

A Comparative Analysis on Access to Information in Local Government Administration Systems of South Africa and Türkiye

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Abstract

Access to information is a fundamental right that local administrative systems are compelled to follow when implementing service delivery. Türkiye and South Africa are clear examples of how the administrative system is shaped along the lines of political, social and historical factors. South Africa and Türkiye undertook reforms in their local government laws over the years. This paper strives to analyse how the two administrative systems have performed since 1994 in the case of South Africa and since 2002 in the case of Türkiye. The study draws inspiration from the 'most similar cases principle' of Ran Hirschl as a chosen methodology. This 'most similar cases principle' used in this paper builds on notion of certain events that have seen transformation in local government administration. This is case of South Africa after 1994, Local authorities had new in line with the new constitution Türkiye in 2002 as part of the EU accession plans which though never took place but still have an impact on new legislation after 2005 under the Local Administration Reform Project. The paper is guided by both international and regional law and will use the events, domestic law, and policy to gauge the level of access to information for residents.

Keywords: access to information, democracy, accountability, transparency.

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1. Introduction

Access to information is one of the core pillars of how any local authority can gain trust and credibility with its residents. The right to information is an important right which Türkiye and South Africa are clear examples of how the administrative system is shaped along the lines of political, social and historical factors. Türkiye, being a civil law nation, subsequently adopted a style of municipal governance similar to the rest of Europe. South Africa's Roman Dutch law administrative system has in the last 27 years has been shaped along lines of democracy, accountability, and equality. Both

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Türkiye² and South Africa³ are compelled by respective regional instruments to develop human rights-based approaches relating to local government law and policy. Noting that Türkiye is monist state, international instruments immediately become part of Turkish law once ratified by Türkiye. The South African Constitution in Section 39(1) (a-c) explicitly references to the use of norms of foreign and international approaches in as far as the various aspects of the Constitution is concerned, but however the South African Constitutional court has been avoiding the normative content on the minimum core of Social and Economic Rights in the famous cases it has decided.⁴

It is worth noting that section 152 of the South African Constitution presents a striking difference from Article 127 of the Turkish Constitution, Municipalities in South Africa enjoy a high level of autonomy by having executive and legislative authority vested in the Municipal council. This further prevents the central and provincial governments from interfering in the municipalities' abilities to perform such rights. In terms of Article 127 of Türkiye's Constitution, duties and powers of municipalities are regulated by local administration, but however the central government has a power of 'administrative tutelage in the local administration laws with a purpose off ensuring that there is amongst other needs integrity and serving of public interest. For instance, the new *Law No. 7471 on the Amendment of the Law on the Transformation of Areas Under Disaster Risk, Certain Laws and Decree Law No. 375* ("Law No. 7471") that supersedes, *6306 Law on Transformation of Areas Under Disaster Risk* gives central government the power over urban planning issues such as urban regeneration. Furthermore, in Türkiye budgets of municipalities are consolidated with the central government and social security institutions budgets and presented to national parliament for scrutiny in terms of *5018 Law on Public Financial Management and Control Law* in article 77. In the case of South Africa, provincial government may only intervene in the local government affairs only when there is maladministration in a specific municipality in terms of section 139 in the Constitution. As can be see with many municipalities that have been placed under administration such as the case of Mangaung metro municipality for failing to deliver basic services.⁵

Municipalities both in South Africa and Türkiye operate various service

² European Charter of Local Self-Government; European Charter for Safeguarding Human Rights in the City : Convention on the Elimination of All Forms of Discrimination against Women: Manifest for a new Urban Charter II: European Charter for Equality of Women and men in Local Life.

³ African (Banjul) Charter on Human and Peoples' Rights; The African Charter on the values and principles of Decentralisation, Local Governance and Local Development: African Charter on Democracy, Elections and Governance; Protocol to the African Charter on Human and People's Rights of Women in Africa (2003/2005); Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human And Peoples' Rights.

⁴ *Soobramoney v Minister of Health (Kwazulu-Natal)* 1998 (1) SA 765 (CC); *Minister of Health and Others v Treatment Action Campaign and Others* (2002 (5) SA 721 (CC; *Government of South Africa v Grootboom and others* 2001 (1) SA 46, *Port Elizabeth Municipality v Various Occupiers* (CCT 53/03) [2004] ZACC 7; *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and others* 2008 (3) SA 208 (CC).

⁵ Jason Felix. 2022. *Mangaung municipality placed under national administration after Cabinet approval*, News24 (April. 07, 2022), <https://www.news24.com/news24/southafrica/news/mangaung-municipality-placed-under-national-administration-after-cabinet-approval-20220407>.

delivery programs based on their planning documents such as the Strategic plans in Türkiye in terms of article 18 of *5393 Municipality Law*⁶, and Integrated development plans in South Africa in terms of section 36 of the *Municipal Systems Act 32 of 2000*.⁷ Metropolitan municipalities in Türkiye specifically have legislation namely, *5216 Law on Metropolitan Municipalities*. This legislation is unique in that, it expands on the various duties and responsibilities of municipalities in terms of Article 7,⁸ Specifically covered in the dimensions of this topic despite the tutelage the central government has over all municipalities. A major difference is that South Africa's local government system follows the one tier system whereby metropolitan municipalities are centralized and operated under one integrated development plan. Türkiye follows a two-tier system, whereby metropolitan municipalities have district municipalities that have their own strategic plans and Development Action plans.

With the above this paper will look first into the motivation why the two nations systems have been chosen in accessing the right to information at local government level. Secondly the paper will look into international and regional approaches which relate to access of information. Thirdly the paper will look into the position of South Africa, Fourthly the paper will look into the position of Türkiye and lastly the paper will look into the submissions and conclusion.

2. Motivation of Comparing South Africa and Türkiye

A qualitative method has been chosen in conducting this research. This involves reviewing various literature, instruments and policies in Türkiye and South Africa, considering that South Africa and Türkiye's administrative systems are shaped along the lines of political, social and historical factors. The comparative approach uses a small number of cases through an inference-based approach. Such a comparative approach draws inspiration from Hirschl's illustration of inference-oriented controlled mechanisms when comparing constitutional experiences of the global south. Comparing constitutional experiences of the specifically chosen countries, whether using the Small N approach or large N approach, further aims to ensure a rational and analytical robust connection between the research question posed and the observations from the global south constitutions chosen for the study.⁹

To make this comparative study possible, the article uses 'the most similar cases' principle as one of the five methods that fall under the systematic examination of a small number of cases approach (small-N) developed by Ran Hirschl.¹⁰ The other four methods namely (ii) the 'most different cases' principle (iii) the 'prototypical cases' principle (iv) the 'most difficult case' principle, and (iv) the 'outlier cases' principle have not been used because they do not fit into the context of this comparative

⁶ Article 18 of *Municipality Law No. 5393*.

⁷ Section 36 of the *Municipal Systems Act 32 of 2000*.

⁸ Article 7 of *5216 Law on Metropolitan Municipalities*.

⁹ Ran Hirschl. 2014. *Comparative Matters: The Renaissance of Comparative Constitutional Law*, Oxford University Press, p. 223.

¹⁰ Ibid, at pp. 244, 245.

research that sees both South Africa¹¹ and Türkiye¹² having a political climate dominated by one major party for a long period of time has an impact on how social justice law and policy are shaped towards tackling inequality. This ‘most similar cases principle’ picked up by the writer builds on the human rights-based approaches and in line with the Sustainable Development goals to draw a casual inference in making this comparison.

The most similar cases principle uses an inference-based approach in qualitative studies on the small-N studies. This approach requires that research aim to compare similar factors of casual interest. An example illustration of when the most similar case principle is deemed inappropriate would be when two countries with different types of judicial review mechanisms on civil rights are chosen. In the instance of the United States and China, firstly, this choice would not make any logic because the two nations' histories are shaped on different lanes. Secondly, constitutional legacies are not the same; and thirdly, the political structures of governance are not same (i.e. democracy and one-party state system).¹³

An example of an appropriate comparative study using the most similar case system would be based on two countries with similar histories, constitutional legacies and political systems of governance. A classic example would be Australia and Canada, firstly, they have at some point been fully controlled by the Great Britain, secondly, even after gaining some autonomy, both countries recognise the Queen of the United Kingdom as their head of state, thirdly, both countries recognise an elected prime minister and his/her party as the ruling government in power.¹⁴

Using a simple illustration to understand the most similar case approach, Hirschl states that the use of two nations' cases with striking similarities in their status of challenging Montesquieu's argument on the impact of material and atmosphere factors on certain policy laws would be useful in testing the hypothesis regarding social, religious and colonial matters on the constitutional practices.¹⁵ An example used here is the position of two countries geographically located on one Caribbean island of Hispaniola called Haiti and the Dominican republic. Both countries inherited a civil law system from their former colonizers, namely France and Spain. A research question posed to be tested amongst these two countries would be the impact colonial heritage on present day societal problems of the two nations. In the alternative another research question would be oriented around the present political stability of the two nations as a result past colonial legacy.¹⁶

From a cultural perspective Hirschl uses the Ginsburg arguments to determine, judicialization of politics by constitutional courts South Korea, Mongolia and Taiwan.

¹¹ The African National Congress has dominated both National, Provincial and Local Government since 1994.

¹² The Justice Development Party (AKP) has dominated both National, Provincial and Local Government since 2002.

¹³ Ran Hirschl, *op. cit.*, pp. 247.

¹⁴ Ibid, at p. 248. (point of emphasis example rephrased).

¹⁵ Ibid, at p. 248.

¹⁶ Ibid, at p. 248. (point of emphasis example rephrased).

These three countries share a similar history of transitioning to democratic states in the late 1980s and early 1990s. The three countries have constitutional courts that struggled to keep up and maintain their reputation in the political climate that compromises judicial independence and supremacy of the constitution.¹⁷ Despite these challenges the extent of judicial independence varies between the three countries.

Hirschl goes on to illustrate the most similar cases principle with a comparison on institutional reform designed to strengthen judicial accountability by Kosar in 2003. In this instance two countries Czech Republic and Slovakia where compared because they shared a similar history of a communist past, a centralized judiciary and civil law system.¹⁸ Even though the Czech Republic and Slovakia have similarities, they may disjuncture in the model of court administration, as Hirschl puts it.¹⁹ Drawing inspiration from the illustrations that have been put by Hirschl, this study basically aims to compare two local government systems. Lidström's approach fits more into the context of reimagining the most similar method, whereby it is submitted that comparative overviews provide an opportunity to identify the characteristics of local government systems in one or several continents. The comparative study poses three important questions, which are the pith of making this research, as Lidström asks.

The first question posed to research is whether a historical criterion or criterion based on present similarities will be used for the research. The second question for the researcher will be whether this criterion must comprise several factors or just one single factor. The third criterion will be based on whether the research must differentiate between categories of local government systems or whether it must cover the entire local government or just one aspect of the local government.²⁰ This question is addressed below, integrating Hirschl's approach and Lidström's approach. Another comparative example that fits within the context of local government law based used by Lidström is Preteceille's study in respect of institutional and fiscal changes of local government law in six different countries. The study aimed to investigate if the local authorities in these six countries experienced any form of financial crisis, and the extent of such financial cuts on service delivery, and what drifts occurred in respect of decentralisation and centralisation functions.²¹ Basically, the six countries had been impacted by the 1975-1987 fiscal crisis, and they have different conclusions about how each system of local government acted in resilience to this fiscal crisis.

In the case comparing the two systems of local government in in South Africa and Türkiye, the most similar approach would be appropriate to address the extent on access to information the two nations, because local government administrative systems in South Africa and Türkiye are shaped along the lines of political, social and historical factors.²² As the paper aims to use metro cities in South Africa and Türkiye as a point

¹⁷ Ibid, at pp 249.

¹⁸ Ibid, at pp 250.

¹⁹ Ibid at pp 250.

²⁰ Ibid, at pp 100-103.

²¹ Ibid, at pp 104.

²² Anele Horn. 2019. "The history of urban growth management in South Africa: Tracking the origin and current status of urban edge policies in three metropolitan municipalities." *Planning Perspectives* 34, no.

of reference, the most similar case principle would fit within this context because, the major metro municipalities are not in full control of the ruling party in national government. There tend to be clashes between the central government and the respective municipalities on the best policies suitable for the various issues of local government administration. There is political polarisation, whereby political camps are divided on an 'Us and them' relationship. This entails distrust or lack of respect between camps because of different views, between the two camps. The latest V-Dem project, shows that Türkiye is a toxic polarized society, with extreme levels of polarisation has a threat on democracy since AKPs accession to power in 2002.²³ This is despite the fact that South Africa is portrayed as a progressive democracy and Türkiye is regarded as a democratic breakdown. Such a democratic breakdown has spilt into the local government, whereby some of the opposition Mayors under judicial and administrative investigation by the central government, dismissed by the central government, are replaced by government-appointed trustees, thus denying citizens their choice representation.²⁴

In the 2021 report on key findings of Türkiye, it is further pointed out that although Türkiye has to some extent been prepared in the field of public administration reform, it lacks a comprehensive public administration reform agenda and as a lead institution of such progress. Policymaking is not evidence-based, it is further politicised, and women's representation remains very low.²⁵ To the contrary, the level of misgovernance at the local government level results in the opposite expectations of progressive democracy, such as the absence of corruption and civil society participation. Also, even though in the case of South Africa, the local government enjoys a greater level of autonomy in decisions than in Türkiye's local government, which is subject to tutelage of the central government, this entails that the key variable, that is, the independence of South Africa's local government is not the same in Türkiye. More light will be shed in the coming paragraphs.

6: 959-977, <https://doi.org/10.1080/02665433.2018.1503089> at pp 964 and Melih Ersoy. 1992. "Relations between central and local governments in Turkey: An historical perspective." *Public Administration and Development* 12, no. 4: 325-341, at pp 326 and 328.

²³ V-Dem Institute, *Democracy Report 2022, Autocratization Changing Nature?*, March 2022, V-Dem Institute https://v-dem.net/media/publications/dr_2022.pdf 33-34. See also Bahar Rumelili and Didem Çakmaklı. 2017. "Civic participation and citizenship in Turkey: A comparative study of five cities." *South European Society and Politics* 22, no. 3: 365-384 <https://doi.org/10.1080/13608746.2017.1354420365>; See also Ulaş Bayraktar. 2020. Strengthened Civil Society And Effective Cooperation In Democratic Urban Governance, Tesev Good Governance Reports, January 2020, at pp 11-13, the writer speaks about political polarisation that has seen Civil society organisations drifting away from National Politics to local issues.

²⁴ European Commission, Key Findings of the 2021 Report on Turkey: The Fundamentals of the Accession Process (October 2021).

²⁵ Ibid.

3. Position of International and Regional Law on Access to Information

3.1. Key International Instruments and Their Connection to the Right of Access to Information

The Universal declaration of human rights is an important instrument, where in article 19, it refers to the everyone having to right to freedom of opinion and expression. This includes the freedom to receive, seek and impart information. The International Covenant on Civil and Political Rights (ICCPR), although not explicit on understanding the pursuit to social inclusion from a local government level, is important in understanding civil liberties. However, it is essential to point out that article 19 gives the individual the right to freedom of expression. More so article 19(2) states that everyone has the right to freedom of expression, this includes the right to access information, irrespective of its frontiers either orally or in writing.²⁶ General Comment no.34 of the UN Human rights Committee has further interpreted article 19 of the ICCPR and UDHR to encompass access to information from public bodies. It is the duty of state bodies to distribute information in public interest and in a prompt and effective manner.²⁷ This includes ensuring the fees paid for access to such information are at a reasonably low cost and legislation is promulgated to promote the right of access to information.²⁸

In 2015, the report by the Rapporteur on freedom promotion and protection of the right to freedom stated the need to protect people who are whistleblowers by public bodies, when allegations of maladministration and corruption emanate.²⁹ It is common for the pursuit of social inclusion to be hindered by a lack of access to information on funds which corrupt officials have diverted, and as such, access to social services within the local government is limited, as will be discussed more in accessing the position of South Africa and Türkiye. The UN 2020 E-government survey (hereafter survey) points out the importance of local government in Information and Communications Technology.³⁰ Municipalities are in a position to share information relating to their plans and objectives, operations and services offered through digital platforms. Furthermore, the use of Information communication technology assists the local government in ensuring that operations are streamed, thus reducing administrative burdens and increasing communication platforms between the public and the municipality. The survey used an E-Government Development Index (EGDI), to determine the capability of municipal councils' preparedness in using Information Communication technology to deliver public services. However, many nations in the

²⁶ Article 19 of the International Covenant on Civil and Political Rights.

²⁷ Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN GA CCPR/C/GC/34, (September. 12, 2011) at para 18-19.

²⁸ Ibid.

²⁹ David Kaye. 2015. *Promotion and Protection of the Right to freedom of opinion and Expression*, UN GA A/70/361, September 08, 2015, at para 26-42.

³⁰ UN-Department of Economic and Social Affairs- E-Government Survey 2020: Digital Government in the Decade of Action for Sustainable Development.

global south score low in this EGDI.³¹

The survey further used a Local Online Services Index (LOSI) to access the e-government portal of selected cities.³² The aim of this LOSI was to determine the extent of essential public information and resources online. Criteria used in this LOSI for high and low scores included participation and engagement.³³ This selected criterion was determined to find out the initiatives of interaction and ability of the public to interact in local governance structures.³⁴ The findings of this LOSI indicate that selected cities in developing nations have a weak LOSI score. This is mainly because of weak ICT infrastructure, and low internet affordability by the public as some of the challenges faced.³⁵ Thus hampering the enhancement of the right set out in articles 19 of the ICCPR and UDHR.

Article 23 refers to the family as a fundamental group unit entitled to protection by society and the state. As will be shown later, we can see the importance of such a provision in the influence of article 8 of the European Convention on Human Rights (ECHR), which relates to an individual having the right to respect for his private and family life, his home and his correspondence. Although not much has been written on the case law relating to article 23 before the human rights council, the European Court on Human Rights provides a rich ground as was seen in chapter 2 in understanding the meaning of article 8 in the ECHR.

Just like the already mentioned main international instruments, the ICCPR provides an interlink with the various selected provisions in the pursuit to social inclusion. This may include relating article 6.1 of the ICCPR to the SDG1, SDG3, 5, 6, 16, where the importance on the right to life is of utmost importance in as far as there is nexus connection between poverty and the right to life. As well as the dimension of Gender Equality in article 3 of the ICCPR states that parties must ensure there has been an undertaking of ensuring that all men and women enjoy their rights within the covenant. SDG6 on water and sanitation is not very clear in its link to the ICCPR.

3.2. ECHR and Its Connection to Access to Public Information and Communication

The relevant provision in the ECHR regarding access to public information and communication in as far as it is related to the pursuit of social inclusion at the local government level is the right of freedom of expression set out in Article 10. This right in Article 10 sets out the importance of a person having the freedom to hold opinions and receive and impart information without any interference from state authorities. When the public, including civic groups and communities in a municipality, have access to crucial documents, they can express themselves accordingly in response to the municipal proclamations, tender allocations and any other information they have been

³¹ Ibid at pp 86

³² Ibid at pp 89.

³³ Ibid at pp 89.

³⁴ Ibid at pp 89.

³⁵ Ibid at pp 102.

given access to. This also pertains to having adequate information regarding the calibre of elected councillors and the conduct of people employed in managerial and lower jobs in the municipality. Elected councillors can be for the good or harm of the ward in a council.

In the case of *Kwiecień v. Poland*,³⁶ the applicant brought his case before the ECtHR because provisions of the Polish Local Elections Act violated his right in Article 10 of the ECHR.³⁷ The dispute to this violation emanated from the applicants objections of the Head in Charge in the district office he was due to stand where he was residing as a candidate in the local elections. The applicant's letter objecting to the candidate was published in several local newspapers and sent to the local Mayors and prime minister.³⁸ The Applicant had an action against this Head in charge intending to stand for election to withdraw his statement, issue an apology, and pay a fine in the Regional Court. The Regional Court ordered the applicant to pay a fine for the benefit of charity and the aggrieved claimant who brought the action against him.³⁹ Despite appealing against this judgement, the domestic courts refused to entertain him.

The question guiding the ECHR in reaching a decision was whether interference of the applicants' rights in terms of Article 10 was necessary in a democratic society.⁴⁰ The ECHR noted that the applicant's conduct was a matter of public interest done to make the public aware. The calibre of the candidate and issues of freedom of expression concerning public interest must be interpreted narrowly.⁴¹ Thus, the official who opted to stand in a local election deserved public scrutiny of his deeds and words that domestic courts failed to consider when handling the matter.⁴² The ECtHR further stated that the domestic courts' penalty imposed on the Applicant was disproportionate to the legitimate aim pursued, and the reasons furnished by the domestic courts were not sufficient and relevant to meet the necessary criteria limitation set out in article 10 of the ECHR.⁴³ Therefore, there was a clear violation of Article 10. Cases relating to violation of Article 10 have followed the case of *Kwiecień v. Poland*, for instance, in the case of *Kubaszewski v. Poland*,⁴⁴ also, the statements made by the applicant emanated from a board session where the applicant questioned the transparency of the municipal budget implicating some of the board members.

The applicant compared the lack of transparency with what he viewed as a better-run neighbouring municipality. This lack of transparency in the budget was reported to the local newspapers.⁴⁵ Subsequently, the domestic courts ordered the applicant to make a public apology and pay damages for making statements against the Kleczew Municipal Board members. Such statements were said to have tarnished the

³⁶ *Kwiecień v. Poland*, App no. 51744/99, Eur. Ct. H.R. (2007).

³⁷ *Ibid*, at para 6.

³⁸ *Ibid* at para 8.

³⁹ *Ibid* at para 9.

⁴⁰ *Ibid* at para 42.

⁴¹ *Ibid* at para 51.

⁴² *Ibid* at para 52 and 54.

⁴³ *Ibid* at para 56.

⁴⁴ *Kubaszewski v. Poland*, App no. 571/04, Eur. Ct. H.R. (2010).

⁴⁵ *Kwiecień v. Poland*, App no. 51744/99, Eur. Ct. H.R. (2007), para 7-13.

image of the public officials and their good name, reputation, and reliability.⁴⁶ The ECtHR in reaching its decision noted that even though the applicants' statements sounded hush, such statements were not specifically targeted at anyone on the municipal board. Those who addressed questions were expected to have a degree of tolerance on the applicant as common criticism against those sitting in position of authority.⁴⁷ The authorities had failed to strike a balance between the relevant interests and the protection of politicians on the other hand. Therefore, interfering with applicants right to freedom of expression was not necessary within the meaning or context of paragraph 2 in Article 10 of the ECHR.⁴⁸

Noting that a lack of access to public information and communication has often resulted in service delivery protests in South Africa and Türkiye witnessed the Gezi Park protests that spread to other municipal jurisdictions of Türkiye, the right to freedom of association and freedom of assembly is often a violated by both municipalities through the assistance of the state. Article 11 (1) of the ECHR, states that everyone has the right to freedom of peaceful assembly and association with others Furthermore, Article 11(2) states that there are no restrictions that must be attached to the exercise of this right and those exercised in a free and democratic society. The facts of judgements relating to the violation of Article 11 are not necessarily linked to protests emanating from lack of access to information or lack of prior consultation before local government. Nevertheless, judgements that come to mind could impact how local governments deal with disgruntled citizens who feel they have not been appropriately consulted due to the local government actions or decisions. For instance, in the case of *Vyerentsov v. Ukraine*,⁴⁹ the applicant had notified the Mayor of his intention to hold demonstrations over several months to express concerns over the high levels of corruption in the prosecution service.

The local council obtained an order from the administrative court prohibiting such demonstrations. In reaching its decision, the ECtHR, amongst other issues, held that the complaint brought before it in terms of Article 11 was not manifestly ill-founded with the meaning of article 35 (a) of the convention.⁵⁰ The ECtHR further stated that the punishment imposed on the applicant for holding a peaceful demonstration interfered with the applicant's right to freedom of peaceful assembly.⁵¹ Such interference failed to meet the fair standard in a democratic society.⁵² Although the state constitution had provisions giving prior notice to protest, a decree drafted during the soviet era gave municipalities discretion to authorise demonstrations.⁵³ The court

⁴⁶ Ibid at para 15.

⁴⁷ Ibid at para 43.

⁴⁸ Ibid at para 50. See also *Ziembinski v. Poland* (no.2), App no. 1799/07, Eur. Ct. H.R. (2016); *Guseva v. Bulgaria*, App no 6987/07, Eur. Ct. H.R. (2015); and *Lombado and others v. Malta*, App no. 7333/06, Eur. Ct. H.R. (2007). These cases all related to the lack tolerance by those in Municipal leadership of freedom of expression and Access to information in a free and democratic society.

⁴⁹ *Vyerentsov v. Ukraine*, App no. 20372/11, Eur. Ct. H.R. (2013).

⁵⁰ Ibid, at para 47-48.

⁵¹ Ibid, at para 51.

⁵² Ibid, at para 51.

⁵³ Ibid, at para 54.

pointed out that the decree on holding demonstrations drafted during the soviet era was biased towards a certain ideology incomprehensible with the fundamental right to freedom of assembly.⁵⁴ It was unacceptable that the parliament had failed to pass a law regulating peaceful demonstrations, mainly where such right of assembly was under compromise.⁵⁵

3.3. The African Normative Framework and Its Connection to the Right to Information

The regional African normative framework on access to information is found the African Charter on Human and Peoples rights. In terms of article 9 on the African Charter on Human and Peoples rights, in subsection (1) every individual shall have the right to receive information. In subsection (2) Every individual shall have the right to express and disseminate his opinions within the law. However critics submit that, this provision does not give assurance of information a state that is not willing to give make publicly available.⁵⁶

4. Access to Information in South African Local Government Administrative System

International normative approaches show that freedom of expression has been further interpreted within the scope of access to information in both the UDHR and the IPPCR. In South Africa, access to information plays a pivotal part in the pursuit of social inclusion. The *Promotion of Access to Information Act No.2 of 2000* is an imperative source of legislation that interrelate with the rendering of services at the municipal level. It is also further necessary to see how this legislation impacts on achieving the pursuit of social inclusion at local government level through creating capabilities to make people achieve level of satisfaction. Furthermore, creating some form of social capital that makes people feel included in the decisions of the local government.

The Constitution in section 32 gives everyone a right of access to information of the state and furthermore provision of the appropriate legislation to give effect to the right.⁵⁷ The *Promotion of Access to Information Act No.2 of 2000* (PAIA) refers to important provisions of the Constitution such as section 32(1)(a), which relates to the right of access of information held by the state by anyone.⁵⁸ Access to information as a right in local government can be found in various parts of the Municipal Systems Act

⁵⁴ Ibid, at para 54.

⁵⁵ Ibid, at para 55.

⁵⁶ Aaron Olaniyi Salau. 2017. "The right of access to information and national security in the African regional human rights system." *African Human Rights Law Journal* 17, no. 2: 367-389 <https://doi.org/10.17159/1996-2096/2017/v17n2a2> at pp 373.

⁵⁷ Section 32(1)(a) and (3) of the Constitution.

⁵⁸ Preamble of the *Promotion of Access to Information Act No.2 of 2000*.

and the municipal finance management act.⁵⁹ Community participation is a key aspect and this overlaps with access to information. In the case of *Garden Cities (Incorporated Association not for Gain) v City of Cape Town and Another*, the court made reference to the burden placed on state organs to avail information upon the request of the public while fulfilling the service delivery role.⁶⁰ The court lamented on the barriers unfairly placed by most organs of the state towards releasing information, which may have been as a result of failure by office bearers to give the public such information upon such request.⁶¹ Access to information also involves knowing about the budget of the municipality. In *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality*, the respondents had failed to follow constitutional obligations in availing their 2011/2012 budget to the public before adopting.⁶² The court emphasised that municipalities must ensure people have the capability and capacity to use the opportunities available in participating. Based on consultation, the municipality would review the budget, make amendments before passing it as a law.

Public bodies, including municipalities, are required to have a manual establishing their functions and index of records in section 14 of the PAIA. Procedures in this provision are set on steps to be followed in obtaining records held by the municipality. The public body, in this case a municipality is required to ensure that it has a manual which gives detail on how an interested person can request a record in line with section 14(1), categories of record available in terms of section 14 (d) description of the services of available to the members of the public, (e) recent notice on categories of the record available and (g) description of any arrangements with person employed by the public body to make the necessary representation on how a policy was formulated, the exercise and performance of duties by the body and in terms of (h) remedies available in respect of act or a failure to act by the body.⁶³ Relevant to the pursuit of social inclusion are records that relate to amongst other issues such as by-laws, budgets, audit enquiries, integrated development planning, community development workers program and municipal indigent registers.

The case of *City of Cape Town v South African National Roads Authority Limited and Others*, involved the applicant a local authority challenging the respondent a section 239 organ of state to avail documents pertaining to the tender bidders and who were awarded such tender for road construction availed to the public. The court held that PAIA had no restrictions on how information obtained maybe used. This further meant that people who received documents from a public body could do whatever they

⁵⁹ See Section 152 (1) (e) of the Constitution; Section 72(3) and 74(a) of the Local Government: Municipal Structures Act; Sections 29(1)(ii) and 42 of the Local Government: Municipal Systems Act 32 of 2000; Sections 23(1)(a) of the Local Government: Municipal Finance Management Act, 56 of 2003.

⁶⁰ *Garden Cities (Incorporated Association not for Gain) v City of Cape Town and Another* 2009 (6) SA 33 (WCC) at para 24 and 25.

⁶¹ *Ibid*, at para 24 and 25.

⁶² *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality* 2014 (5) SA 256 (ECP) at para19; See also Jaap de Visser et al., measuring transparency, public participation and oversight in the budget processes of South Africa's metropolitan municipalities: findings from the 2019 budget survey, (International Budget Partnership-South Africa (IBP South Africa) and the Dullah Omar Institute 2019)

⁶³ Section 14 (d) (e) (g) and (h) of the *Promotion of Access to Information Act No.2 of 2000*.

wanted to with such documents.⁶⁴ The same public documents can be further distributed to the public. The court went one step further to hold that a public body such as a municipality can compel another state institution to make documents known to the public because 'secrecy is an antithesis of accountability.'⁶⁵ The case is significant in that it marks a precedent on access of information of other public institutions used to provide infrastructure projects to municipalities is vital. Especially where the organ of state is providing services that overlap with the services provided for by a local authority such as strategic planning, rehabilitation, and maintenance of roads. It creates accountability especially where the allocation of tenders is concerned because of funding involved in such tenders.

PAIA serves an advantage in that it ensures that public bodies of government that include municipalities promote principles of human rights and social justice. Such promotion is done through reasonable ways which allow for the accessibility of information in a quick, cheap and effortless manner. Further promoting a culture of transparency, effective management and accountable public bodies.

Harrison et. al submits that integrated development planning on the functioning of local government is still yet to impact effective service delivery. The participatory process in the preparation of integrated development plans appears to deflect the energy away from the real issues such as basic service delivery.⁶⁶ Madue submits that public participation at legislative level is hindered by a deficient integrated and joint public participation plan.⁶⁷ Public participation initiatives lack the social inclusion aspect in they did not robustly cater for all groups. This is seen by the lack of regular direct feedback to the public through meetings.⁶⁸ The use of ICT has the potential to enhance public participation at all spheres of governance.⁶⁹ However Ncamphalala et al submits that has not been properly practically implemented with office bearers in the municipality failing to implement it properly.⁷⁰ UCT of ICT is has the potential of improving the level of efficiency economically in the delivery of

⁶⁴ *City of Cape Town v South African National Roads Authority Limited and Others* 2015 (3) SA 386 (SCA) at para 38.

⁶⁵ *Ibid* at para 45. See also *Transnet Ltd and Another v SA Metal Machinery Company (Pty) 2006 (4) BCLR 473 (SCA)* at para 55. The court here held that confidentiality of information does not apply were tender has been awarded.

⁶⁶ Philip Harrison, Alison Todes and Vanessa Watson. 2007. *Planning and transformation: Learning from the post-apartheid experience*. Routledge, at p. 248.

⁶⁷ Stephens Madue. 2012. "Perceptions on the institutionalization of public participation in South Africa." *Mediterranean Journal of Social Sciences* 3, no. 12 (Special Issue): 21-34 at p. 31, <https://www.richtmann.org/journal/index.php/mjss/article/view/11655>.

⁶⁸ *Ibid*.

⁶⁹ *Ibid*. See also Stella Bvuma and Bwalya Kelvin Joseph. 2019. *Empowering Communities and Improving Public Services Through Open Data: South African Local Government Perspective*, In: Rodríguez Bolívar, M., Bwalya, K., Reddick, C. (eds) *Governance Models for Creating Public Value in Open Data Initiatives*. Public Administration and Information Technology, vol 31. Springer, Cham. https://doi.org/10.1007/978-3-030-14446-3_7, pp. 141-160, at 156.

⁷⁰ M Ncamphalala and S Vyas-Doorgapersad. 2019. 'The Use of Information and Communication Technology (ICT) for Smart Governance in the City of Ekurhuleni', *Administratio Publica*, vol. 27(3), 205-221, <https://journals.co.za/doi/pdf/10.10520/ejc-adminpub-v27-n3-a12>.

services to citizens.

Access to information plays an important role in the participatory aspect of local government in advancing community participation section 16 of the *Municipal Systems Act*. Uzodike & Dlamini submit that, a lack of participation at local government level is a hindrance towards creation of social capital mainly because of reliance on public meetings as a means of communicating with communities for public participation.⁷¹ Other means of public participation such as electronic participation (e-participation) are relatively weak across most municipalities in South Africa.⁷² This may be attributed to the fact that access to the internet comes at astronomically high costs for people of low income, or municipalities are not actively engaging with residents on social media platforms such as Facebook and X. Before an IDP can be passed as a municipal planning tool, it must undergo vigorous public participation.

However, to the opposite, Uzodike & Dlamini submit that municipalities do not effectively use e-participation to inform the public about IDP since the traditional conventional routes of public meetings are not being effectively used at local government level.⁷³ This limits the power of the residents in the respective municipalities to influence decisions of the municipality. Creating robust means of access to information and participation are said to be potential for ensuring that the problem of service delivery protests is dealt. Mamokhere et.al submit that South African municipalities generally face a problem of service delivery protests, which may at times disrupt normal activities in the respective municipal area. People who partake in such service delivery protests are making attempts to fulfil their psychological needs, increase their self-esteem and achieve common goals. Such psychological needs include freedom, respect and personal power.⁷⁴ Promoting access to information at municipal levels with reinvigorated websites that provide communities with trends such as tender opportunities, financial reports and job opportunities.⁷⁵

On the other hand, the COVID pandemic was no good, especially for South Africa, where investigations revealed a lack of transparency in the procurement of recommended supplies to fight the COVID pandemic.⁷⁶ Some municipalities' purchase and supply finances were not as transparent, and this was a result of a patronage

⁷¹ Obainuju E Okeke-Uzodike and B Dlamini. 2019., 'Citizens' E-Participation at Local Municipal Government in South Africa', *Journal of Reviews on Global Economics* vol. 8, Special issue: 458–468, at 463–464, retrieved from <https://www.lifescienceglobal.com/pms/index.php/jrge/article/view/6047>.

⁷² Ibid.

⁷³ Ibid at 465.

⁷⁴ John Mamokhere, Mmbengeni Victor Netshidzivhani and Mavhungu Elias. 2021. "A quantitative study on service delivery protests in the South African municipalities: A case of Tzaneen municipal area." *European Journal of Economics, Law and Social Sciences* vol. 5, no. 3, 613–628, at pp 615.

⁷⁵ Ibid at 626.

⁷⁶ Carlene van der Westhuizen. et al. 2020. Transparency in Local Government Procurement during Covid-19, Dullah Omar Institute; International Budget Partnership South Africa. 2020. *How Transparent are Municipal Websites about the goods and services that municipalities procure?*, <https://dullahomar.institute.org.za/siteworkspace/sarchi-reports-04-12-2020/how-transparent-are-municipal-websites-about-the-goods-and-services-that-mun.pdf>. See also Gaopalelwe Mathiba. 2020. "Corruption, public sector procurement and COVID-19 in South Africa: Negotiating the new normal." *Journal of Public Administration*, vol. 55, no. 4: 642–661 <https://hdl.handle.net/10520/ejc-jpad-v55-n4-a5>.

network, were certain people obtain contracts at inflated prices.

5. Access to Information in Turkish Local Government Administrative System

Türkiye is not a member of *The Council of Europe Convention on Access to Official Documents* but nevertheless the *Turkish Law on the Right to Information, Law No. 4982* regulates the basis and procedure of having the right to information.⁷⁷ This law applies to all public institutions, including local government. Every institution is required to apply administrative and technical measures to provide information as set out in the law to allow applicants to access information promptly, correctly and effectively.⁷⁸ Kocaoğlu submits that the right to information builds a level trust in the state rendering access of information to citizens for any documents they maybe in need of and thus builds trust between the state and the citizens. Basically, in a nutshell, the right to information is based on factors such as protecting the state against the public servants, and protection of the citizens against the state.⁷⁹ Public agencies and institutions such as the local government must provide information to the citizens to ensure equality, impartiality, and openness. The interested party in this case a citizen, civic group can access information in two consequences which are short term and long term. In the short term, the purpose is to access the system's functioning, building confidence in the system and adaption of transparency within the system. In the long term, the purpose would be transparency and openness.⁸⁰

In 2019 Türkiye had its local elections which witnessed an 84% voter turnout,⁸¹ a rise to 87.05% in the 2023 general election and dropping to 78.55% in 2024 local elections. These percentages are the highest turnout of voters in amongst council of Europe members, implying that citizens have a high interest in local government matters.⁸² This comes as an improvement from the Literature from 23 years ago presented a different situation of lack knowledge on local government issues in some municipalities.⁸³ Article 8, touches on the aspect of accountability, *Public Financial Management and Control Law 5018*, those who are assigned with duties and vested with authorities must account for effective, economic and efficient acquisition, utilization of such resources based on law and taking the necessary measures to prevent an abuse of such resources.⁸⁴ Like other state organs, municipalities, through their Mayors and their relevant subordinates in instances of benefiting from the national

⁷⁷ Article 1 of the *Turkish Law on the Right to Information, Law No. 4982*.

⁷⁸ Ibid, at Article 4.

⁷⁹ Belgin Uçar Kacaoğlu. 2013. "Right to information in Turkey in the scope of accountability" *Trakya University Journal of Social Science* 15, no. 1: 1-18, at pp 4-5.

⁸⁰ Ibid, at 5-6.

⁸¹ Vladimir Prebilib, Slovenia, (L, SOC/G/PD), Debate on Monitoring of the European Charter of Local Self-Government: Turkey (23 March 2022).

⁸² Ibid.

⁸³ Muhammet Kosecik and Isa Sagbas. 2004. "Public attitudes to local government in Turkey: research on knowledge, satisfaction and complaints." *Local Government Studies* 30, no. 3: 360-383 at pp 377-381.

⁸⁴ Article 8 of *Public Financial Management and Control Law 5018*.

budget, must prepare accountability reports sent to the *Sayıştay*, hereafter known as the Turkish Court of Accounts. The minister of interior will prepare such reports for public viewing and its own comments.⁸⁵

Amongst some of the continuous challenges that seemingly seem to be an obstacle in the advancing the right to information in Local government in Türkiye is what Korlu describes as lack of attention to public participation in the decision-making of municipalities. As already discussed, strategic plans are key in planning the municipality's programmes. Opinions from the public must be included in the strategic plans. Just like in South Africa, the government in Türkiye reduced the number of municipalities, and this is likely to be a problem behind the level of public participation. Public relations activities are important, and regular activity reports are of prime importance if the strategic documents are put into action to improve the level of engagement with the residents.⁸⁶ To augment this engagement with the public, it is important to have investment in technology that transmits and receives information. Such Information technologies have the potential of offering quick and reliable solutions on local problems, thus providing important opportunities for interaction with citizens.⁸⁷ Local governments that keep up with developments around them in terms digital facilities can be in a position to provide services in a transparent, democratic, effective and efficient manner. More audiences can be reached by transmitting information through these means, saving time and cost in service delivery.⁸⁸

Based on the EU Benchmark report of E-Governance in 2016, Türkiye is said to be progressive. Further indicating adequate E-governance infrastructure in Türkiye.⁸⁹ As from 2020, it is stated that they are about 112 mobile applications that can be used in metropolitan cities. Metropolitan cities provide services through mobile applications so as to facilitate online transactions or e-municipality on their web pages.⁹⁰ The COVID-19 outbreak showed the importance of digital governance and the benefits of digital tools in extraordinary situations, and using such data effectively.⁹¹ One case

⁸⁵ Ibid, at Article 41.

⁸⁶ Rükan Kutlu Korlu. 2015. "Professional City Manager Model in Municipalities and its Evaluation from the Perspective of Turkey." *Journal of Administrative Sciences/Yonetim Bilimleri Dergisi* 13, no. 25: 41-69, at 63, <https://dergipark.org.tr/tr/download/article-file/660339>. See also Aysun Yemen & Mehmet Akif Çukurçayır. 2016. Metropolitan Municipalities in the Context of Democratization and Efficiency Dimensions, Social Sciences Conference, Prague, 45-58 (19-21 July 2016) Czech Republic, Masters International Research & Development Centre, at 50-55.

⁸⁷ Seyida Erkek & Erhan Örselli. 2021. 'Digital Transformation In Local Governments: Digital Municipalism', 94-115 in Kadir Caner Dogan & Ömer Ugur (eds.) *Public Administration And Public Finance Research*, Livre De Lyon, at 100.

⁸⁸ Ibid.

⁸⁹ Turkey 2018 report, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy, {COM(2018) 150 Final}-{SWD(2018) 151 final}-{SWD(2018) 152 final}-{SWD(2018)154 final}-{SWD(2018) 155 final}-{SWD(2018) 156 final} at 22. See also Evrim Tan. 2018. *Decentralization and governance capacity: The case of Turkey*. Springer, at 134.

⁹⁰ Seyida Erkek & Erhan Örselli. *op. cit.* (2021), p. 101.

⁹¹ Ibid.

study contextualises digital municipalism as a concept that develops from the notion of municipalism. The social assistance program indicates Konya qualifies as a digital smart city candidate. Municipalism in Türkiye came about due to the resource-generative municipality, where municipalities made efforts to make revenue through setting up enterprises. One such example that continues today is the bread factories. Municipalities were able to achieve the provision of cheap bread with a regulated price.⁹² Going back to the position, Konya is an example of how municipalism has developed through ensuring that people have access to information on how to receive services that benefit their welfare. A look into the Konya metro-municipality website shows that apart from general services such as loading credit online for transportation cards and submitting petitions online, local citizens were able to access job adverts and make applications through this service. The municipality even offered a social support centre application system for the provision of aid to citizens whose workplaces shut down or who could not work during the pandemic.⁹³

The historical background showed that although the Mayor was chosen directly by the people as of 1963, there was still a gap in the level of participation by the people in municipal affairs. Municipal councils were more active in the decision-making body of municipalities. This section aims to look into the developments after the reform of local government laws and any other laws related to local government after 2005.

The EU report of 2016 and 2018 on Türkiye's readiness into the accession plans shows that lack of civil society involvement is also cited as a problem in these laws because of the government's failure to involve the civil society in law and policy-making processes fully.⁹⁴ Yilmaz submits that there is a deficiency in as far as linking accountability between citizens and the local government. It is extremely difficult to access financial information of the municipal section, of which two most prime issues of concern are finances of municipality owned enterprises and debt deductions.⁹⁵

⁹² Zuhul Önez Çetin. 2014. 'The Social Democratic Municipalism in Turkey: The Metropolitan Municipal Case of Ankara', *International Journal of Liberal Arts and Social Science*, vol. 2, issue 7: 129-143, at 136.

⁹³ Melike Keskin. 2021. *Konya Metropolitan Municipality Mayor Uğur İbrahim Altay announced the 50 million lira social support package*, Anadolu Agency, (April. 28, 2021) <https://www.aa.com.tr/tr/ekonomi/konya-buyuksehir-belediye-baskani-ugur-ibrahim-altay-50-milyon-liralik-sosyal-destek-paketini-acikladi/22230> 52. See also Seyida Erkek & Erhan Örselli. 2021. Digital Transformation In Local Governments: Digital Municipalism, 94-115. In: Kadir Caner Dogan & Ömer Uğur (eds.), *Public Administration and Public Finance Research*, Livre De Lyon, at 109-110.

⁹⁴ Commission Staff Working Document, Turkey 2016 Report, Accompanying The Document, Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee Of The Regions, 2016 Communication On Eu Enlargement Policy, {Com(2016) 715 Final} At 13; And Commission Staff Working Document, Turkey 2018 Report, Accompanying The Document, Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, 2018 Communication On Eu Enlargement Policy, {Com(2018) 150 Final}-{SWD(2018) 151 FINAL}-{SWD(2018) 152 FINAL}-{SWD(2018)154 FINAL}-{SWD(2018) 155 FINAL}-{SWD(2018) 156 FINAL} at 16.

⁹⁵ Serdar Yılmaz and Ayşe Güner. 2017. "Impact of Recent Changes on Local Government Discretion and Accountability in Turkey" *Mamara Journal of Economics* No. 2: 229-250. DOI: 10.24954/mjecon.2017.12 at 245; Ceren Ergenc & Ozge Yusekkaya. 2022. 'Institutionalizing authoritarian urbanism and the centralization of urban decision-making', *Territory, Politics, Governance*, 12(3), 410-429. <https://doi.org/>

Interested parties such as civic groups cannot access information from banks to analyse the financial affairs of municipalities, it is stated that banks use banking laws to decline any requests for such information.⁹⁶ Municipal enterprise's financial information is rarely available to the public because it is regulated by commercial law. Measures to fully involve people to participate in the local planning process are said to be relatively weak.⁹⁷

Although there have been positives on the aspect of participation at the local level, the next dimension below aims amongst other issues to check the level of gender participation in local government issues. The above discussion has shown that over the years the AKP government has consolidated power, this was evident in the past 2019 municipal elections and the removal from office of HDP Mayors on the suspicions of activities that pose a threat to the national security.⁹⁸ The EU accession reports suggest that even though municipal law provides means by the municipalities, citizens and civil society having a platform to make engagements, this is very weak in most municipalities, although notably some municipalities have increased their level of transparency and accountability.⁹⁹ This suggests that enthusiasm into participation issues related to local government activities may not be as high due to tight monitoring from the central government. Furthermore, this may also suggest that Türkiye is retrogressing towards a similar situation when it was still a one-party state between 1930 to 1946 when it was difficult to differentiate between politics and the government. Local Administration Reform Project report (LAR III) emphasises the importance of neighbourhoods and masters (mukhtars) improving their relationship with municipalities. Mukhtars are the relevant people to relay information related to various

10.1080/21622671.2021.2020156, writer states that general assembly decisions in Ankara are often incomprehensible even for experts. Reports from the general assembly are often regarded as confidential and not published online. See also Zeynep Kadirbeyoğlu and Bilgesu Sümer. 2016 "The neoliberal transformation of local government in Turkey and the contracting out of municipal services: implications for public accountability." In Sylvia I. Bergh (ed.) *The Redeployment of State Power in the Southern Mediterranean*, Routledge, pp. 38-55, the writers submit that municipal services outsourced to private players are guise to escape from traditional audits and checks. See also Elif Genç. 2020. "A critical evaluation of the city councils in Turkey: Institutional, external environmental and legislative aspects." *OPUS International Journal of Society Researches* vol. 16, no. 29: 2093-2107, <https://doi.org/10.26466/opus.688170> at pp 2101 to 2102, the writer notes although it is a requirement to form working groups for various municipal activities, this is problematic because one cannot be involved in the affairs of the municipal council without being a member of the working group.

⁹⁶ Ibid, at pp 245.

⁹⁷ Ibid.

⁹⁸ Görkem Altınörs & Ümit Akçay. 2019. 'Authoritarian neoliberalism, crisis, and consolidation: the political economy of regime change in Turkey', *Globalizations*, Vol. 19, Issue 7: 1029-1053, at 1039-1040, <https://doi.org/10.1080/14747731.2021.2025290>.

⁹⁹ Commission Staff Working Document, Turkey 2020 Report, Accompanying The Document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2020 Communication on EU Enlargement Policy, {COM(2020) 660 FINAL}-{SWD(2020) 350 FINAL}-{SWD(2020) 351 FINAL}-{SWD(2020) 352 FINAL}-{SWD(2020)353 FINAL}-{SWD(2020) 353 FINAL}-{SWD(2020) 354}-{SWD(2020)356 FINAL} at 14-15.

development issues back to the residents residing in the neighbourhood.¹⁰⁰ This report mentions that municipalities have recently developed new policies to assist in improving communication with neighbourhoods and mukhtars on a participatory and institutionalised basis.¹⁰¹ Some neighbourhoods in areas previously classified as rural areas now falling under metropolitan municipalities do not have legal personalities granted on mukhtars and neighbours, thus seeing weak relations between the municipality and the rural settlements. However, there is room for improvement.

Strategic plans have not fulfilled their objectives in regard to the information aspect. There has been no internalisation of all the elements within some of the municipalities especially where procurement of services is concerned. The Impact Assessment Final LAR III report puts emphasis on the broad participation by improving technical capacity especially where the budget is concerned.¹⁰² This could suggest some of the problems identified by Beyzli that citizens are not able to understand the role of planning in various issues concerning their city's. For instance, some implemented projects are not supported and understood by the public even though such projects have good intentions. The situation is worsened by the fact that there is a rush to finish these projects within a short period of time without taking into account the individuals' needs and the environment that such individuals reside in.¹⁰³

For planning to be a success, in this case strategic planning, there is a need to ensure active participation in the process. The citizen must believe in the need to participate in the process and his or her position in the city. If the citizen is acquainted with what is happening in their environment, they will be in a much better position to comment and give a level of urban consciousness.¹⁰⁴ Planning not only changes the physical or spatial dimension of a place but also changes the social dimension.¹⁰⁵ This is likely to impact the individual's social capital because they may drift from places they once considered home and meet up with other people when forced to relocate to make way for a project. The aspect of housing indicates that scholars have questioned the consultancy process of some projects that took place. Some variables used to determine the level of urban consciousness in understanding the roles of citizens' participation in a study conducted in the metropolitan city of Trazbon include claiming ownership of the city, emotional and social gains and participation in the city.¹⁰⁶ The evidence from

¹⁰⁰ Muhittin Acar, Emre Koyuncu, Can Okman, Eren Çağdaş Bilgiç. 2020. Belediye mevzuatının uygulanmasının yerel yönetimler üzerindeki etkisinin değerlendirilmesine ilişkin rapor (Report on the assessment of the impact of the implementation of municipal legislation on local governments), https://www.researchgate.net/publication/364302190_BELEDIYE_MEVZUATININ_UYGULANMASI_NIN_YEREL_YONETIMLER_UZERINDEKI_ETKISININ_DEGERLENDIRILMESINE_ILISKIN_RAPOR, (LAR III), (May 2020), at 44.

¹⁰¹ Ibid, at 44.

¹⁰² Ibid, at 48.

¹⁰³ Dilek Beyazlı & Şinasi Aydemir. 2011. 'Does Urban Consciousness Help understand The Citizens' Role in Planning?', *European Planning Studies* vol. 19, no. 5: 839-860, at 840, <https://doi.org/10.1080/09654313.2011.561040>.

¹⁰⁴ Ibid, at 840.

¹⁰⁵ Ibid, at 842.

¹⁰⁶ Ibid, at 847.

the first understanding claiming ownership of the city showed that people who lived longer or all their lives in a specific area are more likely to regularly participate or get involved in the issues affecting their respective neighbourhoods.

Those who did not have any social ties with the city were less likely to participate the issue or challenges bedevilling their neighbourhoods.¹⁰⁷ In respect of the variables concerning emotional and social gains of the city, the study shows that the more people interact with each other, the more they likely to be aware of the challenges and developments taking place their neighbourhoods. People involved in meetings concerning their communities are more likely to be concerned about seeing positive outcomes than people with no emotional or social gains attached to the city.¹⁰⁸ In the last variable picked concerning participation in the city affairs relates to having strong institutions in place to ensure that citizens participate fully. Strong institutions create a sense of loyalty amongst citizens in that they will feel obliged to participate in the affairs of the city. Suppose the municipality does show commitment to create an environment of participation in the city's affairs. In that case, the chances are that there will be a feeling of alienation among the citizens, which can further worsen as years progress because of lost hope in respect of the city taking the concerns seriously.¹⁰⁹ All in all, the study showed that consciousness of participation in planning issues of residents in Trabzon was non-consistent and it varied by neighbourhoods; the more individuals resided in the urban area, the more they were likely to show some consciousness in the affairs of the metro-municipality.¹¹⁰

Municipalities, like any other organisations with legal personality, must have their affairs audited. LAR III shows that empirical interviews with municipal representatives indicated they displayed their reports on the internet in respect of electronic tender systems and advertising of tenders, therefore, this was an example of transparent municipalism.¹¹¹

Other methods of participation showed that citizens assemblies were an important mechanism that allows citizens involvement through NGOs. Citizens assemblies in respect of LAR III show a potential of bringing together different political and social groups to influence the decisions of the municipality.¹¹² However, a challenge posed is the inefficiency of taking decisions of citizens assemblies and discussing them in the municipal councils as it is not applied formally.¹¹³ The report suggests that for citizens assemblies to work effectively, they must develop continuous relations and methods of cooperating with neighbourhoods and Mukhtars.¹¹⁴

Access to information must not only be a formality, but the mass housing projects also suggest access to information on issuing of public tenders was just a

¹⁰⁷ Ibid, at 847.

¹⁰⁸ Ibid, at 851-852.

¹⁰⁹ Ibid, at 854.

¹¹⁰ Ibid, at 857-858.

¹¹¹ Muhittin Acar, Emre Koyuncu, Can Okman, Eren Çağdaş Bilgiç. *op. cit.* (2020), p. 51.

¹¹² Ibid, at 52.

¹¹³ Ibid.

¹¹⁴ Ibid.

formality. Empirical analysis by Akçaoğlu suggests that one would need strong political support to obtain a public tender to build public housing. This not only makes a tender applicant win the bid, but also create future relations and overcoming certain bureaucracies.¹¹⁵

Challenges of implementing Law No. 6360 reveal that the merger of smaller municipalities and rural areas has caused citizens living in rural neighbourhoods and residential areas at the edges of the cities to be in a difficult situation. Decision-making in the metropolitan municipalities that have had mergers has become more complicated. Some citizens residing in merged residential areas do not enjoy the level of participation they had prior to the merger. These residents are restricted to participation in local elections. The report recommends that citizens be put in a situation where they can state their preferences in projects within their municipality and those projects that affect their entire province.¹¹⁶

Not much has been written about the institution of Mukhtars and their relevance to promoting access to information a local level of government, with the age of digital technology, tasks done by Mukhtars such as giving people address certificates can now be found online. But nevertheless, Mukhtars have an important responsibility of negotiating on behalf of the neighbourhood represented at in the respective municipality. They communicate information from the people to the municipality.¹¹⁷ We can see the importance of Mukhtars in the urban transformation projects. For instance, in Ankara's urban transformation projects, Mukhtars played influential role negotiating with people residing in the *Gecekondu*s and the municipality to receive compensation. Although the issue of housing has its own disadvantages, the relying of information through convincing people to sign TOKİ contracts has been as result of the Mukhtars. In one interview, a Mukhtar described this as the correct thing in convincing former residents of the *Gecekondu* of Çiğir to get their homes demolished in order to move into TOKİ housing as they had long been suffering in poverty.¹¹⁸ This can be put under doubt because of indirect recentralization that has taken place over matters which overlap with the scope and functions of municipalities in terms of article 14 in *Municipality Law 5393* such as housing. However, the aspect of polarization and patronage allegations surrounding the TOKİ projects has not been discussed in depth.¹¹⁹ People may feel short-changed by their actions when requested to move out of an area.

It is important to interpret the *New Urban Agenda* (NUA) within the context of accessing information. Furthermore, access to information cannot be left in isolation from Sustainable Development Goal No. 11.3 which aspires by 2030, to "enhance

¹¹⁵ Aksu Akçaoğlu. 2018. 'The Transformation of Space and Social Class: The Past and Present of Çukurambar', *Kent Araştırmaları Dergisi*, Volume: 9 Issue 25: 782 - 799, at. 797.

¹¹⁶ Muhittin Acar, Emre Koyuncu, Can Okman, Eren Çağdaş Bilgiç. *op. cit.* (2020), p. 53.

¹¹⁷ Gülşah Aykaç. 2022. 'Muhtars becoming real estate agents: Changing roles of neighbourhood representative in relation to the state-led urban transformation in Çiğir, Ankara, Turkey', *Journal of Urban Studies* vol. 46, issue 1: 160-178.

¹¹⁸ *Ibid*, at 163.

¹¹⁹ Marschall, Melissa, Abdullah Aydoğan, and Alper Bulut. 2016. "Does housing create votes? Explaining the electoral success of the AKP in Turkey." *Electoral Studies*, vol. 42: 201-212, <https://doi.org/10.1016/j.electstud.2016.02.010> at pp 209.

inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries”.¹²⁰

It is, therefore, important for a local authority to be capacitated in being viable, transparent and accountable by offering services that consider the needs of the most disadvantaged people. The Turkish report on measures taken this far in implementing NUA states that 346 municipalities in Türkiye are implementing the strategic administration frameworks. Activity reports have been produced which mention whether the SDG indicators have been achieved or not. The Report emphasises that municipalities must ensure that they make their work available to the public through reports which can be used annually.¹²¹ NUA cannot be left in isolation from SDG 16.6 which aims to “Develop effective, accountable and transparent institutions at all levels” and SDG 16.7 which seeks to “ensure responsive, inclusive, participatory and representative decision-making at all levels”.¹²² In its report to NAU, the government states that Türkiye has taken steps to ensure that citizens are included in the local decision making process introduced by local Agenda 21. The report states that government encourages voluntary participation in institutional strategic plans, presence in council meeting and specialized commissions, right to information and mechanisms of filing petitions.¹²³ The government further states that e-government and e-municipality service has been rolled to ‘increase local inclusion’ by facilitating lives of people daily.¹²⁴ Eskişehir metropolitan municipality has been used as an example of where prior consultation takes place before a budget is implemented in line with public input and priorities.¹²⁵

Access to information cannot be interpreted without living out issues involving understanding to what extent SDGs have been implemented at local in selected municipalities. In the case of Kadıköy, participatory planning has been implemented from a bottom-up approach whereby different stakeholders' needs and expectations are taken into account. This planning approach is said to increase a sense of ownership towards the city and the inhabitants, thus creating a transparent management culture.¹²⁶

¹²⁰ Sustainable Development Goal No.11.3.

¹²¹ Republic of Turkey National Report on NUA , at pp 107-108.

¹²² Sustainable Development Goal No. 16.6 and 16.7.

¹²³ Republic of Turkey National Report on the Implementation of the New Urban Agenda, (March 2021), at 111, <https://webdosya.csb.gov.tr/db/habitat/haberler/bm-habitat--8230-54329-20210817155231.pdf>.

¹²⁴ Ibid, at pp. 112.

¹²⁵ Ibid.

¹²⁶ Localisation of sustainable development goals: the case of the Marmara region, (MMU publications, first edition October 2022) at 106-108; see also Murat Şeker, Çağla Bakış, Barış Dizeci. 2017. Human Development Index-Districts (Hdi-D). Transitioning From Consumer To Human, Editor N. Berk Çoker, Istanbul, <https://ingev.org/raporlar/HDI-D-2017-ENG.pdf>; see also The pilot project on mapping the SDGs in Turkey, Final Report, (UCLG-Mewa August 2020) at 73-75. This report thought not mentioning Kadıköy speaks of Şişli District municipality enjoying a high development index that includes a high level of participation and transparency within the municipality; See also Yılmaz Argüden. 2018. From A Citizen's Perspective: Governance Scorecard of Municipalities for Istanbul Districts, Argüden Governance Academy, No:12-E at 123. In 2018 the Kadıköy had one of the highest scores in terms of governance principles that includes transparency, accountability and consistency based on score card results from public opinion.

The 2020-2024 strategic plan of the municipality “Tell us Kadiköy” has been launched, this project involves the public in the planning process, through providing the public with an opportunity to monitor the plans and also raising awareness to the public on the importance of localizing the SDGs. Meetings have been organized with 1100 residents from 21 neighbourhoods.¹²⁷ A website was created in 2019 with the title ‘Tell us Kadiköy’ for the public to post their concerns, demands and challenges to include in 2020-2024 strategic plan. Prior to the public consultations people were educated on the 17 SDGs on issues relating to public health, gender equality, sustainable cities, and renewable energy.¹²⁸ The municipality also added links to the UNDP web pages. The Kadiköy municipal website has a series of strategic reports from previous years with data of the 21 neighbourhoods within the district.¹²⁹ The public can view the problems raised on the Kadiköy online platform, which is unique in that it has platform where children can express their feelings and opinions on issues connected to the city through photos, videos, and messages.¹³⁰

The 2022 EU report on candidate’s progress of accession gives a positive impression about some municipalities taking measures to increase the level of transparency and accountability within their municipalities through live broadcasting of municipal tenders.¹³¹

6. Conclusions

Access to information plays a vital role in promoting social inclusion and enhancing the well-being and happiness of individuals. The right to access information from the state, as enshrined in Section 32 of the South African Constitution and regulated by the Promotion of Access to Information Act (PAIA), is fundamental in ensuring transparency, trust, and accountability between the government and its citizens.

However, despite the existence of laws and regulations, challenges remain in ensuring effective public participation and access to information in both South Africa and Türkiye. In South Africa, inadequate access to information has been linked to service delivery protests, as citizens feel betrayed and excluded when important information is withheld from them. The lack of inclusive approaches in public participation initiatives also contributes to the inadequate realization of social capital,

¹²⁷ Ibid, at 106-108.

¹²⁸ Ibid; See also Yenigun, Ozge, and Ayda Eraydin. 2019. "Governing urban diversity in Istanbul: Pragmatic and non-discriminatory solutions of governance initiatives in response to politicisation of diversity." *European Urban and Regional Studies* 26, no. 3: 268-282 <https://doi.org/10.1177/0969776419854497> at pp 274-275.

¹²⁹ Ibid, at pp 106-108.

¹³⁰ Ibid.

¹³¹ Commission Staff Working Document, Turkey 2022 Report, Accompanying the Document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Communication On Eu Enlargement Policy, at {com(2022) 528 final}-{swd(2022) 332 final}-{swd(2022)334 final}-{swd(2022) 335 final}-{swd(2022) 336 final}-{swd(2022)337 final}-{swd(2022) 338 final} at 15.

as not all groups of people are adequately represented and engaged in decision-making processes.

In Türkiye, there have been efforts to improve access to information through information technologies and social media platforms. Digital municipalism and inclusive programs have been implemented to provide residents with information and enable online transactions. Mukhtars play a crucial role in disseminating information between municipalities and neighbourhoods, but more can be done to enhance their relevance and effectiveness.

In both countries, public financial management and control laws have been introduced to inform citizens about the financial state of affairs of public institutions, aiming to close doubts of misappropriation and irregular expenditure.

One common challenge in both countries is the lack of simplified and accessible information, especially in the context of procurement processes and urban regeneration projects. Ensuring that information is presented in a clear and understandable manner is essential for engaging citizens and fostering trust.

Additionally in South Africa, barriers such as prohibitive internet data charges and limited access to smartphones can further impede access to information, particularly for vulnerable and marginalized populations.

Overall, promoting access to information and effective public participation are essential for building trust between municipalities and residents, fostering social capital, and ultimately improving governance and service delivery. By addressing the challenges identified in the paper, both countries can work towards creating more inclusive and transparent societies, where citizens are empowered and informed participants in the decision-making processes that affect their lives.

Although Türkiye has a *Turkish Law on the Right to Information, Law No. 4982* the nation neither signed or ratified the *Convention on Access to Official Documents*, this regional instrument is very important towards ensuring that access to crucial documents is disseminated at the local level of governance. For instance, national government is responsible for educating public authorities that include local authorities in implementing this right.¹³²

This document also encourages public authorities, including local authorities, to ensure that they take up initiatives to avail public documents to create transparency and efficiency of public administration.¹³³ It is also recommended that *Ministerial Committee Recommendation On The Participation Of Citizens In Local Public Life*¹³⁴ should also be seriously implemented on the basis of its inclusive traits. For instance, dialogue between citizens and local elected representatives is encouraged.

Citizens must be given a greater say over municipal planning and decisions of strategic importance. Based on the higher voter turnout in the local elections of 2019, citizenship participation in municipal politics is growing and changing its form. This

¹³² Article 9 of *The Council of Europe Convention on Access to Official Documents*.

¹³³ Article 10 of *The Council of Europe Convention on Access to Official Documents*.

¹³⁴ CM/Rec(2018)4 - Recommendation of the Committee of Ministers to member states on the participation of citizens in local public life (21 March 2018).

level of participation must be guarded by eradication of secrecy in procurement processes, collusion and corruption in municipalities, as we see more in South Africa. These recommendations also explicitly speak on the importance of fostering social inclusion by local authorities. Municipalities must always bear in mind that some people are less fortunate than others to have means of participation in the affairs of the municipality, such as women, youth, elderly people and foreign citizens. Therefore, it is imperative that municipalities make participatory approaches which target these groups of people.

The paper has demonstrated, with the most similar approach, the impact that local governments' role in ensuring access to information has had on creating inclusive societies in both South Africa and Türkiye. The paper has been constructed from the available international instruments on the importance of ensuring that access to information cannot be separated from the local government's role in the pursuit of creating inclusive societies. The Paper has demonstrated that lack of access to information creates service delivery protests and mistrust amongst citizens. The normative framework of access to information needs to be fully realised practically. The potential of secrecy results in irregular expenditure and corruption, which sees municipalities being put under judicial administration in order to put their affairs back in order.

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