in the Philippines; in 1998, demonstrations and riots in Indonesia led to the resignation of a dictator of 32 years; and in 1992, demonstrations in Bangkok ended 60 years of military rule. These were epochal events in the recent political history of these three countries.

Table 2.1.3: Historical context and regime types - Southeast Asia

Thailand

- Military authoritarianism 1932–92 (short democratic interlude 1973–6); strong military with influential king. Military control of political institutions, buttressed by use of force and extensive economic power.
 - 1992: mass demonstrations in Bangkok ended military rule.
 - Democratic transition slow because of need to dismantle structures established under military. Demilitarization accelerated after 1995.
 - 1997: exceptionally liberal constitution, setting extensive legal provisions for grassroots participatory initiatives.
-

Philippines

- Elite democracy from 1935; US colonial rule ended 1946.
-

Table 2.1.3: (continued)

Philippines (continued)

- 1972–86: Marcos dictatorship, which ended elite democratic institutions and monopolized government power. Despite strength of military, it remained under civilian control. Mass assertion of ‘people power’ ended Marcos’s rule in 1986, spearheaded by popular movements from across political spectrum, including elites. Elite democracy revived subsequently.
- Elected President Estrada forced out by mass demonstrations 2001.

Indonesia

- Parliamentary democracy from independence 1949 until 1957.
 - Leftist authoritarianism under Sukarno, 1957–65.
 - Rightist authoritarianism under Suharto, 1966–98.
 - 1998: popular demonstrations and riots forced resignation of Suharto after 32 years.
 - 1998–present: establishment of parliamentary democracy, with authoritarian threat; strong military.
-

East Africa

Kenya, Tanzania and Uganda have moved from centralized authoritarian regimes in the 1960s, 70s and 80s to somewhat more democratic and decentralized forms of governance in the last 20 years. Since independence, the three have experienced widely divergent leaderships and political ideologies, yet their structures of governance have moved in remarkable parallel, as is well-summarized by Gibbons (1994: 12):

All not only became single-party or non-party regimes, but continued to allocate an extremely limited role to representative institutions, to maintain a [...] system of government dominated by strong central and provincial authorities, and to separate representative bodies in the lower two tiers from any meaningful revenue base.

Moreover, all have experimented with at least limited forms of decentralization or deconcentration, and have experienced in recent decades a contraction of the central state along with cutbacks in state services.

Table 2.1.4: Historical context and regime types - East Africa

Uganda

- Pre-colonial period: consensus-based rule by elders. Monarchy in Buganda Kingdom.
 - Colonial period: ‘indirect rule’ by British through co-option or appointment of chiefs and Buganda monarchy by colonial provincial administration. Local councils (LCs) after late 1920s. Restricted to rubberstamping decisions of colonial administration. Some elected representatives on LCs after nationalist agitation.
 - Independence 1962. Initially multi-party elite democracy. Colonial-style local councils, but fully elected. Single-party state declared by President Obote (1967). LCs appointed by central government. Dictatorial rule; human rights abuses.
 - Military coup overthrows Obote in 1971; replaced by Amin. Continued human rights abuses; breakdown of order in rural areas. Civil war starts after rigged elections return Obote to power in 1980. Resistance Councils (RCs) formed during war to govern NRM-controlled areas and distribute key goods.
-

Table 2.1.4: (continued)

Uganda (continued)

- Victory of Museveni's National Resistance Movement (NRM) in 1986. 'No-party democracy' 1986–present (political parties banned). RCs become five-tier LCs in extensive decentralization programme, allowing extensive indirect and direct political participation but all within the NRM. Elections based on 'merit', not distinctive party ideologies. Adoption of structural adjustment policies and heavy donor influence.
 - 1989–95: constitution-writing process involving wide range of actors, including civil society.
 - Massive increase in number of civil society groups, and highly publicized encouragement by Government of Uganda and donors to participate in certain policy debates.
-

Tanzania

- Pre-colonial period: democratically or hereditarily chosen chiefs. No central administration.
 - Colonial period: rule by Germans 1884–1919. Rule by British 1919–61: 'indirect rule' through chiefs. Local councils after late 1920s. Restricted to rubberstamping decisions of colonial administration. Some elected representatives after nationalist agitation.
 - Independence 1961. Initially multi-party elite democracy; fully-elected councils. Single-party state declared by President Julius Nyerere's socialist TANU government in 1965.
 - Corporatism: state absorbs civil society. Arusha declaration of 1967 spells out doctrine of 'African socialism'. Emphasis on the 'village'. Nine million peasants relocated to villages (voluntarily and involuntarily). LCs abolished in 1972 and replaced with central government-appointed 'development committees'. Reinstated in 1982. Economic crisis and resurgence of civil society in 1980s. Internal and external pressures for change.
 - Multi-party democracy reinstated in 1992. CCM (formerly TANU) wins first national elections. Local Government Reform Programme initiated in 1996 to decentralise power to local governments (LGs). Increase in civil society groups (mostly service based).
-

Kenya

- Pre-colonial period: tribes governed by councils of elders. No central administration.
 - Colonial period: 'indirect rule' by British through appointment of chiefs by colonial provincial administration. LCs initially set up for white settlers only. LCs for indigenous people after 1924. Restricted to rubberstamping decisions of colonial administration. Some elected representatives after nationalist agitation.
 - Independence 1963. Initially multi-party elite democracy. Single-party state effectively begun in 1964 under KANU and President Kenyatta. Centralization of nearly all LG powers. Daniel Arap Moi becomes president in 1978. Initiates 'District Focus' in 1983; deconcentration not centralization. Harambee self-help groups provide opportunities for participation in community affairs, but are co-opted by state.
 - Multi-party democracy reinstated in 1991 after economic crisis and donor conditionalities.
 - Moi and KANU win multi-party elections after voting irregularities and divided opposition.
 - Civil society groups mobilising for change. In 2002, Moi stands down and opposition party Narc wins presidential and local elections.
-

Selected northern countries

Information was not systematically collected on historical context for the northern countries studied, but generalizations can be made about regime types. In terms of regime type, all five are clearly electoral democracies. They have relatively well-functioning and mature representative institutions, and abundant guarantees of civil and political rights which, in comparison to the southern regions studied, are largely satisfied. Some show marked leanings towards participatory democracy, having put in place mechanisms and channels for citizen participation which supplement perceived flaws in conventional representative democracy and complement the existing political institutions with other innovative social and political institutions.

2.2 Constitutional frameworks and rights

This section focuses on constitutions and the bills of rights contained in many countries’ constitutions. We distinguish these from national laws, which are covered in Section 2.3. In many countries, the constitution is an important ‘backdrop’ against which legislation and policies introduce, promote or regulate citizen participation in local governance. While some constitutions make little detailed reference to local governance except insofar as to establish (in some cases) provision for subsequent decentralization legislation and the corresponding changes this requires, some do furnish citizens with a range of rights relating to participation that are more applicable and enforceable at the local level than any other. It is also useful, for our purposes, to examine constitutions alongside laws because, being comparatively stable, immutable and incontrovertible, they have often provided democratic reformers with the principles and precedents on which proposals for reform can be based.

Latin America

Latin America has a relatively long history of constitutionalism, with many constitutions (generally favouring the elites) enacted soon after independence. The largest countries of Latin America – Brazil and Mexico – have federal systems, while Bolivia, Chile and Uruguay have unitary systems. Each has undergone some degree of recent constitutional change, with a return to democratic systems and constitutionally guaranteed rights, after undergoing periods of military or effectively single-party rule in the 1960s, 1970s and 1980s (in Mexico, single-party rule only ended in 2001). While the focus was initially on civil and political rights, there has in recent years been growing recognition of economic, cultural and social rights. These reforms were often the result of pressure by social movements, and in Brazil (and to a lesser extent, Bolivia), civil society groups were directly involved in drafting and submitting the constitutional amendments.

Table 2.2.1: Constitutional frameworks and rights - Latin America

Bolivia
<ul style="list-style-type: none">▪ Unitary system – national government and municipalities.▪ Constitutional reform 1995; recognition of political rights of indigenous groups according to their traditional laws.

Table 2.2.1: (continued)

Bolivia (continued)

- New constitutional reform process set in motion in 2002, with view to institutionalizing mechanisms of popular participation in public affairs.
-

Brazil

- Federal system – federal, state and municipal governments.
 - 1988 constitution enshrined direct and representative democracy and political decentralization.
 - Direct mechanisms include plebiscite, referendum by popular initiative, co-managed councils.
-

Chile

- Unitary system – national and municipal government.
 - 1980: new constitution without progressive political reform. Enshrined anti-democratic measures introduced by Pinochet dictatorship, which endure today. Constitutional reforms after 1980 did not succeed in dislodging or reforming authoritarian legacies, such as the institution of the lifelong senators, put in place by Pinochet.
-

Mexico D.F.

- State in federal system which has federal, state and municipal governments.
 - Federal constitution (dating from 1917) does not include any significant mechanisms for popular participation; reforms have been called for to address this but with no effect to date.
 - Referendum approved development of a constitution for Mexico DF in 1999 but no progress made yet.
-

Oaxaca State, Mexico

- Reforms of Oaxaca's constitution since 1990 to include aspects related to indigenous practices and customs, formally regulated in 1995. Reforms allow indigenous groups to elect leaders according to traditional practices rather than those enshrined in constitution, and to participate in local elections without intermediation of political parties, thus potentially increasing pluralism and reducing co-optation by the PRI or opposition parties.
-

Uruguay

- Unitary system – national government, departments, municipal governments.
 - 1917 Constitution guarantees departmental (i.e. provincial) autonomy, providing financial and administrative power to municipalities and departments. Recognizes 'local councils' at departmental level and below, whose function in practice is largely administrative or patronage related.
-

South Asia

While the constitutions of South Asia were developed in greatly different contexts, they share a similar focus in respect to rights. Each includes fundamental rights such as equality before law, protection of right to life and personal liberty, safeguards as to arrest and detention, freedom of movement, assembly and association; freedom of thought, conscience and speech; freedom of occupation; freedom of religion; and rights to property. India's constitution, which reflects Nehru's 'secular socialist' ideals, was adopted in 1949 and came into force in 1950. The 73rd and 74th Constitutional Amend-

ments in 1993 led to an ambitious programme of municipality-building and *panchayati raj* (village rule), to promote 'democracy at grassroots level', and thousands of village, block and district councils were created. Bangladesh's constitution was enacted in 1972 but underwent a number of changes during and after military rule, most recently in 1996. Nepal's constitution was enacted in 1990 with the beginning of democratic rule. Of the three, only Nepal's constitution explicitly recognizes civil society, with a mandate toward establishing a 'civil society based on democratic process, transparent practice, public accountability, and people's participation'. Nepal's constitution also contains a right to information. India's Supreme Court ruled that this right is incorporated in the 'freedom of speech' clause of India's constitution.

Table 2.2.2: Constitutional frameworks and rights - South Asia

India

- 1949 constitution guarantees fundamental rights to citizens; also issues directive principles to states relating to establishment of social order for promotion of people's welfare, and of range of economic, social, cultural, civil and political rights, including that of participation in village assemblies. These civil and political rights (e.g. to association, freedom of expression) effectively permit many kinds of participation and mobilization of demand for mechanisms to facilitate participation (e.g. right to information).
- Constitution does not define roles for civil society.
- Constitutional Amendments 73 (1992) and 74 (1993), pushed by ruling political party, brought into existence more tiers of governance (municipalities and panchayats, besides federal and state levels) as part of federal structure, with wide democratic base. 73rd Amendment obliges states to devolve powers and responsibilities to panchayats to prepare plans for economic development and social justice, and to implement such schemes of this kind as may be entrusted to them. The 74th Amendment applies similar provisions to municipalities and urban councils. States have each incorporated these amendments differently into their own constitutions and have implemented them to differing extents, reluctant to share power. In practice, persistent patriarchal and hierarchical behaviour inhibits effective local participation, especially by women and poorest.

Bangladesh

- Constitution provides range of fundamental rights – civil, political, some economic and some cultural. These allow many opportunities for citizen activism and participation. Constitution does not define roles for civil society

Nepal

- Constitution provides range of fundamental rights. Constitutional principles assign to government role of establishing a civil society based on democratic process, transparency, public accountability and people's participation.

South-East Asia

Both Thailand and the Philippines have strong, progressive constitutions enacted within the last 15 years after pressure from civil society and social movements. The constitution of the Philippines was enacted in 1987 after the fall of the Marcos dictatorship and contains a strong bill of rights and recognition of civil society. It is impeded, however, by a lack of implementing legislation for its more progressive clauses. Thailand's constitution was enacted in 1997 with support from a broad coalition of civil society groups

and politicians. Among its articles are provisions for a strong electoral commission and an anti-corruption body and specific protection for the rights of indigenous people, children, elderly, consumers and the environment. Indonesia's constitution, by contrast, was enacted in 1945 and has undergone slow and piecemeal revisions since then. The pace of change has increased considerably since the end of Suharto's regime in 1998.

Table 2.2.3: Constitutional frameworks and rights - South-East Asia

Thailand

- 1997: progressive, reformist constitution with special provision for electoral commission, anti-corruption body and grassroots participation. Civil society played strong role in drafting it. Recognizes civil society's right to participate in policy formulation, development planning, political decision-making and monitoring state performance. Contains strong bill of rights with special reference to many marginalized population groups.

Philippines

- Constitution of 1987 restores elite democracy. Elaborate, with strong bill of rights and rhetorical support for participation, including recognition of civil society participation in governance. Progressive provisions (e.g. constitutional amendment by popular initiative; special measures for representation of marginalized groups in local legislative councils) have proved mainly rhetorical; no implementing legislation passed yet to enact them.

Indonesia

- 1945 Constitution has undergone slow, piecemeal revisions, including three since 1998. 2002 amendment allows direct election of president and removes allocation of seats for military. Provisions which appear in virtually every constitution (issues of elections, political parties and representation) are in section called 'Political Laws' in Indonesian constitution.
-

East Africa

The constitutions in each of the countries in East Africa guarantee a range of rights. However, these are not always claimable in practice: Uganda, even more than most countries, lacks the resources to ensure all of the economic and social rights guaranteed by its constitution; Tanzania's constitution is characterised by 'claw-back clauses' that limit the application of rights; while the bill of rights in Kenya has been suspended since 1978. The constitutions in East Africa are in some senses the result of citizens' participation. In Kenya and Tanzania, civil society organisations and popular movements played a major role in forcing the constitutional changes that enabled multi-party politics, while in Uganda the 1995 constitution was the result of a process of a nationwide participatory consultation.

Table 2.2.4: Constitutional frameworks and rights - East Africa

Uganda

- Constitution re-written in 1995 after national participatory consultations. Recognizes sovereignty in the people. Rights guaranteed include equality and freedom from discrimination, freedom of speech, religion the press and assembly, freedom of information, habeas corpus. Economic rights, such as the right to 'social justice and
-

Table 2.2.4: (continued)

Uganda (continued)

- economic development’, including ‘education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits’.
- Constitutional rights not always realized – read more like ambitions.

Tanzania

- Bill of rights formalised in constitution in 1984. Rights include freedom of the press and of expression, freedom of association and assembly, right to join unions and other organisations, right to be informed. Right to participation in decision-making guaranteed.
- Rights limited by ‘claw-back clauses’ in constitution that provide for exceptions or restrict their application.

Kenya

- Bill of rights suspended since 1978.
- Formal provision for rights including life, liberty and security of the person; freedom of conscience, of expression and of assembly and association; protection from slavery and forced labour, from inhuman treatment, from deprivation of property, from arbitrary searches and entry; freedom of movement; and protection from discrimination.
- No freedom of information; no reference to participation.

Selected northern countries

Constitutional frameworks in the North are varied. They range from strong, written constitutions forming the basis for laws and rights (as in the USA, Switzerland and Finland) to systems with no written constitutions, where rights are based upon precedents, laws and international treaties. Switzerland and the USA both have federal systems, including canton/state legislatures and constitutions, while the UK, previously operating a unitary system, has recently undergone partial decentralization and devolution, with a Scottish Parliament and new assemblies in Wales, Northern Ireland and London.

Table 2.2.5: Constitutional frameworks and rights - Selected Northern Countries

UK

- No written constitution; system based on laws, traditions and precedents. Tradition of indirect democracy. Series of government-commissioned enquiries and reports since the 1960s have tended to establish and institutionalize mechanisms of public consultation and citizen participation in governance at the local level.

Switzerland

- Federal state; strong history of direct democracy and citizen participation in political process. Strong tradition of local autonomy, deriving from relatively recent (1848) unification of small states into one country. 1999 constitution replaces 1874 constitution, incorporating small amendments, including several relevant to participation (e.g., right of people to petition authorities). Constitution contains strong bill of rights, including guarantee to protect ‘free formation of opinion by the citizens and the unaltered expression of their will’. Each of 23 cantons has own constitution, compliant with confederation’s.

Table 2.2.5 (continued)

Finland

- Local Government Act (1995) enshrines local residents' 'right to participation' in local governance and charges authorities with promoting opportunities for this.

USA

- Federal state. Each state has own constitution. Many of these, and the federal constitution, state that 'all political power is inherent in the people' but few provide explicitly for participation in democratic processes beyond traditional means such as voting. People's right to alter or reform the constitution can be enacted through voting, popular petition and referenda only; no more participatory means.

New Zealand

- No constitution; collection of laws and treaties (e.g. Constitution Act 1986). Makes no special reference to citizen participation, but several other national treaties and laws do.
-

2.3 National laws specifically relating to citizen participation

In contrast to the previous section, here we cover national laws and policies that have been introduced in the past 30 years to modify the prevailing system of representative democracy. In Latin America, South-East Asia and East Africa, laws and policies are of very recent vintage, having been introduced in the past 15 years as part of the spate of democratization processes in these regions outlined in Section 2.1. In South Asia, the relevant laws and policies tend to be slightly older, and our selected northern countries show a mixed picture.

We include in this section acts and laws of local government or decentralization. Although referring to the local levels, these are national (or federal) laws with implications for citizen participation at the local level. We also include national or federal government programmes to promote citizen participation, which in many countries will in any case have had to go through a process of legislation in order to be implemented.

Latin America

In the 1990s, many of the countries of Latin America adopted national laws on participation as a result of both increasing democratization and pressure from emergent new social actors, including popular movements, NGOs and progressive administrations. The laws focus on decentralization and participation through new forms of organisation: Mexico D.F. established 'neighbourhood committees'; and Bolivia's path-breaking national Law of Popular Participation established 'territorial base organizations' as units for participation in local governance; while Brazil and Uruguay (and, to a limited extent, Chile) instituted new deliberative and consultative bodies to decide policy at municipal level. Increasing focus on participation has also coincided with increased adoption of neoliberal frameworks, leading to a simultaneous decentralization of the state and a reduction of its services.

Table 2.3.1: National laws specifically relating to citizen participation - Latin America

Bolivia

- Political decentralization.
- 1994: Law of Popular Participation passed. Aims to recognize, promote and consolidate the process of social participation, linking peasant communities, indigenous communities and villages, and neighbourhood councils into the country's polity, economy and judiciary. Does not create new structures of social organization but assigns legal and political status to existing ones.
- 1999: National Law of Municipalities establishes territorial base organizations (Organizaciones Territoriales de Base—OTBs) as units for participation in local governance, with rights, roles and responsibilities in development process.
- 2001: National Dialogue Law passed, requiring consultations between central government and civil society on fighting poverty every three years.

Brazil

- Decentralization in federal laws related to social policies and incorporation of participation in the municipal councils established for areas of health, social assistance, children and youth, and education.
- Each municipality has Municipal Organic Law since 1990 to regulate popular participation at that level. Following constitutional provisions, municipalities must generate own legislation: e.g. creating and delegating power to municipal councils; referenda, plebiscite and popular initiative; rules for implementation of social policies; public consultations or hearings.
- Recognition of rights to participate of popular movements, organizations and civil society in government's 2001 Statute of the City, setting out means for institutionalizing participation in urban areas. Recognizes the 'right to the city'; conferences of the city, democratic management of the city including local participatory planning and budgeting.
- National, state and municipal urban policy councils established as a result of the Municipal Organic Laws, and provide a forum for including both public officials and members of the local community in the policy process.

Chile

- Lack of legislation for participation at national level.
- 2000: Instructivo Presidencial'; non-binding, executive resolution recommending administration to incorporate participatory mechanisms.

Mexico, D.F.

- 1998: Distrito Federal Citizen Participation Law approved.
- 2001: amendment proposals to the 1998 law submitted.

Oaxaca State, Mexico

- 1995: Reform of Oaxaca's electoral procedure codes as part of reform of state constitution. Enables indigenous people to participate in state and local elections according to their practices and customs, without intermediation of political parties.
 - 1998: Ley de Derechos de los Pueblos y Comunidades Indigenas del Estado de Oaxaca approved, ratifying this electoral legislation. Lacks any established procedure to define who has authority to organize how elections will occur (whether by indigenous practices or constitutional procedures) – important issue in bi-cultural municipalities.
-

Table 2.3.1 (continued)

Uruguay

- 1990: proposals for participatory decentralization, to introduce 18 administrative zones in Montevideo, create institutional channels for citizen participation through local council system and creation of deliberating assemblies; and decentralize operational services. Debate leads to more focus on political as well as administrative/fiscal decentralization.
 - 1992: National Agreement creates formal spaces for popular participation at municipal level. Through participatory process, new channels of participation being put in place: neighbourhood councils, with consultative and control functions over local councils and Intendente; and local councils with executive powers whose membership includes representatives of different political parties.
-

South Asia

National laws and constitutional amendments on participation in South Asia have tended to focus on decentralization and the formation of democratic, village-level units of governance. The major case in India is the 73rd and 74th Constitutional Amendments (covered in previous subsection). In Nepal, the constitution instructs the state 'to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralization'; this decentralization takes the form of village and district development committees. In Bangladesh, a recent government review recommended a four-tier system of local government, including village-level councils. However, in each country, implementation has been mixed, the powers devolved to local bodies have been limited, and the democratic potential of village-level councils has been severely restricted by the persistence of patriarchal and hierarchical behaviour.

Table 2.3.2: National laws specifically relating to citizen participation - South Asia

India

- 1982: Supreme Court ruling on right to access to government information; several states have proceeded to pass right to information laws or executive orders to implement this right.
- Most important aspects of the legal/policy framework for citizen participation are 73rd and 74th constitutional amendments (see previous subsection)

Bangladesh

- Constitution plus local government legislation, rather than separate national laws, tend to set the framework. 1976 Local Government Ordinance, providing for local elected bodies (parishads) at three levels (union, thana and district), but no elections were held and government officials ran the parishads. 1980: amendment to Local Government Ordinance introduced self-reliant village government at village level; abolished by martial law order in 1982. 1982 and 83: new Local Government Ordinances and Local Government Act in 1998, all reorganizing parishads.
 - Post-1996 election, government constituted local government commission to report on local government institutions strengthening, which recommends four-tier structure (village, union, thana and district) – all concerned with rural and regional administration.
 - Two main tiers of urban local governance exist.
 - No Right to Information law.
-

Table 2.3.2 (continued)

Nepal

- Constitution plus local government legislation, rather than separate national laws, tend to set the framework.
- 1999 Local Self-Governance Act establishes institutional framework for managing decentralization process (devolution of powers to districts and villages and municipalities) and overseeing devolution of financial authority. Defines rationale for decentralization as participation and enhancing the partnership of local government with civil society. In practice, implementation is constrained by lack of resources and weaknesses in communication up and down the institutional hierarchy.

South-East Asia

National laws on participation in South-East Asia position citizens and civil society groups as ‘watchdogs’ on central government. The Philippines allows for recall of representatives and citizen’s initiative, and Thailand recognizes the right to petition government and to ‘public participation in laying down policies, making decisions on political issues, preparing economic, social and political development plans, and inspecting the exercise of State power at all levels’. Recently, governments in the region have also embarked on decentralization programmes, with mixed results. The Philippines 1991 Local Government Code provides the most extensive decentralization programme of the region, and allocates significant funding to local councils. Thailand’s constitution promises decentralization, but implementation so far has been slow. In Indonesia, two decentralization laws were passed in 1999 and accompanying implementing legislation in 2001. Bureaucratic resistance, attempts by Megawati Soekharnoputri’s government to roll back aspects of decentralization, and weak civil society have prevented opportunities from being fully exploited.

Table 2.3.3: National laws specifically relating to citizen participation - South-East Asia

Thailand

- Legislation to implement 1997 constitution (progressive, reformist, tending towards participatory democracy) is still in process.
- Decentralization Law 1999, following constitutional endorsement of decentralization of power. Empowers local governments to collect some taxes and receive higher allocations from central government than previously. Slow progress with implementing Decentralization Law.

Philippines

- Republic Act 6735 of 1989 introduces a system of popular initiative and recall. Recall provisions are used extensively; popular initiative less so. At the national level, amendment of constitution through popular initiative cannot be done because no implementing law has been passed yet.
- Republic Act 7160 (Local Government Code) of 1991 provides for deep, extensive decentralization, including significant funding allocations from central to local governments and considerable taxing and borrowing powers to local governments.
- Republic Act 7941 (the Party List Law or Party List System Act) of 1995 provides for representation of ‘marginalized groups’ in national legislative process, but defects in the law limit its utilization.

Table 2.3.3 (continued)

Indonesia

- ‘Political laws’ (governing elections, parties, legislature) in constitutional amendments of 1999.
 - 1999: decentralization laws began a process which has advanced with difficulty in light of conflictive political environment, donor pressures and the need to counteract Indonesia’s internal centrifugal tendencies. Since Suharto’s fall, regions have demanded ever greater shares in proceeds from extraction of their natural resources. Tendency under current president Megawati Soekharnoputri is to roll back decentralization, but local executives and councils are resisting.
 - Participation Law in process
-

East Africa

While there has been less legislation on participation in East Africa compared to other regions, the region is to some degree witnessing a return of indirect participation in the form of representative democracy. Kenya and Tanzania have recently moved to a multi-party electoral system in which the president and parliament are elected based on universal adult suffrage. Uganda has retained its ‘no-party’ system that bans political parties, meaning that this indirect form of participation is more curtailed. However, of the three countries, Uganda has the most explicit constitutional and policy framework for national-level citizen participation, having made some progress towards opening up the policy process to a wider range of actors—for example, via national consultations on the constitution and the Poverty Eradication Action Plan—and through its decentralized five-tier system of local government.

Table 2.3.4: National laws specifically relating to citizen participation - East Africa

Uganda

- No-party democracy under NRM allowing indirect political participation.
 - 1997 Local Govt Act provides for people’s participation in planning between LC1–LC5 and sets out responsibilities of different levels of local government. Detailed local planning processes are conducted, but degree of involvement of ordinary people (not local elites) is very questionable.
 - No national law specifically on participation, but strong government and donor promotion of civil society participation has led to extensive participation in national policy-making processes (e.g. development of Poverty Reduction Strategy Paper in 1999–2000).
-

Tanzania

- Multi-party democracy allowing indirect political participation.
 - Despite constitutional rights to participation in decision-making, national laws serve to restrict participation, especially by civil society groups which are not allowed to be political (e.g. Women’s Council of Tanzania).
 - Current system is of five-tier system of local councils from block to district level. But local government reform programme (co-sponsored by government and donors) is underway to facilitate decentralization and increase citizen participation in local governance, which will substantially alter the powers and structures of local administration
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Table 2.3.4 (continued)

Kenya

- Multi-party democracy allowing (some) indirect political participation. Main laws relating to citizen participation are those concerning electoral process.
 - Local Government Act (1965: Chapter 265) narrowly confines citizen participation to participation in processes and institutions of representative democracy.
 - National-level participation overall very limited; not encouraged by government.
-

Selected northern countries

As in many southern countries, there has been a surge in interest in participation in the North in recent years. National frameworks for participation in the North fall into two broad categories: participation as a right, and participation as consultation, which sometimes appears to be promoted more as a legitimating device than as the satisfaction of a right. In Switzerland and Finland, participation is recognized as a right. In Finland, this is enshrined in the constitution and reflected in the National Participation Programme, while in Switzerland, it is reflected in its decentralized system of governance. In the UK and New Zealand, participation is more likely to be framed as consultation, and participatory initiatives tend to be justified on the grounds of efficiency as well as democracy. The USA embodies elements of both: national-level participation can be limited, although individual states are empowered to make their own laws on participation.

Table 2.3.5: National laws specifically relating to citizen participation - Selected Northern Countries

UK

- No national laws as such, but series of government-commissioned enquiries, studies and reports have established precedents for participation (1969 Skeffington Report on public participation in local planning; 1991 Citizens' Charter promoting greater participation in local governance for greater efficiency; 'listening government' image of post-1997 Labour Government, with pragmatic consultative approach to participation).
 - Legislation and programmes focusing specifically on participation post 1997 include:
 - 1998 White Paper 'Modern Local Government – In Touch with the People' legislating on support to councils to develop their arrangements for participation and consultation; more frequent local elections and developments in electoral procedures; and councils' duty to develop a culture of consultation.
 - 1998 Best Value Scheme, designed to reward councils responding positively to White Paper provisions.
 - 1999 Local Government Act, providing legal framework for Best Value Scheme.
 - 2000 Local Government Act, giving councils the authority to hold local referenda.
 - 2001 White Paper 'Strong Local Leadership – Quality Public Services' introducing measures for performance assessment and improvement in public service provision through local authorities.
 - Neighbourhood Renewal Scheme includes two programmes (New Deal for Communities and Local Strategic Partnership) intended to encourage councils to go beyond minimum legal requirements in terms of citizen participation.
-

Table 2.3.5: (continued)

UK (continued)

- General tendency for post-1997 government to set out guidelines and allow local councils to interpret them as they see fit. Heavy stress on public consultation rather than more engaged or empowering forms of participation, and little attention to need for government to provide feedback or be accountable to those consulted.

Switzerland

- Federal constitution lays out general principles (e.g. in Right of Petition; Exercise of Political Rights), but the 23 cantons provide more specific frameworks for citizen participation in local governance.

Finland

- Constitution enshrines right to participation; together with Local Government Act (1995), provides comprehensive package of legal measures to ensure that citizens (called 'residents') are heard and can propose initiatives. Both constitution and Local Government Act call participation a right, placing onus on local authority to facilitate and encourage it by creating for residents 'opportunities to participate and exert influence', which indicates support for more than instrumentalist participatory measures. Local Government Act covers right to submit initiatives for consideration of authorities and receive feedback on them, and authorities' responsibilities of accountability and the maintenance of good communication links with residents.
- 1997–2002: national participation programme, aiming to develop local innovative models for increasing citizens' opportunities for participation and influence. Provides incentives to municipalities to cooperate with NGOs, residents' associations; village committees, parishes and private companies.

USA

- Little specific legal provision for participation within the states making up the federation despite federal and state constitutions' statements of commitment to 'political power inhering in the people'.
- 1964: Economic Opportunity Act passed, calling for 'maximum feasible participation of the poor' in efforts to address the situation of rural poor. Backlash from other social sectors and ambiguities in the language meant that this became diluted to a modest representational quota for poor people on related bodies.
- 1994: start of national Community Empowerment Zone programme, designed to regenerate poor communities through active participation of low-income residents via a grant mechanism. Despite extensive rhetoric, the participation provided for is very instrumental and geared towards economic development rather than political or citizen empowerment.

New Zealand

- New Zealand Bill of Rights Act 1990; Electoral Act 1993; Treaty of Waitangi and Standing Orders of House of Representatives all relevant to citizen participation, although do not make specific reference to it. Local Government Bill 2001 updates 1974 Local Government Act. Seeking to modernise and streamline local government and produce a 'broadly empowering framework that focuses on councils meeting the needs of their communities'. Detailed legislation for proper consultation procedures, including provision of information in 'appropriate ways' (including ways suited to the Maori culture) and feedback and accountability to those consulted. Emphasis heavily on public consultation rather than more intensive forms of participation, and on enabling people to 'participate effectively in the decision-making process' rather than on guaranteeing participation as a right. 'Empowerment' is for councils (in the context of 'an empowering legislative framework') rather than for communities.
-

2.4 Local governance

Having summarized our findings in respect of national constitutions and national⁷ laws and policies, we look in this section at the local level. Here, we cover, on the one hand, the structures of local governance and their relationship to the central (or in cases of federations, state) government, and on the other, the different kinds of citizen participation that are provided for explicitly or permitted implicitly and practised. To refer back to the variations of democratic governance discussed in Section 1.2, these can roughly be grouped as indirect participation, direct participation and joint action by citizens with local government. However, these labels are not always a comfortable fit or easy to apply, so instead of using them rigidly here we present initiatives in clusters which approximately match these three groupings, noting that it is not always possible to attach one label clearly to one initiative.

Latin America

Structures of local governments vary widely in Latin America: in Chile, for example, local councils remain largely subordinate to central government, while in Brazil both state and municipal governments have a high level of autonomy and their own constitutions. Throughout the region, attempts at administrative decentralization have been linked with the development of legal mechanisms for local participation. In addition to electoral means of participation, in recent years there has been an increase in direct forms of participation and involvement of citizens and civil society organizations. These include neighbourhood or residents' assemblies to discuss local issues (particularly in Mexico, D.F., Brazil and Chile), OTBs (in Bolivia), co-managed councils that include local representation (particularly in Brazil) and participatory budgeting (in some municipalities in Brazil).

Table 2.4.1: Local Governance - Latin America

Bolivia

- Structure: Unitary; national government and municipalities, with lower level of OTBs recognized by Law of Popular Participation 1995. OTBs are geographically bounded units for citizen participation and the representation of social demands, and have duties and rights as such, many related to formulation and implementation of Municipal Development Plan.
- Indirect participation: Free elections at the municipal and national levels. At the departmental level, administrators (prefectos) appointed by the president.
- Direct participation: By membership of 15,000 OTBs and OTBs' engagement in Municipal Development Plan.
- Joint action: 'Vigilance committees', mixed bodies of local government and OTB members which oversee Municipal Development Plan and budget execution; participatory local planning.

Brazil

- Structure: Federal system, with federal government, state governments with own constitutions, and municipality/local governments, with significant responsibility for social policy and service delivery, and each with own Organic Municipal Law, equivalent to constitution, regulating these activities.
-

⁷ Or in the case of federations, state laws and policies.

Table 2.4.1: (continued)

Brazil (continued)

- Indirect participation: Free elections at the municipal, state and federal levels.
 - Direct participation: Neighbourhood assembly; popular movements assembly; conferences of the city about sectoral policies (health, housing, social assistance, urban development, sanitation, among others); assembly of participatory budget; public meetings of networks and forums (NGOs, popular movements, professional associations, base communities).
 - Joint action: Co-managed sectoral councils, mandatory according to national laws, for areas of health, social assistance, children and youth, education, urban policy (and optionally for housing, environment, women); neighbourhood committees and councils; participatory budget; participatory planning.
-

Chile

- Structure: Unitary system; national government, 13 provinces with limited autonomy, and municipalities. 1999 National Constitutional Organic Law of the Municipalities introduced range of changes in municipal administration, instituting several mechanisms for participation by, and communication with, local community (see below).
 - Indirect participation: Free elections at the municipal and national levels, but the president is constitutionally in charge of appointing the intendentes (regions) and gobernadores (provinces).
 - Direct participation: Neighbourhood assembly; popular movements assembly
 - Joint action: Reformed communal economic and social councils (Consejos Económicos y Sociales Comunes – CESCOS) have become consultative body for local investments, development, regulation, annual municipal public accounts.
-

Mexico D.F.

- Structure: Capital city of federation (slightly different status to states of the federation), with own Law of Citizen Participation (1999) allowing for formation of neighbourhood committees. Proposals in 2000 to turn these into neighbourhood authorities, with budgets and new powers, not approved yet. Impact of neighbourhood committees limited by their small, atomized nature.
 - Indirect participation: Free elections of municipal, state and federal levels.
 - Direct participation: Neighbourhood committees.
 - Joint action: Mixed neighbourhood committees, which supervise, evaluate and administrate citizens' demands and budget elaboration process, and channel public opinion about public programmes and services.
-

Oaxaca State, Mexico

- Structure: One state in federal republic, with more than 50 per cent of its population indigenous and 570 municipalities, some indigenous, some non-indigenous and some mixed. (Many municipalities have smaller population than state constitution requires, but result from historic Mexican state tendency to atomize indigenous communities so as to avoid fostering creation of united indigenous movements.)
 - Indirect participation: Free elections of municipal, state and federal levels. Local authorities elected according to indigenous practices and customs.
 - Direct participation: Indigenous movements assemblies; village assemblies of the indigenous group.
 - Joint action: 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.
-

Table 2.4.1 (continued)

Uruguay

- Structure: Unitary system; national government, 19 departments (i.e. provinces) with executive (intendente) and elected legislative (junta departamental) authorities. Montevideo (one department and capital city) divided into 18 zones, each with zonal communal centres with administrative, executive and technical functions.
- Indirect participation: Free elections at the departmental and national levels.
- Direct participation: Deliberating assemblies of civil society actors represent civil society in spaces of decentralized participatory governance.
- Co-management: of local councils, neighbourhood councils and co-management commissions (e.g. for health and social programmes).
- Joint action: (Montevideo) Innovative public spaces; neighbourhood councils with support of the zonal communal centres; local councils; co-management commissions (e.g. health, social programmes). Participatory processes of planning and budgeting.

South Asia

India, the largest of the South Asian nations, is also one of the most decentralized: it has a federal system, with governments at state level and councils at district, block and village level. Constitutional Amendments 73 and 74 have attempted to strengthen these councils or *panchayats* and municipalities as means for participation. In addition, *gram sabhas*, or village assemblies, provide arenas of direct participation, and have functions including development planning and election of *panchayats*. Other countries in the region are less decentralized: both Bangladesh and Nepal have unitary states with fewer legal mechanisms for direct participation.

Table 2.4.2: Local Governance - South Asia

India

- Structure: Federal republic with 28 states and 7 union territories. 73rd Amendment establishes three tiers of elected panchayats below state level – zilla parishad at district level, panchayat samiti at intermediate/block level, gram panchayat at village level, and below these the village assembly or gram sabha to which all residents belong. Reserved seats at each level for women, weaker castes and tribals. Panchayats are expected to engage in planning (with district planning committee) and implementation of works. Devolution of financial authority and power is mainly left to state legislatures so vary between states.
- Indirect participation: Free election by gram sabha of members and chair of gram panchayat, one member of block panchayat and one member of district panchayat.
- Direct participation: Via institution of gram sabha, whose structure, functions and powers are not defined in federal constitution so vary considerably; most meet minimally twice a year at well-publicized meetings. Functions of gram sabha include reviewing development plan, assisting in its implementation, identifying beneficiaries for targeted support schemes, mobilizing voluntary labour for welfare programmes, playing an oversight function.
- Joint action: Gram panchayats responsible for village planning, through long bottom-up process of multiple steps often facilitated by an NGO.

Table 2.4.2: (continued)

Bangladesh

- Structure: Unitary state, with four-tier governance system – zilla parishad, upzila parishad, union parishad and gram parishad. Union parishad is the most functional tier, has reservations for women and 10 mandatory and 38 optional functions and is legally empowered to raise resources.
 - Indirect participation: Free elections for union parishad members. (So far no elections held for other councils meant to be elected.)
 - Direct participation: Local Self-Governance Act provides for this at grassroots level.
 - Joint action: —
-

Nepal

- Structure: Unitary (monarchic) state; two tiers of local governance – village (municipal) development committee and district development committee.
 - Indirect participation: Free election of village development committee members.
 - Direct participation: Local Self-Governance Act provides for direct participation at grassroots level in the form of ward assembly, forum for identification of needs which is basis of village and town development plans.
 - Joint action: Community participation in local alternative dispute resolution. Local Self-Governance Act gives powers to community as ‘subsidiary governance’. Community role in this is long-standing tradition, newly institutionalized in legislation.
-

South-East Asia

South-East Asia, and Thailand and Indonesia in particular, have a ‘prefectural’ tradition of local government, in which local governments were previously appointed by central government. However, each has undergone attempts at both decentralization and democratization, enabling some degree of indirect participation through elections. The Philippines, with its *barangay* system of local councils (which include participatory development planning initiatives), has the most elaborate legal framework for participation of the three countries. Throughout South-East Asia, direct forms of participation occur in the context of mobilization of social movements, whether through poor peoples’ assemblies (Thailand) and social movement groups (Philippines) or through civil society-organized citizens forums (Indonesia). In addition, legal mechanisms, including popular initiative (Thailand, Philippines) and referenda (Philippines), exist.

Table 2.4.3: Local Governance - South-East Asia

Thailand

- Structure: Prefectural tradition. Strong Ministry of Interior. Slow implementation of 1997 constitutional provisions for decentralization. Local government system in throes of massive change until 2010. Local councils have been elected for some time, but these bodies co-existed with local units of the central government. Local executives elected by councils. Local governments weaker than administrative counterparts in terms of powers and functions. In 2000, the local share of revenues was only 12 per cent. By 2007, this is supposed to go up to 35 per cent.
 - Direct participation: Poor people’s assemblies. Constitution provides for popular initiative in local legislative processes. Civil society organisations (CSOs) mainly in cities. Movements for direct election of local executives have failed.
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Table 2.4.3: (continued)

Thailand (continued)

- Joint action: Some claim-making through poor people's assemblies, but slow institutionalization of decentralization has limited citizen engagement in local governance so far.
-

Philippines

- Structure: Weak Department of Interior and local government; history of central—local government contestation. 40 per cent of internal revenues transferred to local government units since 1994; local government units can borrow and receive foreign aid and impose new taxes. Autonomous local governments for Muslim region.
 - Indigenous people's traditional councils recognized for ancestral domain claims.
 - Indirect participation: Executives and local legislatures at all levels are elected.
 - Direct participation: Wide range, from institutionalized people's councils to time-bound, issue-based coalitions. Claim-making by social movement groups, sometimes in alliance with state reformers.
 - Joint action: Legally mandated participation in local special bodies (dealing with development planning, education, health policy, bids and contracts, and peace and order). System of popular initiative and referendum. Participatory barangay (lowest unit of governance) development plans; citizen and government collaboration in project development and implementation, resource generation. Paralegal training by local governments of representatives of popular organisations and civil society. Civil society groups have initiated revenue generation for local governments in some cases. New initiatives in participatory service delivery.
-

Indonesia

- Structure: Strong Ministry of Interior; prefectural tradition. Military territorial organization parallels government units at all levels. Autonomous special regions in Aceh and Jogjakarta. Current central government is rolling back decentralization, but local governments resisting.
 - Indirect participation: Election of legislative representatives at provincial, municipal/city, village, urban and ward level; executives elected by legislative at municipal/city level.
 - Direct participation: Forum warga (citizens' forums) as space for claim-making. Traditional village assemblies recognized by law.
 - Joint action: Selected initiatives in participatory planning; some government-initiated, some by civil society. Fiscal devolution from district to village level offers opportunities for participation. Little institutionalization of measures yet because of uncertainty around decentralization.
-

East Africa

Participation in local governance has been relatively weak in East Africa, with the exception of Uganda. In Kenya and Tanzania, local governments are limited in their powers and dependent on central government for finance. Uganda has an ambitious decentralization programme and purports to enable participation through a five-tier system of local councils. In addition to indirect, electoral forms of participation, direct forms of participation include village assemblies involving all members of the village as the lowest rung of local government and development planning in Uganda and Tanzania, and budget conferences soliciting citizen and civil society input on district budgets in Uganda. Joint action between local governments and civil society can occur

through the failure of central and local government – in all three countries, NGOs and church organizations assist in delivering services once provided by the state. Joint action with civil society has also occurred in the context of participatory poverty assessments.

Table 2.4.4: Local Governance - East Africa

Uganda

- Structure: Five-tier system of local councils (LC1–5), from village to district level. Main roles include development planning and service provision, dispute resolution, by-laws.
- Tax-raising powers at LC3 and LC5 levels. Substantial degree of planning autonomy in principle, but finances restricted because of type of taxes raised, low collection rates and because most grants from centre are conditional.
- Indirect participation: LC1 committee, LC3 and LC5 directly elected; LC2 and LC4 indirectly elected. One third of seats reserved for women elected in separate elections (in which women and men may vote). Two seats in each council reserved for youth and disabled, selected through their own representative structures. Citizens may recall representatives. Women and youth councils parallel to local councils provide forum for debate and discussion, but have little powers and as such may marginalize women’s and youth’s concerns instead of pushing them up the national agenda.
- Direct participation: LC1 council formed of all adult members of the village. Discusses development planning and use of resources. Poor attendance and limited power in practice. District budget conference is opportunity for people and civil society groups to comment on draft budgets. ‘Bottom-up’ development planning usually begins with locally produced community action plan; inputs and impacts are limited as it passes through many-layered bureaucratic procedures.
- Joint action: Uganda Participatory Poverty Assessment Project carried out in conjunction with civil society groups, aiming to improve poverty knowledge and planning capacity of district-level government; impact on central government policy strong and on district processes weaker. Planning guidelines state that local governments should consult civil society and local communities. Joint civil society/local government provision of services and sub-contracting of NGOs by local government.

Tanzania

- Structure: Five-tier system of local councils from kitongoji (block) to district level. Powers include arbitration, development planning, by-laws, service provision. District level may levy taxes. Finances restricted because of type of taxes. Powers and finances to be expanded under Local Government Reform Programme. Some autonomy from centre.
 - Indirect participation: Direct election at kitongoji and district level. Village councils consist of kitongoji chairpersons plus at least one quarter women elected by village assembly. A quarter of seats at district level reserved for women, elected through separate elections (in which women and men may vote). Citizens may recall representatives.
 - Direct participation: Village assembly formed of all adult members of the village is ‘the supreme authority at village level’. Elects village council and has power of recall, but this seldom happens. Can debate policy and development planning, but behaves more like an electoral college. ‘Bottom-up’ development planning begins at village level and passes through 13 stages of bureaucracy. In practice, little gets approved.
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Table 2.4.4: (continued)

Tanzania (continued)

- Joint action: Joint provision of services. Participatory Poverty Assessment (PPA) ongoing in which citizens help shape national policy-makers' understanding of poverty and needs, and give feedback on services.
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Kenya

- Structure: District, town and municipal councils. These are paralleled by central government-appointed district development committees. Powers are limited and include some service provision and development planning. Finances severely restricted. Dependent on central government. Little autonomy from central government.
 - Indirect participation: Councils are directly elected but under Moi mayors have been appointed. Under new NARC government (elected 2003), public pressure mounting for direct election of mayors and clarity over eligibility for candidacy to mayoral elections.
 - Direct participation: 'Bottom-up' development planning meant to originate from the people, but passed through bureaucratic filters limiting input, removing citizens' control.
 - Joint action: Civil society participation in development of national Poverty Reduction Strategy Paper, but despite active engagement civil society inputs were little reflected in final document.
-

Selected northern countries

Forms of local government, and the level of participation enabled within them, vary widely between the countries of the North. In some, such as the UK, local councils have relatively little autonomy from central government, while others, including Switzerland, have highly decentralized systems. While indirect participation through direct elections is common to all of the countries, forms of direct participation vary by country. In the UK, New Zealand and the USA, participation occurs through the 'software' of public and community consultation rather than the 'hardware' of legal mechanisms. In Finland, in contrast, participation is framed as a right, supported by legal provisions such as citizens' initiative and referenda, and the inclusion of service users in municipal bodies, while Switzerland enables direct participation through annual commune citizen assemblies.

Table 2.4.5: Local Governance - Selected Northern Countries

UK

- Structure: Unitary system with metropolitan councils in larger cities, unitary authorities in smaller urban areas, and county, borough, district and parish councils. Councils are statutory not constitutional bodies, and raise approximately only 40 per cent of revenues locally.
 - Indirect Participation: Councils directly elected; some councils have a directly-elected mayor.
 - Direct Participation: Emphasis on consultation (by methods decided by local councils) rather than legal requirement of participation. Occasional referenda on some issues (e.g. whether to have a mayor).
 - Joint Action: Some participation of citizen/civil society groups in consultations.
-

Table 2.4.5: (continued)

Switzerland

- Structure: Federation with 23 cantons with a high degree of autonomy. Cantons subdivided into communes.
- Indirect Participation: Directly-elected councils at canton and commune level.
- Direct Participation: Annual citizen assembly in most communes, allowing citizens to vote on budgets and important issues.
- Joint Action: —

Finland

- Structure: Administratively divided into regions, counties and municipalities, with local governments operating at municipal level.
- Indirect Participation: Directly elected local governments. Election of service users to municipal bodies.
- Direct Participation: Municipal referenda; citizens' initiative and the right to propose referenda.
- Joint Action: Requirement of councils for 'helping residents to manage, prepare and plan matters on their own initiative'. Development of local participation projects in cooperation with NGOs, residents' associations, village committees, parishes, companies and non-profit organizations.

USA

- Structure: Federal system; states with own constitutions, laws and taxation; county and city councils can pass by-laws and provide services such as education.
- Indirect Participation: Directly elected state congress and local councils.
- Direct Participation: Some states have provision for citizen's initiative leading to referenda.
- Joint Action: (Limited) community participation in anti-poverty/empowerment programmes.

New Zealand

- Structure: Similar to UK.
 - Indirect Participation: Directly elected councils.
 - Direct Participation: Emphasis on consultation. Citizens can make written submissions and must be informed of reasons for council's decisions. Special provision for Maori groups.
 - Joint Action: —
-

2.5 Accountability measures

As noted in Section 1.2, the introduction of accountability measures through adjustments to legal frameworks has proven a common way of modifying and enhancing representative democracies to date. Different country and regional studies in this research focused to different degrees on the existence and application of measures for accountability by governments to citizens. What is presented in the tables below is a mixture of the following: legal measures for answerability through the provision of information, vital to accountability processes; legal measures for enforceability; and initiatives by citizens to exact accountability, availing themselves of legal provisions or spaces. As such, this section does not provide an even picture over all countries or regions, but does give a flavour of how widely it is recognized that citizens must be empowered to exact accountability, both in general and in relation to laws and rights

regarding various kinds of participation, if laws and policies on participation are to be realized.

Latin America

Beyond avenues for public participation such as policy councils and participatory budgeting, mechanisms for ensuring accountability in Latin America include public consultations, public hearings and ombudsmen to oversee local government activities and investigate complaints.

Table 2.5.1: Accountability Measures - Latin America

<p>Bolivia</p> <ul style="list-style-type: none"> Public consultation and public hearing.
<p>Brazil</p> <ul style="list-style-type: none"> Ombudsman offices; public hearings, public consultations and public debates (Statute of the City).
<p>Chile</p> <ul style="list-style-type: none"> Public hearing; ombudsman offices.
<p>Mexico D.F.</p> <ul style="list-style-type: none"> Neighbourhood consultations; public hearings.
<p>Oaxaca State, Mexico</p> <p>—</p>
<p>Uruguay</p> <ul style="list-style-type: none"> By law, intendentes are required to present an annual report to the local legislative and the accounts tribunal regarding the budget execution and compliance with government plans and programmes.

South Asia

Accountability measures in South Asia include ‘right to information’ provisions in Nepal and India, and freedom of speech provisions in India and Bangladesh. In practice, access to information may still be difficult to obtain. In India, village assemblies may demand an audit of council performance, and the right to recall of representatives exists in Madhya Pradesh.

Table 2.5.2: Accountability Measures - South Asia

<p>India</p> <ul style="list-style-type: none"> Gram sabha can legally demand social and financial audit of panchayat and its performance; a process often facilitated by civil society organizations. Madhya Pradesh State has instituted right to recall for local self-governments. Gram sabha can recall its elected representative (a minimum of two years after his/her election) on charges of non-performance or irresponsible behaviour.
<p>Bangladesh</p> <ul style="list-style-type: none"> Right to freedom of speech is used to initiate accountability processes at local level.

Table 2.5.2: (continued)

Nepal

- Right to information is used to initiative processes of exacting accountability at local level.
 - Student representatives have been included in primary school management committees to ensure accountability of teachers and education departments.
-

South-East Asia

Despite bureaucratic traditions limiting accountability in South-East Asia, the region is characterised by strong advocacy coalitions seeking accountability and mobilising around political reform. In Thailand and the Philippines, this is aided by constitutional guarantees of freedom of information. Other legal mechanisms for accountability include right to recall of local elected representatives in Thailand and the Philippines, and anti-corruption laws in Indonesia.

Table 2.5.3: Accountability Measures - South-East Asia

Thailand

- Sections 58 and 59 of the 1997 Constitution provide guarantees for freedom of information.
 - Bureaucratic tradition limits rights.
 - Constitutional provision for recall of tambon (sub-district) council members.
 - Strong national advocacy coalitions on political reform and policy issues.
-

Philippines

- Freedom of information in constitution, but implementing law still being considered.
 - Elected officials can be recalled.
 - Popular initiative and referenda, including petitions to prioritise debate of legislation.
 - Ombudspersons at every level of local government.
 - Public hearings, consultations and debates.
 - Strong national advocacy coalitions on constitutional reform, electoral and other political reform, economic policy issues.
 - Bureaucratic tradition limits rights.
-

Indonesia

- Anti-corruption law provides for access to information; in practice bureaucratic tradition limits right.
 - Freedom of the press after 1998, activist journalists.
 - Internal Security Law continues to limit right to self-organization.
 - Active advocacy campaigns on political reform, but civil society capability not as strong as in the Philippines.
-

East Africa

Efforts to strengthen accountability in East Africa take two general forms: legal and procedural mechanisms for holding local government and government officials to account, and mobilization and advocacy by civil society in order to strengthen accountability. The legal and procedural mechanisms for strengthening accountability include

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recall of elected representatives (in Uganda and Tanzania), transparency and access to information (Uganda and Tanzania) and anti-corruption bodies (Kenya). Such mechanisms, however, may be restricted in their application.

Table 2.5.4: Accountability Measures - East Africa

Uganda

- Citizens’ recall of representatives.
- Freedom of information enshrined in the constitution (but may be difficult to gain in practice).
- Budgets must be publicly displayed.
- Increasing civil society involvement in monitoring accountability.
- Uganda Debt Network’s PAF monitoring committees monitor use of debt relief funds.
- Civil society involvement invited by central government.

Tanzania

- Citizens’ recall of representatives (exact procedure is unclear).
- Freedom of information enshrined in the constitution (but may be difficult to gain in practice).
- Civil society participation in making land laws, sexual harassment laws and NGO policy.

Kenya

- Kenya Anti-Corruption Authority monitored government bodies and finances (but recently declared unconstitutional).
- Action by civil society for electoral and constitutional reform.
- Increasing monitoring activities by civil society (e.g. NGO Working Group on the World Bank).

Selected northern countries

Freedom of information laws exist in a number of northern countries (including Finland, New Zealand, the USA and, recently, the UK), but in the UK and the USA much information remains restricted or must be specifically demanded. In New Zealand and Finland, there is a specific legal requirement for information provision by authorities. Provision for citizens’ initiative exists in Finland and some US states.

Table 2.5.5: Accountability Measures - Selected Northern Countries

UK

- Laws allow data to be accessed by public, but no onus on authorities to provide them unless demanded.

Switzerland

—

Finland

- Explicit legal requirement for information provision by authorities.
- Laws oblige local government to account to citizens for what happens to initiatives they submit.

Table 2.5.5: (continued)

USA

- 'Sunshine laws' allow data to be accessed by public. Much information is put into public domain; some provided only on demand.
-

New Zealand

- Explicit legal requirement for information provision by authorities.
-

3. SYNTHETIC OVERVIEW

Where the previous section summarized some of the factual findings of the research, this section presents the outcomes of synthetic discussions held in the research team on the significance of the facts uncovered. It discusses first legal frameworks themselves, revisiting the working definition given in Section 1.2 in the light of our findings and presenting a set of issues that they cover, or need to cover, in order to promote citizen participation effectively. We then turn to what else is needed beyond comprehensive and progressive legal frameworks. We explore the importance of various contextual factors in determining what a legal framework consists of and what it actually achieves: the conceptual terrain in which legal frameworks are situated; the historical contexts in which they have emerged; and the actors behind their emergence and reform.

3.1 Legal frameworks: Scope, content and potential

What is a legal framework? Case studies revealed that any analysis of legal provision for citizen participation needs to consider laws and policies at several levels that operate interdependently and together constitute an overall ‘framework’. Besides national laws relating to participation, the clearest example being Bolivia’s Law of Participation, there are constitutions that provide a backdrop by establishing rights, freedoms and entitlements, and decentralization legislation that shapes what happens at the local level. Our research focused mainly on participation laws, constitutions and decentralization laws.

However, there are other areas of legislation which are—at least potentially—pertinent to the existence and effectiveness of provisions for participation. One is local legislation that is formulated by local governments using the powers conferred to them by decentralization laws, and can impinge on citizen participation. Another is laws that are not necessarily thematically related to participation, but that are inconsistent with the legal frameworks for participation and limit their scope. Examples of this are incomplete or imperfect decentralization laws which fail to establish which level of government has jurisdiction in certain matters; and internal security laws—in post-11 September parlance, ‘anti-terrorism laws’—which curb various forms of social activism and civil society organization; or recently-formulated constitutions that contain progressive provisions on participation (among other issues) which cannot be implemented because conservative legislatures have not passed the appropriate legislation. As one observer states: ‘It seems that while some constitutional drafters meant to establish mechanisms for participatory democracy, the conservative part of the drafting committee managed to disable them’ (Orlandini 2003: 10). The case outlined below illustrates several of these points.

Legal contradictions: Political participation of indigenous groups in Mexico
The Mexican state of Oaxaca has one of the country’s largest indigenous populations. In May 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. This allowed indigenous groups to use their own practices and customs (*usos y costumbres*) in electing political representatives, and to participate in state and local elections without the intermediation of political parties. According to these indigenous practices, women are not entitled to equal suffrage. In 18 per cent 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.

Implementation of this law has proven problematic. The state legislation contradicts the national electoral system, which is characterized by political parties and universal, free and confidential suffrage. It is unclear who has the authority to determine whether the constitutional procedure or indigenous practices and customs are to take precedence in any given election—a question of particular importance in municipalities inhabited by both indigenous and non-indigenous groups.

This study was not exhaustive in identifying all national-level laws pertinent to participation, even in the positive, enabling sense let alone in the negative, constraining sense. Neither did the scope of the project permit a detailed examination of local-level by-laws and their relevance to participation in all the countries covered. Our impression, which we cannot systematically verify from the evidence gathered, is that in most cases (excepting states in federal systems) local governments can only legislate about practical matters of governance such as urban and rural services, community order and sanctions for the non-observance of bylaws, and not about the relationship between governors and the governed at the local level, which tend to be regulated by national laws. One noteworthy exception to this may be found in the Philippines.

Local legislation in the Philippines: The case of Naga City Council

The 1995 Empowerment Ordinance passed by Naga City Council in the Philippines represents an instance of remarkably progressive local legislation. This Ordinance attempts to make the options offered by existing national legislation a concrete reality. Section 2 states that the City Government of Naga should recognize that ‘the will of the people shall always reign supreme’, and that the primary duty of the government is to ensure that this will is carried out. It goes on to say that the best way of achieving this is if the people organize themselves to address common or sectoral concerns. Finally, recognizing that governance is best effected when responsibilities are shared with the people, it advocates ‘a system of partnership between the governor and the governed [which] shall guarantee that sovereignty effectively resides in the people’ (cited in Iszatt, 2002: 21). Accordingly, Section 3 contains a *Declaration of Intent to Enter into Partnerships with NGOs and POs* [People’s Organizations] in the conception, implementation and evaluation of all government activities and functions. The scope of the Ordinance makes it clear that this legislation is intended to go well beyond lip service in increasing citizen participation in local governance.

This case suggests that where decentralization acts transfer significant legislative powers to local government, as in federal systems, *national* or *federal* law may just set a national ‘minimum standard’ in terms of participation, and what might be of real interest is the scope for *local* governments to introduce laws that actively promote, or at least do not inhibit, citizen participation. Being local in origin and application, these laws might constitute the most crucial elements of the legal framework for participation in local governance where they exist.

It became clear through the research that in some cases the operational provisions regulating how laws and policies get enacted, and the supportive guidance issued by governments to accompany them and enhance the chances of successful implementation, are as important as the laws and policies themselves. The balance between the promulgation of laws and the production of supportive operational guidelines seems to be partly a product of legislative and policy tradition in a given country or region. The following example contrasts the Latin American emphasis on laws concerning citizen participation with the approach found in most of the northern countries we covered, which tends to make more use of policies and guidance.

More or less legalistic approaches: Latin American cases contrasted with northern cases

Laws proliferate in Latin American countries, whereas in the North, governments seem to address issues such as citizen participation through guidance and, at most, policies rather than through laws.

In Brazil, there are five federal laws relating specifically or closely to citizen participation—one of them effectively a law of urban citizen participation. In Bolivia, there are four national laws which relate closely—one of them the Law of Popular Participation. In Mexico DF, there is a Participation Law. In Chile, the Constitutional Organic Law of Municipalities includes several ordinances on citizen participation and on consultative councils.

By way of contrast, in the UK there are two Local Government Acts (1999 and 2000) which relate to, but do not centre on, participation, and a plethora of policies, initiatives and guidelines. These include the Best Value Scheme, the Comprehensive Performance Assessment, the New Deal for Communities and the Local Strategic Partnership initiative. There have also been supporting white papers, guidelines and select committee reports. The potential advantages of this more flexible legal framework include the possibility that local authorities will have more room to innovate. The disadvantages include the fact that much is left to local authorities' discretion and interpretation rather than unambiguously laid down by law.

To return to our definition, the research has shown that a useful way to understand 'legal framework' for our purposes is as a 'bundle' which embraces the constitution, national laws and policies relating specifically to participation, the supportive guidelines accompanying policies and laws, and the other local or national laws mentioned above, which can impinge on citizen participation in a positive or negative sense.

The concept of the 'bundle' has some important implications. Within the bundle there will be differences between the way the component laws and policies address participation. Some will do so by making explicit provision for it, legislating for the establishment of specific kinds of space or process which involve citizens. Others will do so by giving implicit permission, leaving open spaces which citizens can claim or processes into which they can insinuate themselves, either alongside government actors or alone as civil society actors but working to impinge on government processes. In case of the latter, it is clear that the outcomes will be very heavily determined by the degree of dynamism, capacity and maximization of opportunities on the part of civil society actors. This point is returned to below.

That the existence of legal frameworks was an insufficient condition for citizen partici-

pation to happen was acknowledged from the start of this research. One reason for this insufficiency is that laws are not always applied, or not applied to the letter. As noted earlier, desk-based research of limited scope could not pretend to assess in the cases studied the extent to which the laws we came across are actually applied in practice. The fact that our definition of ‘legal frameworks’ embraces not one but a bundle of related laws, policies and guidelines implies not one but several potential ‘implementation gaps’ at several levels in any one country.

What about the content and potential of legal frameworks? The research team experimented with numerous ways of grouping the plethora of measures, processes and spaces established by the laws and policies examined in this project. None of the devices with which we experimented could capture on its own the range at hand, and most classificatory schemata were imperfect in that their categories proved not to be mutually exclusive when superimposed on real-life examples. Nonetheless, the search for labels permitted us to identify four sets of issues that are essentially the purview of legal frameworks for citizen participation:

- Who is involved in local governance?
- What local governments do in terms of fostering or allowing citizen involvement?
- Which enabling structures need to be put in place and maintained so that these things can be done?
- Which resources are needed?

We discuss each in turn below.

Who is involved in local governance?

This is a broader issue than that of who is included in *government*, but does cover that as well as diverse forms of engagement and interfaces other than formal government ones. The legal frameworks reviewed show a range of approaches to changing who is involved in governance.

One is the **strengthening and improvement of the institutions of representative democracy by making them more representative**, especially of less powerful sectors of the population. The cases below illustrates the attempts made by governments in India and Uganda to make local democracy more representative.

Strengthening democratic institutions in India and Uganda

India’s 73rd and 74th Constitutional Amendments, passed in 1992, brought into existence a third, local tier of government with a wide democratic base. Provisions contained in the 73rd Amendment opened up spaces for the political participation of women and marginalized caste groups in these *panchayati raj* institutions.

In **Uganda**, meanwhile, the 1995 Constitution provides for minority representation at a national level. Article 78 guarantees one parliamentary seat per district for women and allows Parliament to provide representation for people with disabilities, youth and other disadvantaged groups. The constitution also stipulates that one third of councillors at all levels must be women. This has had the immediate effect of introducing 10,000 women into a local government system that had previously been dominated by men (Ahikire, 2001: 1).

In both countries, attempts to utilize these new avenues of representation have generated both successes and failures. In Uganda, female councillors can be marginalized within council meetings (Brock *et al.*, 2003). In India, while the 73rd Amendment has revolutionized local governance in some areas, its impact has been uneven throughout the country.

This is, in effect, enhanced indirect participation by marginalized citizens in the institutions of representative democracy through reforming elected bodies to make them more representative. As such, this approach does not challenge or extend beyond the confines of institutions of representative democracy.

A second approach is the **strengthening and improving of representative democracy by enhancing the quality of representation**, through enabling citizens to hold their representatives accountable for their performance. Many measures designed to improve the quality of representative democracy are, in essence, accountability mechanisms. For example, Uganda and the Philippines both have procedures for citizens' recall of elected representatives.

Holding representatives to account in Uganda and the Philippines

In Uganda, the right of recall of elected representatives exists at both local and national levels, and has been used to recall, for example, corrupt local chairmen (Bazaara, 2002: 13). At national level, a petition signed by two-thirds of constituents can initiate the recall process (Article 84 of the Constitution).

The Filipino Constitution includes a system of recall which provides for immediate accountability of both elective and appointive local officials through termination of their tenure by popular vote. The 1991 Local Government Code provides for two modes of recall:

- By registered voters. Any voter in the locality can initiate recall using a written petition for recall, which needs to be supported by 25 per cent of the electorate.
- By a preparatory recall assembly, comprised of local (elected) officials. The majority adoption of a resolution can bring about the recall of a provincial, city or municipal official.

Whilst in both countries implementation of these recall provisions has proven to be fraught with difficulties, they nonetheless represent a way for voters to bring elected officials to account. (See Brock *et al.* (2003) for further evidence from Uganda.)

A third approach is the **complementing of representative democracy with more direct forms of citizen participation in governance**, through the promotion of more entry-points and interfaces for civil society actors to operate in governance spaces and processes beyond the confines of existing representative institutions. Examples are citizen assemblies in India and in Indonesia, or the development of relationships between advocacy or lobbying organizations and government actors, such as is seen in the North and some southern countries over areas of public concern such as environmental issues. In the former case, being in principle open to everyone, citizens' assemblies are rarely subjected to questions about their representativeness. Advocacy and lobbying organizations, however, are increasingly challenged by the elected officials

they target to demonstrate their legitimacy as spokespersons and representatives, since they are not usually elected by those whose priorities they claim to represent.⁸

Promoting participation beyond representative institutions: Direct democracy in the Indian state of Madhya Pradesh

Whilst the 73rd and 74th Amendments to India's Constitution expanded the structure and inclusiveness of local government, it was largely left to individual states to implement the *panchayati raj* system. This was achieved by endowing the different levels of local government with the necessary powers and authority to enable them to function. However, this approach has meant that in some states the lowest level of government – the participatory village assembly (*gram sabha*) – has little actual scope or influence. Typically, it may be limited to a forum for debate or recommendation on issues such as the selection of beneficiaries for poverty alleviation programmes or decisions on works such as road building proposed by the *gram panchayat*.

The state of Madhya Pradesh has proved exceptionally progressive. In 2001, the state government implemented the Gram Swaraj Act which transferred virtually all powers concerning local development to the village assemblies. Much of the work which was earlier performed by the *gram panchayat* has now been handed over to the *gram sabha*. Many of the duties and powers of various departments of the Madhya Pradesh Government have also been vested in the *gram sabha*. These include powers relating to village development programmes, budgeting, levying taxes, agriculture, health, natural resource management, village security, infrastructure, education and social justice (Bohare, no date).

Although it takes place within a system of representative democracy, citizen participation in the *gram sabha* is individual, and in Madhya Pradesh has certain decision-making powers. It could, therefore, be seen as an instance of direct democracy.

Still another approach is the promotion, in laws or policies, of **more outreach by government actors into civil society spaces and processes**; for example, through the holding of public audiences and consultations of the kind recommended by many of the northern governments we surveyed. This too complements the structures of representative democracy, but cannot be counted as promoting direct citizen participation in all cases because the outreach often takes the form of information provision and consultation from government to public rather than of joint deliberation and decision-making.

What do local governments do in terms of fostering or allowing citizen involvement?

Some laws explicitly prescribe certain forms of joint action between government and civil society actors in governance tasks; for example, **local-level planning processes**.

⁸ See Edwards (2002) on this point.

The following examples, drawn from several countries included in the study, illustrate this kind of joint action:

Joint action in local planning: Indian, Filipino and Brazilian cases

In the **Indian** state of Kerala, legislation passed in 1996 gave 40 per cent of the state's budget to around 900 individual *panchayat* village planning councils (Fung and Wright, 2001). To spend the money, villages are required to come up with detailed plans, which are then approved by direct vote in popular village assemblies.

In the **Philippines**, the 1991 Local Government Code requires citizen participation at all levels of local government through the local development councils. While there are no corresponding bodies for participation at the national level, the Code also requires all national agencies of government to first consult with local governments on all national programmes and projects to be implemented in their localities. The municipal and provincial planning and development coordinators are therefore specifically tasked with promoting people's participation in development planning. The Code also includes provisions for the training of local citizens in order to facilitate their effective participation.

Finally, in **Brazil** the Organic Law of Municipalities provides for a participatory planning system. This brings together municipal councils, sub-prefectures and neighbourhood councils, and seeks to integrate their inputs with sectoral and regional policies. This planning process is closely linked to the production of the municipal budget.

In all of these cases our research found that legislation alone was insufficient: the legal opportunities for joint action in areas such as local planning had to be accepted and implemented by officials, and complemented by citizen understanding and motivation, in order for the initiative to work.

Besides local-level planning and budgeting, another area of local government activity for which some legal frameworks offer provisions is that of **accountability**. Distinct from the form of accountability mentioned above, which is about citizens holding their own elected spokespeople accountable as representatives of their views, several legal frameworks contain measures which enable citizens to hold government to account for carrying out properly the functions of government, whether these relate to executing budgets with probity, holding the requisite minimum number of public hearings or council meetings, or implementing laws on joint planning processes. As the examples given below demonstrate, different countries have taken this form of accountability to varying levels.

Legal frameworks for holding government to account over performance

In **Brazil**, the federal constitution guarantees the right of citizens, political parties, associations and labour unions to denounce irregularities or illegal actions identified in public accounts. This right is made operational by giving citizens a role in the elaboration and execution of the public budget, and in the definition of priorities for the use of public resources.

In **Chile**, however, the corresponding right is limited to the obligation for local authorities to disseminate a summary report of the annual municipal public accounts to the community. Whilst local authorities are 'strongly recommended' to listen to

citizen's complaints and suggestions, there is no comparable legal mechanism by which citizens can hold the authorities to account.

In **Bolivia**, the 1994 Law of Popular Participation established citizens' oversight committees in each municipality. Among other things, these are empowered to freeze municipal budgets if actual budget execution departs from planned execution.

Some legal provisions are **hybrids**, taking up some of the forms of representative democracy and applying them in the complementary arena of direct democracy. Examples of this are the municipal health, education and youth councils throughout Brazil, and the participatory budget initiative introduced by some Brazilian states – most famously, Porto Alegre.

Hybrid models: Pockets of participation within representative systems

Participatory budgeting in Porto Alegre

In the case of participatory budgeting, the law establishes the creation of citizen assemblies and, above them, tiers of elected representatives with different powers at each level, so as to facilitate both direct and indirect involvement of citizens – who remain citizens, not elected officers – in formulating their city budget. In a standard representative democracy, the task would be left to elected council officials and civil servants, and merely ratified by the (elected) legislature.

Municipal health, education and youth councils

In the case of municipal health, education and youth councils, their creation at municipal level is mandated by the Brazilian Federal Constitution and State Constitutions, and stipulations are given as to their composition. The compulsory inclusion of popularly elected councillors and of periodic assemblies for direct citizen participation are fundamental to the nature of the councils, which exist to promote popular participation in public management as fundamental to the development of democracy.

These cases are, in effect, pockets of participatory democracy operating within systems of representative democracies. They overturn the conventional notion that certain functions – deliberation on sectoral councils, city budget allocation between sectors and neighbourhoods – are the business of government and not of people, and that people's only role in these functions is as an electorate to choose the officials responsible for carrying them out.

A key role spelt out for local government actors in some legal frameworks is that of allowing or actively enabling **citizens' participation in making decisions** which have traditionally been the business of government, or in some cases – whether explicitly or implicitly – government with donor and creditor agencies.

Citizens as joint decision-makers ...

... mandated by international institutions

For countries seeking access to debt relief under the HIPC II initiative, or concessional funding from the World Bank and International Monetary Fund, these institutions have made obligatory the production of a Poverty Reduction Strategy Paper, gener-

ated through a broad-based participatory process led by government. In principle,⁹ this should involve consultation at the local level and joint decision-making with poor communities on priorities for public action and public expenditure. However, being an initiative of the international financial institutions, and having been instituted recently (1999), this form of mandate for citizen participation in decision-making is not specifically written into any of the legal frameworks of the countries covered in this study.

... or invited by national governments

Switzerland has a deeply embedded culture of citizen participation. In 90 per cent of the local communes an annual assembly of all its citizens provides an opportunity to vote on important subjects. In the larger communes where this form of direct democracy is impractical, decisions are made by an elected council. Swiss citizens also have the right both to propose legislation of their own and reject legislation already approved by Parliament.

In Uganda in 2000, a referendum was held over the increasingly vexed question of whether the country should maintain its 'no-party' movement system or become a multi-party democracy in line with most African countries and with the preferences of key donor agencies on which the Ugandan economy depends heavily. The majority of voters elected to maintain the movement system for the present. The nature of the polity will be put to referendum once more in 2005.

Obligations in respect of **transparency and information provision** are placed on governments by many legal frameworks. In some cases these are promoted as citizens' rights in themselves; in others, they are seen as vital pre-conditions for informed, useful participation and/or as necessary, for reasons of consistency, in a framework which promotes more open governance. The degree to which they are promoted, and probably still more the degree to which they are met, varies with the degree to which participation is seen as a right as opposed to an efficiency-enhancing tactic, and with the facilities available to government. For example, in high-technology countries, the establishment of a website is an easy and relatively passive way for government to discharge such responsibilities.

The right to information

Transparency in government decision-making is only possible with open access to public documents. The right to information is becoming a legal reality in an increasing number of countries, but its implementation varies.

In the **UK**, the 2000 Freedom of Information Act gave citizens the right to access public documents on demand. In the **USA**, the 1966 Freedom of Information Act was succeeded by various state 'sunshine laws' allowing public access to government-held information. In both countries, the onus is on the citizen to demand information rather than on the authorities to provide it.

Both **Thailand** and the **Philippines** have constitutional provisions guaranteeing freedom of information, but implementing legislation has not yet been passed. In **Indo-**

⁹ In practice, Poverty Reduction Strategy processes have been less than participatory, in most countries stopping at the level of information-sharing or at best consultation without obligation. See McGee *et al.* (2002).

nesia, the anti-corruption law provides for access to information. In practice, bureaucratic tradition limits the right in all three countries.

Finally, in **India**, freedom of information has been the subject of a civil society campaign. The movement led by the Rajasthani group Mazdoor Kisan Shakti Sangathan (Workers and Farmers Power Organisation – MKSS) has highlighted the link between lack of transparency and corruption (Jenkins and Goetz, 1999). Following freedom of information legislation in several states, the government passed a national Freedom of Information Act in 2002.

Which enabling structures need to be put in place and maintained?

Perhaps the most important support is the provision of adequate **information**, referred to above, and the lowest ‘rung’ on the ladder of participation shown in Section 1.2. A vast range of mechanisms for information transmission are in operation, from passive means such as the establishment of government websites in countries with high information technology capacity to active means using far lower technology in less technologically advanced countries.

The scope to take up opportunities for citizen participation depends heavily on citizens possessing the right **skills**, and to some extent, on government actors having the right skills to reach out to citizens. Civil society actors sometimes act as the providers of the support, or sometimes as the beneficiary. A notable example comes from the Philippines.

Skills sharing within civil society

In the highly evolved and differentiated civil society of the Philippines, a prime role of NGOs is to providing training to community-based organizations and groups of the public on how to engage with government actors. NGOs also provide training to local government actors on how to engage with civil society.

Part of the support needed is **financial**: participation costs money. This issue is discussed further below. Suffice it to note here that, unsurprisingly but ironically, more funds tend to be available for fuelling participatory processes in wealthier societies, where the principal barrier to people giving their time is often apathy or disinterest, than in poor societies – or poor communities within wealthy societies – where a major barrier tends to be the income-earning opportunities people miss while participating.

It appears that the more sophisticated the institutions in a given country, the greater the recognition of the need for support structures and the more adequate the provision of them. Northern countries, and southern countries with well-developed civil societies, are where we see most in existence, and countries with a relatively weak or young civil society are where we see least.

Which resources are needed?

Some legal frameworks establish criteria and regulations for **resource allocation** across the various levels of government and for **revenue-raising** by the various levels. Pronouncements on these issues in legal frameworks, however, often mask the fact that

amounts to be allocated at local government's discretion are usually minimal, and that the great majority of transfers from the centre tend to come earmarked for particular sectors, activities or destinations, to ensure that local government has enough funding to fulfil its obligations as service provider, contractor or regulator.

Conspicuous by its absence is the question of how mechanisms and processes of citizen participation are themselves to be resourced, or any recognition of the cost-benefit calculations that citizens will make in deciding whether to engage in local governance processes or not. It is a reasonable supposition—and one upheld by some evidence encountered in this study—that the closer to local people the control over resources is located, the greater their incentives to participate and the more lively their participation. In general, this area emerged as being definitive in terms of garnering citizens' interest and participation, and critically important in terms of whether citizen participation can make a difference to people's lives or not. However, there are few cases where the control over resources lies very low down in the system. In most, resource allocation patterns show a heavy bias towards financing local governments' service delivery obligations and not enough on **resourcing the establishment and maintenance of functional interfaces with citizens**. This suggests weak understanding of the connections between resource issues and the quantity, quality and impact of citizen participation in local governance.

Providing resources for citizen participation

The UK's Neighbourhood Renewal Scheme, launched in 2001, contains both financial and organizational support for increasing citizen participation in local governance. The scheme provides extra resources for 88 of the country's most deprived local authorities. Decisions on how the money is to be spent are left to individual authorities. This operates in conjunction with the local strategic partnership, which aims to develop new ways of involving local people in how services are provided.

In **Thailand**, the 1997 Constitution includes decentralization measures which give more power to local authorities 'for the purpose of independence and self-determination of local affairs' (cited in Rocamora, 2003: 14). This includes empowering local governments to collect certain kinds of tax. In 2000, the local share of revenues was only 12 per cent. By 2007, this is supposed to go up to 35 per cent.

3.2 Context

Beyond the existence of comprehensive and progressive legal frameworks, what else is needed to improve the intensity or effectiveness of the interaction between citizens and government actors at the local level? Indeed, what is needed to make these frameworks comprehensive and progressive in the first place, and to ensure that they have any effect? The premise that context would prove to be a critical determinant of the legal frameworks in place today and of how far they enable or constrain citizen participation, was overwhelmingly validated by the case studies. History, politics, socio-cultural structures, economics and the configuration of social actors stand out as major influences.

Several analytical lenses emerged in the course of our research for analyzing the influence of context. Any or all of these can apply to any given country or region, and to understand fully the importance of context, it is helpful to use more than one of them at once. As shorthand, we refer to them here as conceptual terrain, historical context, actor context and regime context.

Conceptual terrain

In most countries governance is currently conceived, discussed and enacted in terms of 'democracy', 'participation', 'citizenship' and 'decentralization'. Although many of the legal frameworks we examined expressly seek to promote and consolidate these principles, relatively few define them. Moreover, the normative definitions which are explicit or implicit in laws or policies often differ from popular understandings which might, in the end, be more germane to practice than normative definitions.

It is therefore difficult to give an overview of the conceptual terrain in which legal frameworks emerge, from which they derive legitimacy and to which they add meaning. The point, though, is that this conceptual terrain is shaped by 'global' discourses of democracy, participation, citizenship and decentralization, which largely emanate from, and are propagated by, international institutions and official bilateral aid agencies. Legal frameworks relating to participation bear little witness to national and local manifestations of these concepts, despite the fact that these exist and generally pre-date the widespread explosion of the 'global' discourses, and only partially coincide with them.

Historical context

The historical contexts in which legal frameworks for participation emerge shape them in two principal ways. Firstly, in most countries of Asia, Africa and Latin America, colonial history and the governance patterns established in the aftermath of independence shape the laws themselves and the spaces they provide. The East African and Latin American regions offer an example of this.

Distinctive colonial legacies

In **East Africa**, colonial systems of government operated within artificial national borders, sitting uncomfortably on top of traditional governance structures in which ethnic and territorial identities were paramount. Post-independence attempts to maintain the institutions of western democracy soon encountered problems, in many cases with strong ethnic undertones. These attempts were succeeded by centralized authoritarian regimes, which allowed for little participation, and more recently by single- or non-party regimes, which assign a limited role to the institutions of representative democracy but purport to 'contain' ethnic tensions and to promote the participation of 'the people' – of all ethnicities.

In **Latin America**, one legacy of Spanish and Portuguese colonialism has been a recurrent tendency towards military intervention in governance since the nineteenth century. Today's crop of social-democratic constitutions and participation laws across the continent grew out of the struggles by civil society and political opposition groups to overthrow authoritarian regimes. As such, many of these accord a

significant role to civil society as an important source of checks and balances in the post-authoritarian polity, as a safeguard against authoritarianism and as a compensation for civilians' exclusion from any kind of participation during military regimes.

A second vital aspect of historical context is the extent to which legal frameworks for participation appear as a consequence of demand from below, or as a consequence of implantation from above. For example, as cited above, in most Latin American countries social movements rooted in opposition to dictatorships provided the initial momentum for much legislation on participation, but there are variations within that region in terms of where the demand came from.

Demand from below or implantation from above?

Brazil, where legal and constitutional provisions for participation are very much the fruits of the social movements' efforts, stands out as a case where civil society organizations and groupings make intensive use of the opportunities the legal framework provides.

In **Mexico City**, however, the law of participation came after 70 years of 'institutionalized dictatorship'—a system with one very dominant institutionalized party which nonetheless maintained other trappings of representative democracy—and was introduced by the city government as a way of encouraging a politically comatose citizenry to participate in the affairs of their city. The general level of citizen engagement with this legal framework is far weaker than in the case of Brazil or most other Latin American cases, where frameworks arose at least partly in response to popular demand.

The phenomenon of introduction 'from above' of legal frameworks for participation reflects the pervasiveness of contemporary global discourses on democracy and participation, as discussed above.

From above or from outside?

A case driven by donor discourses ...

In **Uganda**, as in other East Africa cases, the international donor discourse of participation, in which the Local Government Act (the mainstay of Uganda's legal framework for participation) is couched, is highly pervasive not only at the level of central government institutions and in international aid circles but also at the district level and below. However, at these lower levels the breach between rhetoric and practice, and the absence of a grounded understanding of how the concept should translate into practice, are striking.

... versus a homegrown model implanted from above

In 1992, the 73rd and 74th Amendments to the **Indian** Constitution were passed, introducing a third, local tier of governance with a wide democratic base. This was known as the Panchayati Raj institution and included representative structures as far down as village level. For the first time, women and marginalized caste groups had the opportunity to participate in local-level politics. However, in practice the *panchayat* system has experienced a variety of implementation problems. Women's participation is frequently inhibited by rigid patriarchal structures. Many members of the *panchayats* are illiterate, and few have prior experience of local governance. There has been progress in participation at the local level, but not of the magnitude envisaged by the writers of the amendments.

Actor context

The range of actors that play a significant role in the adoption and implementation of legal frameworks for citizen participation goes beyond the obvious two: government and civil society. In any case, in this context ‘government’ needs to be viewed as actors operating at several levels with different contexts, room for manoeuvre, knowledge, incentive frameworks and political agendas. Civil society, as many commentators have pointed out elsewhere (for instance, Nelson and Wright (1995); Gaventa (2001)), is heterogeneous, and differences are particularly marked between civil society actors based in capital cities and those based in low-level administrative centres or rural areas. Besides these two already complex groups, two more actor groups emerged as having an important, if less central, role: international donor and creditor agencies, and political parties, classified by some as part of civil society but by others as distinct and belonging to ‘political society’ (Howell, 2001: 54).

Each of the groups of actors matters in two respects: firstly, in the sense that one or all of them can have an active role in securing the adoption of legal frameworks for participation; and secondly, in the sense that frameworks, once put in place, are only brought to life by actors using them. Across countries, different groups of actors have contributed to different degrees to the adoption—and in some cases (for example, Brazil) the actual formulation—of legal frameworks. Where civil society actors have participated in formulating legal frameworks, this can be seen as a form of citizen participation in non-local (national, federal or state level) governance which serves to facilitate citizen participation in local governance.

Knowing the lawing the law

In **Indonesian** and **Philippine** civil society, considerable familiarity with decentralization laws, especially their provisions for greater participation, have empowered civil society groups and made for a more intense utilization of opportunities than in other countries where public and CSO awareness is lower.

Interpretation and use of legal frameworks can be at one extreme reactive, minimalist and a mere formulaic observance of the law, or at the other, proactive, maximalist and the creative exploitation of all the opportunities the law explicitly provides for—plus some that it does not provide for but implicitly allows or does not explicitly prohibit. How different groups use the legal framework is intimately connected to other contextual factors considered above; in particular, whether or not they were instrumental in securing its adoption and, in the case of civil society organizations, whether they themselves have developed as a challenging counter-balance to government (as in much of Latin America, some of South-East Asia and South Asia) or have been ‘developed’ by more powerful actors—governments and donors—to fill a perceived gap in the governance structure. The ability of civil society actors to exploit legal frameworks is also contingent on what status the legal framework confers on them: whether or not it casts them as actors with a legal right (or even a responsibility) to participate. The following describes the contrasting government stances as can be found among the northern cases covered.

Participation as a right?

The governments of both Switzerland and Finland have a constitutional obligation to encourage citizen participation in local governance. Both countries interpret par-

ticipation as a right, and seek to promote it as well as simply legislating to allow it. In the UK and New Zealand, meanwhile, both governments actively promote information provision and consultation, but no more intensive forms of engagement. The UK's 1999 Local Government Act refers to local councils' 'duty to consult', and similar language is used in New Zealand's 2002 Local Government Act.

Contrasting civil society positions are found in Indonesia and the Philippines.

Civil society in Indonesia and the Philippines

In **Indonesia**, civil society is only just confronting the challenges of participating in local governance and is still unsure how to make the most of legalized opportunities.

In the **Philippines**, however, an experienced, highly sophisticated and adaptable civil society exploits legal spaces and holds government to account in myriad ways over the many provisions for participation that exist. The maximization of opportunities for participation in local government processes are directly linked to claims made by these citizen groups.

Following the defeat of the Marcos dictatorship by a civil society-based anti-dictatorship movement in 1986, a new constitution was ratified in 1987. This included a strong bill of rights and commitments to decentralization, and increased citizen participation in governance. In 1991, a local government code was passed which provided clear guidelines for decentralization. Its elaborate provisions represent the most carefully outlined and most extensive decentralization of the three South-East Asian countries included in this study.

Fiscal decentralization has been accompanied by the transfer of some legislative powers to local government. This progressive code has opened up many opportunities for citizen participation in local governance, both explicit and implicit. Over a decade of organized local governance work by civil society has, in turn, equipped many citizen groups with the ability to exploit these new opportunities.

To a great extent, the way that government and civil society engage with legal frameworks for participation can be seen to mirror the state of democracy and level of development of citizenship in any given country, although in the absence of universal benchmarks against which to calibrate these phenomena it is difficult to generalize. Yet, as with the state of democracy or citizenship, engagement with legal frameworks must be understood as a dynamic rather than as a static state of affairs. Frameworks themselves affect the internal composition and nature of actor groups, for example by assigning to citizens the right to participate, or establishing representative structures as mechanisms for participation. In many frameworks the emphasis is precisely on *who* can participate in *which* democratic processes or spaces, and various approaches are taken to this. It has been observed, too, that the introduction of officially organized forms of participation can give rise to perverse dynamics in the formation of organized civil society and relations within it. Two cases in point are noted below.

Manufacturing 'civil society' into organs for participation: Illustrations from Bolivia and South-East Asia

The 1994 Law of Popular Participation in **Bolivia** introduced the figure of the

Organización Territorial de Base or OTB as the recognized unit of organization for civil society to engage in the channels for popular participation created by the law. The figure is a legal one, emphasising territorial rather than social or political identity or interest, superimposed on existing social organizations. Its introduction disconcerted existing civil society organizations and anecdotal evidence suggests it played a part in the fall in participation observed by the late 1990s, in comparison to the situation when the law was introduced.

In **Thailand**, observers express concern over 'democrasubjection', or the subjection of people to imaginary forms of self-rule (Connors, 2001, cited in Rocamora, 2003). This term captures 'a process of cooption of local resistances in which moderate section are tamed and mainstreamed' (Orlandini, 2003: 15) into officially created spaces or large aid agency programmes. In **Indonesia** in recent years, since new democratic reforms commenced, a class of NGO has sprung up which is referred to by others in civil society and elsewhere as 'consumers of democracy'.

Accentuating the dynamic nature of citizen engagement in local governance is the fact that some of the spaces and processes legislated for actually promote joint action between government and civil society, which may affect each group's internal dynamics and the relationship between the two groups.

To turn to the actor groups whose role is less immediately obvious, in various southern cases covered by this study the influence of international donor and creditor agencies was noted repeatedly. The most pervasive way that this influence is exercised, though often the least perceived, is perhaps the production and promotion of all-embracing, universalizing, naturalizing discourses.¹⁰

The influence of donor discourses

In specific countries the role of donors has been very prominent. For example, in **Indonesia** democratic reforms after the fall of Suharto in 1998 have been rewarded with massive donor funding. Much of this is going to a nascent civil society with as yet no clear project and low absorption capacity. The influx of donor funds has spawned thousands of new NGOs, and increased incentives for all civil society organizations to engage in advocacy on policy issues, even those older ones whose expertise in fact lies in delivery of services. Many of the new NGOs, arising in response to opportunities to access donor funding, are in fact 'fly-by-night' operations set up by local elites.

Political parties also merit discussion. As organs of formal representative democracy they exist almost everywhere (noteworthy exceptions being Uganda and, until very recently, Indonesia). Most have now undertaken measures to improve their own internal representativeness by promoting the participation and occupation of party office by actors belonging to minority or relatively disempowered population groups. Yet in the course of this research, the team found itself distinguishing between 'progressive political parties' and others, the former denoting parties that have their roots in social movements rather than in social and economic elites, and actively promote a participa-

¹⁰ Interesting discussions of such discourses are found in Cornwall 2001 and Brock et al 2001.

tory model of democracy rather than operating as organs of minimalist representative democracy. Examples were Akbayan in the Philippines and the PT (Partido dos Trabalhadores or Workers' Party) in Brazil. While the research did not focus on political parties, the identification of these two 'progressive' ones raises issues about the potential role of parties in reinvigorating democracy where it is tending to stagnate – as in several northern countries and some Latin American countries – through broadening their role beyond that conceived for them in models of electoral representative democracy.

Political parties and representation

Many of the countries looked at over the course of this study have adopted or experimented with policies to make political parties more representative of their constituencies. For example, the **UK's** Labour Party came to power in 1997 with a policy of quotas for female Members of Parliament.

In **Nepal**, Article 114 of the Constitution requires that at least 5 per cent of the candidates in a party seeking election be women.

Regime context

Closely related to historical and actor context, or indeed perhaps just an alternative way of presenting it, is the issue of regime type. For the purpose of understanding the scope and effectiveness of citizen participation in local governance, countries can be approximately classified according to their degree of authoritarian or democratic character. Roughly speaking, three types can be distinguished:

- **Authoritarian regimes:** Absence of institutions of representative democracy or effective civil and political rights or freedoms.
- **Elite democracy** (or electoral democracy): Formal institutions of representative democracy and civil and political rights exist, but limits to effective citizen participation prevail.
- **Participatory democracy:** Representative democracy plus legally mandated forms of direct democracy and citizen participation in accountability mechanisms for appointed and elected officials.

The typology can be applied to all countries but perhaps is especially useful in understanding those that are in the process of emerging from relatively recent authoritarian rule, which includes most of those we covered in Latin America and South-East Asia. It refers both to legislative developments and to institutional and actor emergence and (re-) positioning. No country covered in the study represents the ideal-type of a participatory democracy, but many lie somewhere on the spectrum between elite democracy and a more participatory ideal – and in recent years have shifted towards the latter. These three types should not necessarily be seen as lying on a continuum along which countries automatically progress over time. In fact, some have jumped back and forth rather than progressing in a linear way from authoritarian to elite democracy, and thereafter towards participatory democracy.

A limitation to regime-type characterization is that it is at the national level, and thus rather a blunt instrument, obscuring the fact that a country might show different char-

acteristics at the national level from those in some localities, or might show intensive citizen participation in certain areas (for example, fiscal accountability) and little in others (for example, policy formulation). Below we illustrate this point using South-East Asian examples:

Prospects for transition from elite to participatory democracies

All three South-East Asian country cases studied can be classified as elite democracies, although they have all undergone recent democratic transitions. New initiatives in citizen participation are most developed in the Philippines, but it is in Indonesia and in Thailand that the possibilities for citizen participation in future are greatest, because both countries are in the throes of quite substantial decentralization. On the other hand, while the Philippines is at the national level an elite democracy, within this elite democracy there are promising pockets of experimentation in more progressive participatory democracy in certain localities.

Nonetheless, regime-type characterization can be useful when looking across countries, relating historical and actor context to the current nature of a democracy and attempting to extrapolate from current situations to future scenarios.

What is clear from the foregoing is that several contextual factors are significant variables in determining what sort of legal framework emerges in a given setting, and how far it functions in practice to enable citizen participation in local governance. In the final and concluding section, we draw some lessons from this discussion of legal frameworks and their contexts.

4. LESSONS AND CONCLUSIONS

In this section we first return to the objectives presented in Box 1.1, and assess to what degree they have been met, and then summarize lessons and conclusions that can be drawn in line with those objectives.

Predictably, given the desk-based nature of this study, the second of these objectives has proved difficult to achieve to a satisfactory extent or with any degree of uniformity across case studies. The need to synthesize existing knowledge about how frameworks function in practice remains, and heavily informs our conclusions below in respect of areas for further research. There are, however, several conclusions that can now be drawn in respect of the first and third objectives. Our conclusions touch on issues relating to legal frameworks themselves, and on issues of context, accompanying factors and potential replication. What kind of legal framework best enables citizen participation in local governance? And, given that even with a legal framework in place the amount and effectiveness of citizen participation that ensues is subject to several other variables, which additional factors have been identified in this research that constrain or enable citizen participation? These two questions are addressed below.

4.1 What kind of legal framework is most effective in promoting citizen participation in local governance?

Various dimensions of the legal frameworks analyzed can be placed along continua and the more enabling or more constraining extremes identified. The table below sets out the dimensions in which frameworks differ from each other, arranging these to show which appear to be more enabling and which more constraining for effective citizen participation.

Table 4.1.1

Enabling characteristics of legal framework		Constraining characteristics of legal framework
Promulgated in response to demand from below and with citizen inputs.	↔	Imposed from above without groundswell of popular demand, and overly inspired by prevalent international discourses and tendencies to the neglect of home-grown discourses and in-country or regional aspirations and sources of inspiration.
Seeks to strengthen and improve institutions of representative democracy by better representation of those with least voice, better quality of representation and performance, and by complementing with mechanisms of participatory democracy.	↔	Seeks only to make the institutions of representative democracy work better, not to challenge these or extend governance relationships beyond them.

Table 4.1.1 (continued)

Enabling characteristics of legal framework		Constraining characteristics of legal framework
Recognizes people and civil society organizations as citizens with rights, including the right to participate in governance and auxiliary rights.	↔	Treats people and civil society organizations as relatively passive subjects, to be engaged with only in non-binding consultations at a relatively late stage of decision-making.
Builds in accountability measures that ensure representatives can be recalled and government actors held to account for poor performance.	↔	No accountability measures, or measures that are impracticable in real-life situations.
Provides for or contemplates in future a significant degree of fiscal decentralization and citizen participation in fiscal processes, as both an incentive to citizens to participate in local governance and assurance that local government can allocate resources to participatory processes.	↔	Centralized power retained over fiscal matters—revenue-raising and allocation—or no participation envisaged in them, contradicting spirit of decentralization and citizen participation and reducing incentives for citizen involvement in local governance.
Law(s) accompanied by set of operational guidelines, policies or capacity-strengthening measures to ensure that the relevant actors are enabled to apply them.	↔	Excessive reliance on laws and on a legalistic approach to the neglect of operational guidelines or the provision of practical support and capacity-building for implementation.

4.2 What else is needed as well as a legal framework?

Beyond the nature of the legal framework itself, additional factors that have been identified in this research as constraining or enable citizen participation relate to the historic and cultural setting, the nature and background of the actors involved and the availability (through legislation or other channels) of ‘auxiliaries’ to facilitate the operationalization of laws and promote citizen participation. Again, these dimensions of context can be represented as continua, as shown below:

Table 4.2.1

Enabling features of context		Constraining features of context
As well as disposition and commitment from above to participation, a strong demand from citizens and civil society actors below, which implies a relatively mature and strong—or strengthening—civil society.	↔	Weak, immature or inexperienced civil society and government with weak commitment to participation in local governance.

Table 4.2.1 (continued)

Enabling features of context		Constraining features of context
Advanced process of political, administrative and fiscal decentralization.	↔	Limited or early-days decentralization of all kinds, or tightly restricted fiscal decentralization.
Relatively open, trusting relationship between citizens and state.	↔	State–civil society relations marked by mutual mistrust and lack of familiarity, as in immediate wake of authoritarian regime.
Discourses of participation, governance, decentralization and democracy locally derived, or if from elsewhere, strongly appropriated and adapted to national setting.	↔	Discourses of participation, governance, decentralization and democracy borrowed wholesale with no attempt to translate and adapt for the national context.
Existence of progressive political parties with their roots in democratization movements and/or social movements and strong commitment to internal representativeness and transparency, and to participatory democracy.	↔	No political parties (as in ‘no-party’ states) or limited freedom for political opposition parties, which tends to favour conservatism and preclude pressure on government for change of a progressive sort.
A culture of ‘bureaucratic hygiene’, openness and transparency, including information disclosure policy and measures of active disclosure.	↔	A culture of corruption and/or lack of transparency, which generate resistance to opening up governance processes to scrutiny or interference.
Other laws and policies that are supportive of, or at least consistent with, participation legislation.	↔	Contradictions between participation legislation and other laws and policies, or incomplete legislation leading to ambiguities and stalemates in implementation.
Ongoing momentum for and commitment to movement along the spectrum from elite towards participatory democracy.	↔	Political transition (e.g. from authoritarian regime to elite democracy) seen by government and/or civil society as finite process, now concluded; conformity with status quo.
Opportunities for experimentation, adaptation and innovation within and outside the spaces provided by legal framework, by state and non-state actors.	↔	No spaces for experimentation or innovation, through excessively tight and restrictive framework.

What of the scope for replicating or transferring a given legal framework from one context to another? The number of frameworks in existence today, and the analysis of them in this report, provide a basis for designing a ‘good’ framework with maximum

likelihood of being effective. Yet no matter how carefully a legal framework is put together to reflect the latest analysis of what works and what does not, effectiveness is contingent on the context in which it will be applied.

Thus, it is useful and strategic for countries without legal frameworks for citizen participation (or with weak or incomplete ones) to draw on existing and relatively effective frameworks and on the lessons synthesized here, since doing so can help avoid replicating constraining aspects and promote enabling aspects. At the same time, it is vital that legal framework design—and related expectations—are based on a solid and realistic analysis of context. It is also clear that for maximum effectiveness, a legal framework should not be designed and applied on its own but with a set of accompanying measures, particularly in respect of capacity-building, transparency and information provision. Of all the contextual factors noted above, these are perhaps the ones likely to encounter least resistance and the most amenable to improvement over a short timeframe.

4.3 Areas for further research

Consonant with its strong validation of the premise that legal frameworks are important but not sufficient, and that contextual factors are of paramount importance in determining what works in any given place, this study has illuminated with great clarity several areas where more work is needed in future. Some of the key ones are:

How frameworks for participation in local governance are experienced in practice, by any of the various actor groups involved

To research this would require an empirical approach and the adoption of a multi-actor perspective which drew on the views and experiences of not only civil society and government actors but also those two sets of actors whose influence may be considerable but who are less visible—donor and creditor agencies, and political parties. Further, given the multiple levels of government that are often harboured within ‘local governance’ and the considerable differences between civil society organizations at the various levels, this research topic is best suited to a ‘vertical slice’ approach which cuts through ‘local governance’ from the highest level of local government (district, province or department) down through intermediary layers to the most micro level of the community or neighbourhood. Research on this topic could provide insights as to how marginalized groups can utilize the spaces or deficiencies in legal frameworks for participation to achieve more effective participation in local governance than they current enjoy, whether via advocacy strategies or via opportunistic exploitation of the spaces and gaps left.

The historical and contemporary roles of various actors in getting frameworks introduced and influencing their scope and provisions

In some countries with a recent history of civic struggle against authoritarianism there is a wealth of secondary literature available, some of it comparative across countries or even regions, that could shed light on this question. To make a contemporary assessment of various actors’ roles, however, would necessitate empirical research, again drawing on the perspectives of variously positioned actors who will inevitably differ in their versions of events and their attribution of outcomes and influences.

Civil society occupation of the spaces that are opened up by legal frameworks, and in particular, participation that occurs in spite of, not because of, legal frameworks

Our research suggests that some instances of citizen participation in local governance arise in spite of, not because of, legal frameworks. A particularly interesting case in point is the social mobilization and protest that has rocked Bolivia since 2000, despite that country having perhaps the most extensive and sophisticated legal framework in the world for citizen participation. Some advances have already been made in researching and theorizing the various spaces – institutionalized and non-institutionalized – in which citizen participation happens, and in understanding their dynamics and scope (Brock *et al.*, 2003; Brock *et al.*, 2002; Brock, Cornwall and Gaventa, 2001; Cornwall, 2002; IDS, 2002; Jones and SPEECH, 2001; McGee, 2002), but these tend to be either case studies of a single country or even a particular locality, or at a fairly abstract level. Systematic and wider-scale empirical and secondary research into cases of civil uprising and social unrest, apparently spontaneous and autonomous of the state no matter what provision that state might make for legal and institutionalized engagement with civil society, would greatly enrich the existing material and offer new insights into the choices made by advocacy and activist actors.

Fiscal decentralization and its relationship to citizen participation

Fiscal issues arose in this research as both key constraints and key enabling factors. There appears to be a positive relationship between the degree of fiscal authority (for both revenue raising and resource allocation) decentralized to local levels and the degree to which citizens feel an incentive to participate in local governance. On the other hand, citizen participation in fiscal spaces (such as the formulation, execution and monitoring of local government budgets) appears more limited than in other areas for a range of reasons, among them knowledge and capacity in the field of fiscal policy and instruments. Moreover, the question of resource needs for nurturing participation is as yet unaddressed, even unasked, in most of the cases we studied. Analysis of the degree and extent of citizen participation in fiscal dimensions of local governance, and attitudes and prospects in relation to resourcing citizen participation at those levels, could ultimately help to relieve several of the constraints on citizen participation identified in the present research.

Some of these outstanding issues are being addressed in ongoing work within LogoLink and its partner organizations. A multi-country research project on 'Participation and Fiscal Spaces' is being launched in 2003 by LogoLink to be carried out jointly with regional and other partners. It aims to improve knowledge on citizen participation in processes of fiscal decentralization; generate lessons for analysts, policy-makers and civil society activists on successful experience from specific country contexts; and demystify fiscal issues by opening up the debate on policy and practice and widening opportunities for citizen participation. The regional LogoLink partner for South-East Asia is following up the research on 'Legal Frameworks' with a research project on 'Civil Society Engagement with Local Government in the Philippines, Indonesia and Thailand'. It is anticipated that other questions outstanding will be taken up and addressed in LogoLink activities in the programme's forthcoming two-year phase, and that the work of other actors and networks towards addressing them will be monitored by LogoLink with interest.

In conclusion, then, an effective legal framework can contribute to promoting citizen

participation in local governance. The degree to which it can do so depends on a number of contextual factors, and on the extent to which the legal framework represents an attempt to enhance representative democracy with participatory measures, or simply to improve the efficiency of institutions of representative democracy. We can reaffirm our premise that the existence of a legal framework is not a sufficient condition for effective participation to ensue. But, having looked at legal frameworks themselves rather than at situations where they do not exist, we cannot pass judgement on how necessary a framework is, nor on a whole series of subsidiary and related questions and issues that have arisen in the course of the research (in 4.3 above). The research is, then, but an early contribution to what we hope will be a long and sustained dialogue with partners, collaborators and students of local governance, and we look forward to future exploration of the outstanding questions.

ANNEX I: REFERENCES FOR AVAILABLE LAWS AND POLICIES

All hard copies listed here are held in LogoLink's resource collection at the Institute of Development Studies, UK.

Latin America

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Switzerland

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Finland

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USA

www.ids.ac.uk/logolink/legalframeworks

New Zealand

www.ids.ac.uk/logolink/legalframeworks

ANNEX II: COMPONENT STUDIES OF THIS RESEARCH PROJECT AND HOW TO ACCESS THEM

The following are all (at the time of writing) unpublished research reports. Those which constituted regional reports for the study are all available on the LogoLink website (www.ids.ac.uk/logolink/legalframeworks) and can be downloaded. Those which constituted country or case studies are not available on the LogoLink website. For each of these, we provide the contact details of the respective regional partner organization that commissioned the country or case study, so that interested parties can seek access to it by contacting the commissioning organization.

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