

Comparing the reality of participatory democracy in the Algerian and Tunisian states and their effects on the management of local public affairs

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Abstract:

This research paper aims to provide an analytical study of the participatory democracy approach in the Algerian and Tunisian experiences, through a comparative study through which we wanted to review the most important constitutional and legal frameworks and regulations and the programs that embody them, and to provide an analytical legal reading of the most important basic points that the reform touched upon in this

framework. Our choice to address this topic is due to the fact that it is one of the leading topics in the management of regional groups, especially in light of the crises that representative democracy has experienced. This is what led the Algerian and Tunisian legislators to resort to adopting several reforms whose texts were reflected in the Algerian constitutional amendment of 2016 and the Tunisian constitution of 2014.

Keywords: Participatory democracy approach; Regional groups; Constitutions and laws; Community participation.

Introduction:

Regional groups are considered the appropriate basic spaces for practicing participatory democracy and the ease of managing local public affairs. Given the shortcomings and gaps left by representative democracy in the management of local councils, many researchers have resorted to searching for new methods and mechanisms to enable citizens to participate in managing local affairs, which is what the participatory democracy approach has produced in terms of new mechanisms and principles for management.

Algeria and Tunisia, like the countries of the world, seek to establish a state of law and justice and to support democracy by enshrining participatory democracy in their constitutions as the highest peak in the hierarchy of laws that make up the legal system. The Algerian constitutional amendment of 2016 and the Tunisian constitution of 2014 constitute a constitutional, legal and institutional reform, especially at the local grassroots level. Algeria stipulated in the tenth paragraph of

the preamble that the Algerian constitution "intends to build institutions based on the participation of every Algerian man and woman in the management of public affairs, and its recognition of the state's encouragement of participatory democracy at the level of local communities, considering the municipality as the optimal framework for its practice. In contrast, the Tunisian legislator also stipulated in the 2014 constitution the enshrinement of participatory democracy and laid its foundations through the Local Communities Code Law and the regulations for implementing participatory democracy mechanisms.

The problem: *Based on the above, we can pose the following problem: To what extent do the constitutional and legal reforms enshrined in the Algerian Constitution of 2016 and the Tunisian Constitution of 2014 affect the embodiment of the participatory democracy approach and its role in managing local affairs?*

Hypotheses: *The difference in the constitutional enshrinement of the participatory democracy approach plays a role in highlighting the reality of the two experiences.*

The success of the reality of participatory democracy is linked to the extent of enshrining the mechanisms for implementing and embodying participatory democracy.

Methods: *In order to answer the problem raised and prove the validity of the hypotheses, we used: the descriptive analytical method in order to study the regulatory framework for enshrining the participatory democracy approach in Algerian and Tunisian legislation, and the comparative method by studying and comparing the reality of the two experiences between application and legislation.*

Chapter I: Constitutional and legal consecration of the participatory democracy approach in Algerian and Tunisian legislation

First Subtitle: The general framework of the concepts of participatory democracy and local groups

The approach to participatory democracy as a mechanism for practicing democracy in political life is not a recent one. Many philosophers have expressed it before. For example, we find Jean-Jacques Rousseau, the originator of the idea of the social contract, who believed that the English people, under representative democracy,⁽¹⁾ did not have representatives and considered them merely commissioners, whose role ended only with the election process.⁽²⁾

The German philosopher Jürgen Habermas also spoke about it in his research “Democracy in the Public Sphere” and he saw it as an alternative or complement to representative democracy, as he believed that individuals are treated as consumers and must be encouraged to become active citizens by devoting participatory democracy that allows them to exercise oversight and accountability.⁽³⁾

Social groups historically marginalized from public arenas in Latin American countries have also played a role in making their voices and aspirations heard, and have become a significant force in local elections.⁽⁴⁾

Given the development witnessed by the concept of participatory democracy, researchers have differed in providing a general and comprehensive definition of it, as it is a complex term consisting of two concepts, each concept has its own ideological and political connotations. Among these definitions, we find Dr. Amin Sharit's definition that it is a new form or image of democracy represented in the direct participation of citizens in discussing public affairs and making political decisions related to them, or it is expanding the exercise of power to citizens by involving them and involving them in public dialogue and debate, and making the political decision resulting from that.⁽⁵⁾

What also distinguishes this approach is its characterization by the direct participation of citizens, who are sometimes chosen by lottery, and participation in establishing deliberations through the exchange of opinions and arguments to search for the best solutions and decisions, and thus the decision is less conflictual.⁽⁶⁾

Some define it as a collective decision-making process that combines elements of direct and representative democracy, and citizens have the ultimate authority to make decisions on policy, which enables citizens to monitor their performance⁽⁷⁾. It is a new way of participation based on the idea of enabling citizens to participate, whether individually or collectively, which contributes to rationalizing decisions through citizens' conferences or through the process of creating participatory budgets. Therefore, the role of citizens is not limited to electing officials, but they must also be allowed to participate in making decisions through public deliberations and discussions alongside public officials, experts, and social organizations.⁽⁸⁾

As for local or regional groups, they are the appropriate space to embody participatory democracy, since the elected councils at the local level are the ones who possess the mechanisms to empower the citizen to put forward his projects, initiatives and developmental opinions that concern the base in which he resides and cohabits, and he is more knowledgeable about its affairs and aspirations. Accordingly, we will provide a definition of local groups and specify their organization in Algerian and Tunisian laws.

The local community is defined as local administrative units consisting of elected councils that have financial and administrative independence from the central authority to enable them to achieve the goals for which they were established, while the right to monitor remains with the central authority. It is called local to distinguish it from the central authority, given that its role and activity are limited to the local level and not the national level.⁽⁹⁾

It also symbolizes the geographical area over which the powers of public bodies are exercised, and it may be linked to the independent personality of some regions, although they do not constitute an independent state in the conventional political concept. Therefore, it is a place for a shared reality and future for actors who built it and live in it, united by common values and principles and mutual relationships between them and their surroundings.⁽¹⁰⁾

The constitutional founder in Algeria referred to the regional groups, and his reference to them differed according to each constitution. According to the 2016 constitutional amendment and in the text of Article 16 thereof, he considered the regional groups of the state to be the state and the municipality, and the municipality is the basic groups⁽¹¹⁾, which was repeated in the text of Article 17 of the 2020 Constitution.⁽¹²⁾

In Tunisian legislator of 2014 stipulated the concept of local communities and made a radical change to it in Chapter Seven, entitled "Local Authority⁽¹³⁾" and enriched it with principles dedicated to participatory democracy, as the text of Article (131) explicitly recognized and affirmed the democratic legitimacy of the authorities of territorial communities by establishing decentralization as a basis for territorial organization and management of public affairs, where three levels of decentralization were determined, represented by municipalities, regions, and provinces⁽¹⁴⁾, in contrast to what the

regional organization was in the 1959 Constitution, which was represented by two levels of local communities: the state and the municipality.⁽¹⁵⁾

It is clear from this chapter that the Tunisian legislator has expanded the scope of participatory democracy mechanisms by extending them to include all areas related to the preparation of development programs, facilities, territorial planning, and the preparation of financial and investment plans. In accordance with the requirements of open governance, the Constitution allows citizens to access all administrative documents related to local communities. Participatory democracy mechanisms also allow them to influence the decisions of local communities and evaluate their performance⁽¹⁶⁾. Emphasis is placed on the establishment of the Supreme Council of Local Communities, which is a representative structure for the various local councils according to Chapter (141) of the Constitution, and on strengthening the independence of local communities by subjecting them to subsequent oversight.⁽¹⁷⁾

Second Subtitle: Constitutional and legal stipulation of mechanisms for embodying citizen participation in managing local affairs:

The constitutional founder continued to enshrine the principles of participatory democracy in the constitutional amendment of 2016, as the text of the tenth paragraph of the preamble stated that the Algerian Constitution "intends to build institutions based on the participation of every Algerian man and woman in the management of public affairs and guaranteeing freedom for every individual within the framework of a democratic and republican state."⁽¹⁸⁾ It also acknowledged the state's encouragement of participatory democracy at the level of local communities and that the elected council is the general framework in which the people express their will and monitor the work of public authorities, considering in the same context that the regional communities of the state are the municipality and the state, and the municipality is the basic community and the appropriate space for practicing citizenship and involving various societal actors in managing local public affairs⁽¹⁹⁾. It also expanded the scope of participation by establishing new advisory institutions with the executive authority such as the Supreme Islamic Council for Youth and the National Council for Scientific Research and Technology. This

participatory concept allows for the expansion of the fields of participation with the aim of strengthening participatory democracy in all management institutions for the sake of public and rational governance and strong citizen participation that will ensure the effectiveness of public activity, enhance social security and improve services.⁽²⁰⁾

This was actually embodied in the Tunisian Constitution of 2014, which is considered the first constitution to explicitly stipulate the consecration of the principle of participatory democracy, which means going beyond the limits of representative democracy and enriching it with participatory mechanisms in Article 139. This proposal is considered very important and a turning point in the democratic path of citizens in building trust between them and local communities through their participation in developing a specific vision for their regional affairs that is compatible with the nature of the regional community to which they belong. Therefore, Article 139 stipulates that local communities adopt participatory democracy mechanisms and principles of open governance, to ensure a broader contribution of citizens and civil society in preparing development and territorial planning programs and following up on their implementation.⁽²¹⁾

1-The initiative and proposal to hold sessions of the elected people's councils:

The mechanisms for calling for the convening of sessions of the municipal, state, and regional people's councils differed according to what each legislator decided in each country. In Algeria, Article 17 of Law 10/11 stipulates that the municipal people's council shall meet once every two months, for a period of 05 days, and it may hold an extraordinary session at the request of its president or 2/3 of its members, or at the request of the governor. It may also meet in the event of imminent danger or major disaster.⁽²²⁾ *As for the state people's council, according to the text of Article 14 of the state law 07/12, it holds 04 ordinary sessions per year for a maximum of 15 days for each session, and it may meet in an extraordinary session at the request of its president or 1/3 of its members, or the governor. Article 15 indicates the possibility of it also meeting in the event of a natural or technological disaster.*⁽²³⁾

By searching in the legal texts of the municipality and the state, we conclude that the Algerian legislator did not give any mechanism to the

citizen that allows him to participate in the call to hold a session of the municipal people's council, especially if there is a phenomenon that requires that solutions be found for it through deliberation in the sessions of the municipal people's councils, unlike the Tunisian legislator who allowed the right of citizens to intervene to hold sessions of the local people's council, as Article 216 of the Local Authorities Code stipulates that the council shall determine the dates of its regular sessions in its first meetings and inform the public of them, and the regular session shall be preceded by a preliminary session, to which the residents of the municipality are invited through the available media to hear their interventions on issues of a local nature and to inform them of development programs, after which the proposals presented during the preliminary session shall be studied, and the municipal council shall hold a session every three months, and meetings may be held whenever necessary at the invitation of its president or at the request of a third of its members or at the request of a tenth of the voters registered in the municipality's electoral register, and the text of Article 311 of the same law indicates that the council must hold its sessions every three months, as It holds meetings whenever necessary, at the invitation of its president or at the request of one-tenth of the voters registered in the electoral register of the region.⁽²⁴⁾

2- Participation in the sessions of the elected regional councils:

In Algerian legislator did not specify the process of preparing the agenda of the municipal councils, but rather mentioned that the mayor is the one who determines the agenda in consultation with his executive body, and then the agenda is posted in the designated advertising places⁽²⁵⁾, and the state law followed the same procedures for preparing the agenda, but the legislator's desire to strengthen the principle of participation is evident in the text of Article 18 of the same law, which included informing the public of the agenda and sessions of the state people's council, as it stated that the agenda of the session is posted immediately after summoning the members of the state people's council at the entrance to the deliberation hall and in the designated posting places to inform the public, especially electronic ones, and at the headquarters of the state and its affiliated municipalities.⁽²⁶⁾ In contrast to the municipal law, which was satisfied with publication within the designated headquarters only.

3- Publicity of local council sessions:

In Algeria, the legislator has approved an important method of popular participation, which is the publicity of the sessions of elected people's councils and allowing citizens to view their deliberations, most important activities and decisions taken. This is what is stipulated in Articles 26 and 27 of Law 10/11 relating to the beginning, and excluded closed sessions whose scopes were limited exclusively to studying disciplinary cases of elected officials and issues related to maintaining public order⁽²⁷⁾ Article 26 of the Wilaya Law 07/12 indicates that the Wilaya People's Council is obligated to hold its sessions in public, and it can decide in a closed session in cases of natural and technological disasters, or due to studying cases of disciplinary elected officials.⁽²⁸⁾

What is wrong with this article is that it only gives the citizen the right to attend and sit in the place designated for him without having any right or role in the right to express his opinion or participate in the discussion. Therefore, the principle of publicity of the sessions of elected councils is considered insufficient in several aspects, especially the failure to allocate special places and headquarters for citizens, as most of the headquarters of municipal and state councils accommodate the number of elected officials, executive directors, military, judicial and civil authorities, the press, media and civil society. Therefore, the process of citizen participation must be reframed in a way that allows the citizen to attend, propose and express his opinion.

In Tunisia legislator has approved in the text of Article 218 and Article 314 the publicity of the sessions of the municipal and regional councils, and the empowerment of the session president to control the session and order the departure of anyone who disrupts its progress. The council also decides to hold its sessions in secret if its president or a third of the council requests that.⁽²⁹⁾ As for the regional council, according to the text of Article 357, its sessions shall be public and it has the right to summon anyone it deems useful to listen to. Article 219 and Article 315 stipulate the allocation of places for observers in the sessions of the municipal council for each of the representatives of the region, civil society organizations, and the media. As for the regional council, places for observers may be allocated for members of the people's representatives elected from the region, for the mayors of the region, representatives of labor unions, customs, national

organizations, chambers of industry and commerce in the region, the media, and civil society organizations in the region.⁽³⁰⁾

Article 216 of the same law also refers to a real and effective mechanism for participation in the management of local affairs by residents, represented by the preliminary sessions, which preceded the regular session, under the supervision of the president of the municipal council or his representative at least one month before the regular session, and to which the residents of the municipality are invited through the available media to hear their interventions on issues of a local nature and to inform them of development programs, after which the proposals presented during the preliminary session are studied in the regular session.⁽³¹⁾ Although this article was stipulated in Article 14 of the Municipal Law of 1975, it was not effective and remained formal.

Article 35 adds that municipal and regional councils may decide by a majority of their members to organize public meetings with residents during which clarifications are provided by the council and proposals are made by residents, especially before making decisions such as reviewing local fees, concluding cooperation and partnership contracts, contributing to the establishment of public facilities, managing public funds, local council regulatory decisions, partnership and external cooperation agreements, financing associations and managing donations. A session may also be organized upon the submission of a reasoned request by at least 5 percent of those registered in the electoral register of the municipality or region. In this case, the local authority is obligated to organize the session within a maximum of thirty days from the date of submission of the request.⁽³²⁾

This type, which some municipalities have adopted as a model, aims to encourage citizens to rethink the layout of their neighborhoods, by involving architects, urban planners, and elected officials, and by putting forward ideas and visions for projects from which the mayor and his council can draw ideas. An example of this is the municipality of the 12th district in Paris.⁽³³⁾

This is what distinguishes the Tunisian experience in establishing citizen participation mechanisms at the expense of the Algerian experience, as it makes popular participation in Tunisia not limited to attendance only, but also to intervention, providing solutions, and raising recommendations, especially since the council in this case is the one that needs the opinion of the citizen or an important figure.



4-Media as a mechanism for presenting the activities of elected councils:

The principle of participation in the management of local public affairs is linked to the principle of administrative media, and this principle is considered the basic pillar for achieving democracy and the effectiveness of administrative activity. Therefore, the local administration discloses its work by publishing it to the citizen⁽³⁴⁾ and this is what Article 89 of the Municipality Law of 1967 stipulates, that the citizen has the right to view the legal work of the municipality.⁽³⁵⁾

Article 4 of Municipal Law 10/11 referred to presenting the annual activity of the Municipal People's Council to citizens, but this procedure remained optional for the municipality. Its application represents an important administrative, political and democratic awareness because it embodies citizen participation in a way that enables them to know the nature of the activity carried out by the municipality, which enables them to comment, criticize or support. This procedure supports the close relationship between the voter and the local elected official .⁽³⁶⁾

According to Article 11 of the same law, opening the field to citizens of the municipality and informing them by all available means to view various public affairs related to their municipality, and gave examples of this such as posting the extract of the deliberation in the designated locations.⁽³⁷⁾

5-Reviewing the deliberations and decisions of the elected councils

Addition to the right to information, the procedures for the right to inform citizens of the deliberations of the municipal people's councils have also developed. This is what Article 14 of Municipal Law 10/11 relating to the municipality stipulates. In application of the provisions of Article 14 thereof, Executive Decree No. 16/190 came to determine the methods for accessing extracts of deliberations and decisions of the municipal people's council. Its second article indicates that the council shall take all measures aimed at facilitating the information of citizens about the management of local affairs. In this context, the municipal people's council must use and develop all appropriate digital supports in order to guarantee, publish and communicate municipal decisions.⁽³⁸⁾

One of the advantages of the citizen's right to administrative information is the embodiment of transparency in the administrative apparatus and enabling the citizen to obtain administrative documents.

This procedure also plays an effective role in reducing the administration's arbitrary use of power. ⁽³⁹⁾

In Tunisia, Article 28 of the Local Authorities Code refers to the role of local councils in publishing their regulatory decisions in the Official Gazette of Local Authorities, and at their headquarters and website, and taking all measures to inform residents and civil society in advance of development and land planning program projects. Article 34 adds that local authorities are committed to ensuring transparency and management and taking all measures and means that allow access to information related in particular to projects, regulatory decisions of local authorities, financial management, etc. ⁽⁴⁰⁾

Chapter II: The reality of participatory democracy between legislation and application in the Algerian and Tunisian experiences

First Subtitle: Programs for embodying the participatory democracy approach at the practical level in Algeria

The Algerian authorities have carried out new reforms aimed at embodying participatory democracy and achieving the citizen's role in managing local affairs, enshrining the principles of good governance, especially in 2011. The municipal laws of 2021 are a translation of this, and the state law and the constitutional amendment of 2016 are among the legislations that have enshrined this approach at the local level. In this regard, the Algerian government has resorted to embodying several projects, the most important of which is a cooperation project with the European Union and a United Nations Development Program, represented in the program to support the capabilities of actors in local development, under the slogan "Participatory Democracy and Local Development", under the supervision of the Ministry of Interior, Local Communities and Urban Planning 2020 ⁽⁴¹⁾.

The Capacity Building Program for Local Actors (Kabdal) as a mechanism for embodying participatory democracy in Algeria: The Kabdal project is based on a model approach to local development that is implemented in 10 model municipalities distributed across the national territory. This experiment will be tested for four years from 2017 to 2020 in the following municipalities: Ghazaouet (Tlemcen), Ouled Ben Abdelkader (Chlef), Tizirt (Tizi Ouzou), Djemila (Setif), Beni Maouche (Bejaia), El Khroub (Constantine), Babar (Khenchela), Messaad (Djelfa), Timimoun (Adrar), Djanet (Illizi) ⁽⁴²⁾.



As for the actors involved in the implementation of the KABDAL program, they were divided into two sections: there are international actors that contributed to its financing, such as the United Nations Development Program, the European Union Commission, which is the largest funding institution for the program, while national actors include the government, the Ministry of Interior and Local Authorities, the Ministry of Foreign Affairs, public institutions and interests, regional local authorities represented by the municipality and the state, elected local councils, in addition to informal actors such as citizens, the private sector and civil society organizations ⁽⁴³⁾.

The KABDAL program aims, through its axes, to support participatory democracy and joint work between local actors, modernization and simplification of public services, local development and diversification of the economy and multi-sectoral management of major internal risks at the local level ⁽⁴⁴⁾. The CABDAL programme also relied on several mechanisms and training workshops, including the regional charter for civic participation, consultative municipal councils and joint regional diagnosis

Second Subtitle: Programs to Embody the Participatory Democracy Approach in Tunisia

1- Urban Development and Local Administration Program:

In Tunisia, the World Bank launched the Urban Development and Local Governance Program, which is a project that aims to develop decentralization by empowering local councils, strengthening their capacities and making them accountable, to qualify them to assume responsibility. The program aims to benefit municipal councils by providing infrastructure facilities and municipal services, working to align them with citizens' priorities, increasing the participation of women and youth in planning local development activities, and enhancing citizen participation and contribution to development ⁽⁴⁵⁾.

2- Effective Decentralization and Attractive Municipalities Initiative (EDAMA) Program:

The Idama program comes within the framework of supporting the efforts of the Tunisian government in establishing the decentralization process. It is a program directed by the Dutch Ministry of Foreign Affairs and the International Agency of the Dutch Municipalities Association, to support 12 municipalities and enhance their economic development in order to achieve effective and attractive municipalities

and comprehensive and participatory local governance. The means of intervention of the project (Idama) are manifested in providing technical support and accompaniment to partner municipalities and local actors and training them in the field of preparing and planning annual investment programs. ⁽⁴⁶⁾

Conclusion:

Through the study, a critical analytical study of the reality of the Algerian and Tunisian experiences, regarding the Algerian experience, the Municipal Law of 2011 explicitly recognized the principle of participatory democracy, considering the municipality as the basic space for citizen participation, and urged this by giving discretionary powers and authorities to elected councils with the possibility of consulting citizens on major options and presenting their annual activity to them, using various media, and enabling them to obtain information, and until 2016, and pursuant to the constitutional amendment of 2016, and in Article 15 thereof, it stipulated the adoption and encouragement of participatory democracy at the level of local communities.

In the Tunisian experience, the Tunisian legislator has clearly recognized the adoption of the participatory democracy approach by making the citizen a fundamental actor in managing the affairs of his municipality, and a participant in its decisions, not just a voter who casts his vote in electoral entitlements only. His participation has been evident since the issuance of the 2014 Constitution through initiative, proposal, and contribution to managing his local affairs. In return, the Tunisian legislator has approved all the necessary mechanisms to enable the citizen to do so, as new means of communication with citizens have been created, such as websites, display portals, and Facebook pages to provide all information related to the municipality for citizens to view. Several other mechanisms have also been adopted, such as the participatory budget and periodic meetings with citizens in the preliminary sessions that precede the convening of the elected council sessions. In addition, the most important programs adopted, such as the Kabdal program in Algeria and the Idama program in Tunisia, are programs that embody the participatory democracy approach and its actual role in giving vitality to the management of elected councils and promoting the role of civil society in expressing its

opinions and formulating its development project. What is noteworthy about this experience is that it.

- As for the Algerian experience, it is still shrouded in many ambiguities, especially in light of the lack of issuance of any law or charter specific to participatory democracy, unlike the Tunisian experience.

- Since the Algerian Constitution of 2016 did not specify the methods and mechanisms of participatory democracy, it is therefore necessary to issue a draft on the mechanisms for embodying participatory democracy at the local level and present it for discussion, dialogue and consultation before community actors.

- Evaluate the Kabdal program and if it achieves positive results, we will apply it to the rest of the country's municipalities.

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⁽⁴⁰⁾- Basic Law No. 29 of 2018, dated May 9, 2018, relating to the Local Authorities Code, Chapter 28, 34.

⁽⁴¹⁾- Missaoui Hanane, previous reference, p. 593.

⁽⁴²⁾- Belfkarat Rashid, previous reference, p. 120.

⁽⁴³⁾- Naima Azouk, Participatory Democracy as a Mechanism for Embodying Local Governance within the Framework of the Capacity Support Program for Local Actors (CAPDAL), in the collective book *The Approach to Participatory Democracy between Theoretical Foundations and the Possibility of Application in Arab Countries*, Research Laboratory for Constitutional Law and Good Governance, p. 189.

⁽⁴⁴⁾- Farahi Muhammad, previous reference, p. 143.

⁽⁴⁵⁾- World Bank, Strengthening Local Government Councils in Establishing a First Step Towards Decentralization, <http://www.albankaldawli.org>, accessed on 12/12/2022.

⁽⁴⁶⁾- Idama: 3 Years of Establishing Participatory Democracy at the Local Level, <http://www.cilg->