

The Impact of Digitalization on Citizens Involvement in Constitutional Changes

BJÖRG THORARENSEN
SUPREME COURT JUDGE, ICELAND

IACL ROUND TABLE – PANEL 2
COPENHAGEN 31 JANUARY 2022

Main subjects for discussion

- How digitalization may affect citizens involvement in constitutional changes
- Is it feasible to develop methods to increase such involvement?
- The Icelandic experiment in constitution-making process 2010-2013
 - “tremendously innovative and participatory” (Elkins, Ginsburg and Melton 2012)
 - “most consultative and participatory constitutional drafting to date” (Fillmore-Patrice 2013)
 - “world’s first crowdsourced constitution” (Landemore 2015)
- Use of digital means as a channel for the general public in drafting proposals
- The value of digitalization for participatory democracy ?
- Conditions for digital participation
 - Widespread use of Internet (99%) and social media (Facebook, Twitter, Instagram)

The constitution-making process in Iceland 2010-2013

- Iceland's bank collapse and financial crisis in 2008
- Distrust of the public against politicians and the political institutions
- Outdated constitution blamed
- Althingi adopted Act 90/2010 on Consultative Constitutional Assembly
 - Given the task to review certain parts of the Constitution and submit proposal to Althingi
 - Objective to involve the nation directly into the reform process
- 25 delegates elected from group of 522, not connected to political parties
- One day National Forum, 950 individuals selected at random to discuss values
- The elections to the Assembly invalidated on grounds of flaws
- Constitutional Council of 25 members appointed by Althingi

Digitalization in the work of the Council

- Extremely short time, less than 4 months (April-July 2011)
- Strong emphasis on public engagement and transparency
- Digital means to achieve that aim:
 - 1) Publishing on the website all meetings, all minutes from meetings of the three working groups and plenum
 - 2) Broadcasting interviews and weekly sessions on the Internet
 - 3) Using social media for public discourse and platform for updates on the process
- The writing of the constitution draft through „crowdsourcing“
 - First document with main chapters – remarks sought from the crowd and discussed
 - Each version with more text added following comments
 - Twelve drafts posted at various stages
 - Consensus on final version - a compromise of various visions and inputs
- Comments and proposals on Facebook, Twitter, e-mails (approx. 3.600)
- Formal suggestions submitted (395), the largest part on human rights

Digital impact and meaning of crowdsourcing

- Impact of various proposals, comments and feedback received
 - Individuals, groups, associations, NGO's
- Difficult to assess concrete contributions into the text – no record found
- The concept of crowdsourcing: “an online, distributed problem-solving and production model by which an undefined group of people—the crowd—is invited to participate in an online task and help complete it by submitting knowledge, information or talent. ” (Landemore 2015)
- Is the process more participatory?
 - Very low participation despite equal access for all
- Lack of representation from different social groups

The fate of the final proposal of a constitution

- Proposal for a whole new Constitution submitted in July 2011
- Material proposals strongly criticized for its quality
- Advisory referendum in autumn 2012 related to certain questions
- 64% voted that the proposal should “form a basis” for constitutional bill
- A bill introduced but strong opposition in Althingi
- Moving the task of writing a constitution from the political forum did not work out
- Constitutional democracy requires constitutional channels
- The “will of the crowd” through digital means cannot legitimate bypass

New forums to provide for digital participation

- Interactive consultation website

- New systems to increase the participation of the general public through the internet and social media
- Impact on shaping of policies and commenting on proposals for legislative bills
- Promoted in co-operation between the OECD states (OECE Regulatory Policy Outlook 2021)
- Centralized interactive consultation website launched in 2018
 - stakeholders provide comments both at early and late stages of the consultation process
 - preliminary draft legislation and regulations
 - legislative bills contain summary analyzing how comments impacted the proposal
 - participation of the general public through social media, consultations are encouraged

Concluding remarks

- The world's first crowdsourced constitution - Disappointment or encouragement?
- Great impact on public awareness and social debate
- Deeper understanding among the public on the role of the constitution
- Encouraging to seek greater consultation of the electorate
- Digital means as highly useful tools
- The value of digitalization for participatory democracy should neither be oversimplified nor overestimated

Literature

- Z. Elkins, T. Ginsburg and J. Melton, 'A Review of Iceland's Draft Constitution', *The Comparative Constitutions Project*, October 14, 2012 <http://comparativeconstitutionsproject.org/wp-content/uploads/CCP-Iceland-Report.pdf?6c8912>
- H. Fillmore-Patrice: 'The Iceland Experiment (2009-2013): A Participatory Approach to Constitutional Reform' http://www.democratizationpolicy.org/pdf/dpc%20policy%20note%202_%20the%20iceland%20experiment.pdf
- S. Suteu, 'Constitutional Conventions in the Digital Era: Lessons from Iceland and Ireland', *Boston College International & Comparative Law Review* (2015) 38, <https://lawdigitalcommons.bc.edu/iclr/vol38/iss2/4/>
- H. Landemore, 'Inclusive Constitution-Making: The Icelandic Experiment', *The Journal of Political Philosophy: Volume 23, Number 2, 2015* <https://onlinelibrary.wiley.com/doi/full/10.1111/jopp.12032>
- Venice Commission (European Commission for Democracy through Law), 'Opinion on the draft new constitution.' Council of Europe, 11 March 2013 <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29010-e>.
- Indicators of Regulatory Policy and Governance 2021 – Iceland country profile. OECD Regulatory Policy Outlook 2021 <https://www.oecd.org/gov/regulatory-policy/iceland-country-profile-regulatory-policy-2021.pdf>
- Á. Árnason and C. Dupré *Icelandic Constitutional Reform. People, Processes, Politics* Routledge. London New York 2020.
- B. Thorarensen: 'The people's contribution to constitutional changes: Writing, advising or approving? – Lessons from Iceland'. *Participatory Constitutional Change. The People as Amenders of the Constitution*. Ritstj. Xenophon Contiades og Alkmene Fotiadou. Routledge, 2016.