

CITIZEN PARTICIPATION BY PARTICIPATORY BUDGETING: DOES THE LEGAL FRAMEWORK IN ECUADOR ENCOURAGE ITS ADOPTION?

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ABSTRACT

Citizen participation (CP) attempts to bring citizens closer to tangible and visible processes of governance and development, and participatory budgeting (PB) is its most representative strategy. In Ecuador, CP was promoted in the Constitution of 2008 under the government of the political party Alianza País, which sought to establish a participatory policy approach. This study makes qualitative and quantitative analyses of the legal framework in Ecuador to determine whether the legislation provides and promotes the necessary guidelines for adopting PB in local municipal governments. Furthermore, the interest of Ecuadorian legislation is to stimulate the adoption of mechanisms of CP. However, the legislation does not provide clear guidelines on the budget to be allocated through PB and a methodology to prioritize the works to be executed. These aspects and CP depend on the political will of authorities.

Keywords: Local Government, Governance, Legislation, Citizen Participation, Participatory Budgeting.

INTRODUCTION

Citizen participation (CP) is understood as “a social process that results from the intentional action of individuals and groups in search of specific goals according to diverse interests and concrete contexts of social relations and power” (Velásquez and González, 2003). Citizen power was first evident in the networks that had autonomy of action. These networks accumulated knowledge by acting inside or outside the rule of law, with the spontaneous emergence of specific, temporary, or local debates, and the consolidation of professional groups of socio-technological orientation that supported local development (Salazar, 1998). Citizen power is evident when requesting the socialization of an issue, making decisions, giving opinions, participating in initiatives, and supervising the work of citizens, among other circumstances.

CP processes can be strengthened by gaining the recognition of the State, changing public policies, and institutionalizing participatory procedures and instruments to guarantee the permanence and consistency of a desirable action (Aguirre, 2014). Garrido and Montecinos

(2018) have shown that the existence of laws that favors CP and the political will of local authorities contribute to the success or failure of CP.

Since the mid-1990s, Latin American countries have adopted or are implementing national laws as well as municipal, regional, provincial, or state regulations that encourage CP (Massal, 2010). In Mexico, many laws establish the existence of institutional forms of CP, including participatory councils and work committees (Arzaluz, 2013). In Peru, laws related to CP mandated that regional, provincial, and municipal governments become involved in the formulation, debate, and consultation of development plans and budgeting through cantonal councils and public assemblies (Goldfrank, 2006).

In Ecuador, country with a population of 17,373,662 people, is in South America, it has an area of 256,370 km². Rafael Correa's government, under the political party Alianza País with its government model known as the Citizen Revolution (2007 to 2017), was focused on adopting a government model based on CP. In 2008, a new Constitutional Charter of Rights was approved and passed laws that, in theory, encouraged CP, under the assumption that less participatory governments would not return.

In this context, participatory planning emerges in the framework of CP and is reflected in the approach known as participatory budgeting (PB), which is a modality of local democracy (Som-L and De Facci, 2017) defined as a collective decision-making process (Walczak and Rutkowska, 2016) for allocating local investment budgets (Diez, 2009) and helping reduce the distance of local governments to the public sector (Swaner, 2017) by allowing citizens to propose projects that use a varying percentage of the municipal government budget (Annunziata, 2011). PB is the primary mechanism used for developing local communities because of its significant role in the planning and execution of activities in a specific area.

Cabannes & Lipietz (2018) reported that the rationale behind using PB in practice was related to politics (for a radical democratic change), good governance (to improve the relationship between the public and the citizens), and technocracy (to optimize the use and transparency of public resources for the benefit of citizens). PB is an instrument that allows citizens to control local development processes through decision-making on the use of local resources and implies co-responsibility in budget allocation and execution. This process also involves citizen oversight, which guarantees the proper use of resources, as well as accountability to create transparency.

In Ecuador, starting in 2008 (Salas, 2020), citizen participation is strengthened. The Transparency and Social Control Function is created in the country, integrated, among others, by the Council for Citizen Participation and Social Control (CPCCS). The CPCCS oversees promoting and encouraging exercises related to citizen participation, through the creation of public policies and the implementation of mechanisms that allow promoting active citizenship. Community social management reinforces consultative mechanisms for an inclusive and participatory democracy (Racines, 2017), especially strengthening the application of the PB. The PB seeks to satisfy the needs of the communities, direct actors of the progress of the national economy, their needs, capacities and finally their direct control over the resources and their destination (Carrión & Masaquiza, 2020). The Ecuadorian communities have designed the application of the PB considering the multiethnic composition and the economic conditions of

their populations, Ecuador is a country where the indigenous population of Ecuador is close to 1.1 million, out of a total population of 17,200,000 inhabitants, with 14 indigenous nationalities.

The application of the PP requires the fulfillment of several factors to achieve its success (Alguacil, 2014). One of these factors consists of having a legal structure that offers the guidelines and incentives for its application. Ecuador, as mentioned in previous paragraphs, has been trying since 2008 to strengthen citizen participation in its local governments, therefore, knowing if its regulations favor the promotion of the PB is crucial for its democratic strengthening. The research resolves the question as to whether the legal framework in Ecuador establishes and promotes the necessary guidelines for the adoption of PB in municipal governments, known as Decentralized Autonomous Governments (DAGs) Municipal in Ecuador.

METHODS

In this study, it was carried out through a type of descriptive and documentary research, through the following process:

1. The Ecuadorian regulations that are related to Citizen Participation and, therefore, with the Participatory Budget were compiled. The regulations analyzed were a) Constitution of the Republic of Ecuador (2008), b) Organic Code of Territorial Organization, Autonomy, and Decentralization, in Spanish Código Orgánico de Ordenamiento Territorial, Autonomía y Descentralización–COOTAD (2010), c) Organic Law of Citizen Participation, in Spanish Ley Orgánica de Participación Ciudadana–LOPC (2010), and d) Organic Code of the Planning of Public Finance, in Spanish Código Orgánico de Planificación de las Finanzas Públicas–COPFP (2010).
2. Using the qualitative analysis software Nvivo, the regulations were classified into analysis categories: 1) Bases and principles of PC; 2) PB: characteristics, composition, calls and processes; and 3) municipal DAG: attributions and powers.
3. Based on these categories, matrices were created that contain the number of articles defined in each law.
4. Finally, the relationship between categories and laws is explained in the results.

RESULTS

The results are presented according to CP and PB categories (Table 1):

1. Foundations and principles of CP,
2. PB: characteristics, composition, call, and processes
3. Municipal DAGs: attributes and competencies.

Foundations and principles were the most common themes in the legislation related to CP and PB in Ecuador. The Constitution of the Republic of Ecuador (2008) and COOTAD (2010) are the laws most related to these themes. COOTAD is responsible for developing a model for compulsory and progressive decentralization through the national system of competencies, the institutions responsible for managing this system, the funding sources, and the definition of policies and mechanisms to compensate for imbalances in local development (Art. 1). The Citizen Participation Law (2010) is focused on providing general guidelines for adopting PB and

is mandatory for all Ecuadorian citizens and public and private institutions that manage public funds or develop activities of public interest (Art. 2).

	Constitution of the Republic of Ecuador of 2008	Organic Code of Territorial Planning, Autonomy, and Decentralization	Organic Code of Public Finance Planning	Organic Law of Citizen Participation	Total
Foundations and principles	71%	36%	44%	35%	43%
Characteristics of participatory budgeting	0%	0%	0%	10%	4%
Composition and call of participatory budgeting	0%	0%	0%	45%	19%
Process of participatory budgeting	0%	0%	44%	10%	21%
Attributes and competencies of decentralized autonomous governments	29%	64%	12%	0%	13%
Total	100%	100%	100%	100%	100%

Foundations and Principles of CP

The Constitution of 2008 addresses the impact of the participation of the citizens of Ecuador in government provisions and decisions (Racines and Suárez, 2018). Carrera (2015) emphasized that this Constitution changed participation rights and institutionalized public control. The rights involve free, intercultural, inclusive, diverse, and participatory communication in all areas of social interaction, by any means and form, and gives the citizens the rights to demand changes in government processes (Art. 16). This power is reinforced by granting the community a leading role in matters of public interest and the right to participate with ideas, requests, and opinions, especially in the planning and management of public affairs (Art. 61). The 2008 Constitution also introduced mechanisms of direct and community democracy, including public hearings, oversight, assemblies, popular councils, advisory councils, citizen observatories, and other conditions that promote social responsibility (Carrera, 2015).

The creation of Transparency and Citizen Power also demonstrates the interest of the 2008 Constitution in: 1) managing public sectors and organizations and natural or legal persons in the private sector that provide services or develop activities of public interest to guarantee the execution of these activities with responsibility, transparency, and fairness; 2) encouraging CP; 3) protecting the exercise and fulfillment of rights; and 4) preventing and fighting corruption (Art. 204). CP is a fundamental principle of democracy in the 2008 Constitution.

The LOPC supports CP by formalizing this practice and strengthening citizen power and its forms of expression for the functioning of participatory democracy. This Law provides accountability and citizen power initiatives, including popular consultations, social initiatives,

and referenda, revocation of the mandate, political deliberation, local assemblies, public hearings, popular councils, sectorial citizen councils, advisory councils, local planning councils, and national councils for equality, previous consultation, PB, empty chair, citizen observatories, and citizen oversight. Furthermore, this law introduced the principles governing CP, including equality, interculturality, plurinationality, autonomy, public deliberation, respect for differences, gender parity, responsibility, co-responsibility, information and transparency, and solidarity (Art. 4). The principles reinforced and complemented by those advocated by COOTAD are equality, autonomy, public deliberation, respect for differences, citizen power, solidarity, and interculturality (2010) (Art. 302). CP also contemplates the formulation, execution, evaluation, and control of public policies and public services that guarantee adequate budgetary allocation with the involvement of different communities, nationalities, and social groups (Art. 85).

COOTAD establishes that CP is a right whose ownership and exercise guarantee citizenship and should be respected, promoted, and facilitated by all State organs on a mandatory basis to ensure the adoption of collective decisions at different levels of government. COOTAD also introduced the obligation to carry out shared management and CP in public plans, policies, programs, and projects, and the development and execution of government budgets (Art. 3).

The COPFP (2010) gives more details for applying CP, indicating that the central government establishes mechanisms of CP required for formulating plans and policies. The entities that are a part of planning and public finance systems coordinate the mechanisms that guarantee CP during the operation of these systems (Art. 13).

The COPFP belongs to the National Decentralized System of Participatory Planning, which is a CP system composed of the central government and DAGs. The COPFP defines a set of processes, entities, and instruments that allows the interaction of social and institutional actors to organize and coordinate development plans at all levels of government, and its primary function is to acknowledge the CP strategies adopted in DAGs and guarantee the social participation and democratization defined in the Constitution of the Republic and the Law (Art. 13). This system is supported by the Citizen Participation and Citizen Power Council (Consejo de Participación Ciudadana y Control Social–CPCCS) to promote citizen training and disseminate campaigns to exercise the rights and duties established in the Constitution and the Law and implement CP and citizen power programs (LOPC 2010, Art. 39).

The LOPC (2010) gives DAGs the freedom to use the CP strategies considered the best.

The LOPC (2010) demands the execution of PB and mandates that annual budgets presented by all levels of government be integrated into development plans within the framework of a call for CP. Furthermore, governments are responsible for the results of budget execution and preparation of reports (Art. 71). The participating entities should include elected authorities, representatives of the dependent regime, and representatives of social groups at each level of government and abide by democratic principles (Art. 65). These entities are responsible for executing the PB of municipal governments (COOTAD 2010; Art. 100). Moreover, the LOPC (2010) mentions that participating entities from all levels of government should perform the PB of DAGs (Art. 69).

The Constitution of the Republic (2008) indicates that DAGs and the National Planning System acknowledge that the most significant participating entities are communities,

neighborhoods, and urban and rural villages (Art. 248), where all citizens play an important role and should be consulted for adopting regulatory or management approaches that may affect the collective rights (COOTAD 2010; Art. 303) to promote democracy and the absolute right to participation.

Participatory Budgeting

The LOPC (2010) mentions that PB ‘is the process by which citizens, individually or through social organizations, voluntarily contribute to decision-making on state budgets during meetings with elected and designated authorities’ (Art. 67).

Participatory Budgeting Criteria

The LOPC (2010) states that PB should meet the following criteria (Art. 68):

1. Accept social organizations and citizens who wish to participate.
2. Allow public debates on the use of State resources.
3. Grant decision power to achieve redistributive justice in assignments.
4. Promptly implement special regimes at the regional, provincial, and municipal levels and progressively implement these regimes at the national level.
5. Comply with the guidelines of the Development Plan.

These criteria agree with those established by the Ministry of Economy and Finance of Peru (2008) on the competencies, coordination, and programs of each level of government. In the case of Ecuador, these criteria comply with the guidelines of the Development Plan and should be agreed upon by public debate and CP.

Compared with Peru, regulations in Ecuador do not emphasize the characteristics of sustainability and multi-annuality in which investment projects should consider the effective availability of resources and the sustainability of funding, including the expenses required for long-term maintenance, and flexibility in which processes should rapidly adapt to short-term changes and protect community services (Bringas, 2014).

Composition and Call

The highest authority of each level of government is responsible for the calls, which should include different communities, nationalities, and social groups, and gender and generational equity (LOPC 2010, Art. 76).

The law indicates that assemblies are the spaces in which people convene, PB is executed, and public deliberations by citizens are developed to strengthen their collective capacities for communicating with the authorities and therefore collaborating with public policies, service provision, and public management (LOPC 2010, Art. 56). Local assemblies are held at least three times a year. These assemblies should guarantee the plurality, interculturality, and inclusion of social and civic organizations and present the following attributes:

1. Respect rights and demand their fulfilment, particularly in public services at the request of most of its members in local territories.
2. Propose development agendas, plans, programs, and local public policies.
3. Promote social organization and citizen training on issues related to CP and citizen power.
4. Independently provide accountability to which elected authorities are bound.
5. Promote debate, deliberation, and consultation on matters of general interest both locally and nationally; and
6. Grant CP according to ethical standards and under the protection of the Law (LOPC 2010, Art. 60).
In addition to assemblies, citizens can request public hearings to:

1. Request information on public management actions and decisions.
2. Submit proposals or complaints on public matters; and
3. Discuss problems that affect collective interests (LOPC 2010, Art. 74).

These issues should be disseminated in a timely manner to allow follow-up by citizens. The request for public hearings by citizens or social organizations interested in themes related to the political-administrative constituency to which they belong should be answered by the corresponding authority (LOPC 2010, Art. 75). The LOPC (2010) encourages citizens to participate in public deliberations of autonomous governments, and an empty chair is occupied by a representative member to discuss different topics and participate in decision-making (Art. 77). Massal (2010) has shown that these processes structured from the top down can be distorted when actors perform it only to comply with legal requirements without being able to organize a fragmented and polarized civil society.

Process

COOTAD (2010) indicated that the municipal DAGs form a CP system, which is regulated by a normative act, and has its own structure and attributes. This system is created to execute the PB of municipal governments (Art. 304). The LOPC (2010) indicates that PB includes (Table 2):

1. Public deliberations for formulating budgets.
2. Discussion and approval by citizens and social organizations that wish to participate, including local groups, communities, neighborhoods, and urban and rural villages in DAGs.
3. Monitoring of budget execution (Art. 70).

PB should comply with technical budgetary norms that are mandatory for public sector institutions and with other unspecified participating entities, including autonomous sectional groups, and the execution of PB is limited to institutions whose funds are received by the General State Budget. For executing municipal budgets, it should be considered that the COPFP requires the funding of permanent expenditures exclusively with permanent income.

COOTAD (2010) also stressed that at the end of the fiscal year, a representative of each DAG should convene local groups or higher-level groups from each DAG to discuss the execution of the annual budget, the fulfillment of goals, and the priorities of the following year (Art. 266).

Stages	National regulations
(1) Public deliberation	<p>The highest authority of each level of government is responsible for the call, which should include different communities, nationalities, and social groups, with gender and generational equity (Art. 74) (Organic Law of Citizen Participation, 2010).</p> <p>The law indicates that assemblies are the space in which meetings should be held, participatory budgeting should be developed, and public deliberations are made by citizens to strengthen collective capacity for dialogue with the authorities and consequently collaborate with public policies, provision of services, and management of public services (Art. 56) (Organic Law of Citizen Participation 2010).</p> <p>These assemblies will be held at least three times a year (Art. 76) (Organic Law of Citizen Participation, 2010).</p>
(2) Discussion and approval	Strategies are approved in each municipality by municipal ordinance.
(3) Monitoring of budget execution	At the end of the fiscal year, the representatives of decentralized autonomous governments (DAGs) convene local groups or higher-level groups in each DAG to discuss the execution of the annual budget, the fulfilment of goals, and the priorities of the following year (Art. 266) (COOTAD, 2010).

Viesca et al. (2013) have shown that the first part of this process and its principles are recognized by the legislation, whereas participation and supervision of government actions depend on the rulers.

Municipal DAGs

COOTAD (2010) grants DAGs the autonomy to avoid other institutions from interfering with administrative, financial, and political autonomy. Political autonomy is the capacity of each DAG to promote CP-based development processes and strategies (Art. 5-7).

COOTAD (2010) highlights that participation is the right whose ownership and exercise guarantee citizenship and needs to be respected, promoted, and facilitated by all State organs on a mandatory basis to ensure the adoption of collective decisions by governments and citizens. COOTAD also introduced the obligation to carry out shared management and CP in plans, policies, programs, and public projects and the development and execution of PB (Art. 3). In Ecuador, the organ that oversees PB is the municipal DAG.

Attributes and Competencies

According to the Constitution of the Republic of Ecuador (2008), municipal governments are entitled to coordinate local development with land planning at the national, regional, provincial, and community levels to manage the use and occupation of urban and rural lands (Art. 264). These governments have political, administrative, and financial independence and are bound by the principles of solidarity, subsidiarity, inter-territorial equity, integration, and CP (Art. 238). COOTAD (2010) introduced the principles of complementarity (collective obligation

to coordinate local development plans with the National Development Plan) and the sustainability of development (prioritize potentialities, capacities, and vocations).

COOTAD (2010) reported that one of the responsibilities of DAGs is attaining equitable and supportive development by strengthening autonomy and decentralization processes. The integrated functions of these DAGs are:

1. Legislation, regulations, and supervision.
2. Execution and administration; and
3. CP and citizen power, implementation of a CP system for exercising fundamental rights, and democratic management of local activities related to strategic planning and CP (Art. 29).

The Constitution of the Republic of Ecuador (2008) indicates that municipal DAGs are responsible for coordinating local development with land-use planning at the national, regional, provincial, and community levels to manage the use and occupation of urban and rural lands (Art. 264).

DISCUSSION AND CONCLUSION

The political and institutional factors that contribute to the success or failure of CP are related to the impact of laws that encourage participation and the political nature of the authorities and public officials responsible for promoting these initiatives (Garrido and Montecinos, 2018). These laws guarantee the legitimacy of the process despite the change of government and grant citizens fundamental rights that allow them to demand government compliance with current legislation (Goldfrank, 2006). Formalization and institutionalization are limited in Chile, and the country does not have a legislation that promotes decentralization and participation in decision-making at the national, regional, and local levels. Moreover, a national law that promotes PB is not available. Argentina, Uruguay, Peru, and the Dominican Republic have an institutional framework that promotes CP and PB (Montecinos 2014).

In Ecuador, the participation of the state in approving laws, regulations, codes, and national plans that regulate government actions has increased, demonstrating the need for direct dialogue with citizens to allow for local planning and active social inclusion in core public decisions (Yela et al., 2015).

The analysis of the regulations governing CP and PB indicates that it is evident that collective planning at the local, regional, and national levels is defined by Ecuadorian regulations. The principles of equality, autonomy, plurinationality, solidarity, and the power of citizens to demand transparency and accountability from different levels of government have been emphasized in the legislation. These principles support PB by including a higher number of people in development processes and granting decision-making capacity to solve problems as a society.

The law states that, although the central government establishes mechanisms of CP, the National Decentralized System of Participatory Planning implements the strategies adopted by the CP system in DAGs, as reported by the COPFP (Art. 13). The CPCCS performs similar

functions. This structure demonstrates the existence of an infrastructure that supports and strengthens CP.

The analysis of the regulations showed that no legislative document detailed the percentage or amount of the budget of each unit to be allocated to PB. However, a general procedure was established in Art. 70 of the LOPC. In Chile, the average percentage allocated to PB does not exceed 3% of the total municipal budget and 10% of public investment (Garrido and Montecinos, 2018). The municipalities in Argentina allocate 1% to 2% of the total resources (López et al., 2012). Municipal DAGs determine the amount considered appropriate in municipal ordinances, which agrees with COOTAD guidelines, in which DAGs form a CP system that is regulated by a normative act of the corresponding level of government and has specific structure and attributes. With respect to the distribution criteria, a percentage of the total amount is usually distributed equally among the local governments participating in the CP process; other percentages are distributed according to the number of inhabitants of each community and based on the unmet basic needs. Revuelta and Patron (2010) have shown that PB has four weaknesses:

1. It is not decisive but advisory.
2. It can serve as a means of manipulating civil society by political parties, especially the party in power.
3. It generates leftist institutional clientelism by bureaucratizing popular movements, and
4. It does not question private property and profit.

For the proper development of CP, citizens should acknowledge their public responsibility and the need to participate in communicating their ideas, needs, opinions, and decisions, especially in the planning and management of public affairs. For this purpose, the regulations establish spaces for participation, and the LOPC (2010) indicates that there will be opportunities for participation at all levels of government to execute CP-based PB in DAGs.

CP is regulated primarily by the Constitution of the Republic of Ecuador, although no resolutions detailing its application are available. This situation allows managing CP without making requirements that discourage its development. CP is a continuous process and usually depends on political, economic, social, and temporal contexts (Carrera 2015). Massal (2010) analyzed regulations in Ecuador and found that several principles and mechanisms encouraged participation; however, these principles were defined from the top down, had little impact on decisions, and were mostly consultative (Massal 2010). Goldfrank (2006) and Monteferrario and Asensio (2015) have shown that the legal framework can be counterproductive by causing forced participation, with formal institutions privileging specific groups, in a context in which political and social actors are not trained, mobilized, or interested in assessing and adopting CP. In contrast, local processes tend to be more informal and deliberative because the mayors respond to requests from social movements for creating public spaces for deliberation, and open formats allow attracting new voters.

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