

# Legal tools towards inclusive cities for children in South Africa

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All viewpoints and errors remain the author's own.

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## **DEDICATION**

The study is dedicated to children living in cities and urban environments in Africa.

More importantly, to children unseen and unheard in the governance of their cities.

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## **ABSTRACT**

The world is experiencing significant urbanisation as more people live in cities. It is estimated that approximately 55% of the global population lives in cities. Half of the global urban population comprises children. The global urban population is estimated to increase to 60% by 2030 and to 68% by 2050. South Africa is no exception to the increase in urban population. It is estimated that over 67% of South Africa's population currently lives in cities, and the urban population is projected to increase by approximately 70% by 2030 and 80% by 2050. Interestingly, more children live in cities, and the urban child population is expected to continue to rise in the coming years. This implies that children constitute an important urban constituent that should not be left out of decision-making processes in city-level governance.

This study aims to identify and explore legal tools as well as opportunities in South African law and policy for the inclusion of children in decision-making processes at the city level against the background of the concept of inclusive cities. The concept of inclusive cities is generally discussed in the literature with limited connection to what inclusive cities for children are or could mean for city-level governments. Even scholarship on Sustainable Development Goal 11 (the urban goal) and the New Urban Agenda is mute on the concept of inclusive cities for children. No comprehensive study has been conducted on the concept of inclusive cities for children. At the time of writing this thesis, no conceptual framework existed on what inclusive cities for children should look like. This study frames the concept of inclusive cities for children. It notes that inclusive cities for children are cities that respect the rights of children, provide participatory opportunities for children, and cities that are child-responsive, as well as foster sustainability governance.

In addition to international urban policy, the study also relies on international children's rights law, such as the United Nations Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child (1990). These instruments provide a normative legal framework and standards for the

inclusion and participation of children in all matters concerning them. It is argued that the right of children to be heard and taken seriously in matters concerning them is a legal imperative for all levels of government, including city authorities. With this understanding, this study explores the typologies, forms, and methods that city authorities can use to engage children in decision-making, as well as the Lundy model of child participation. The Lundy model underscores that children should be provided with the "space, voice, audience and influence" in decision-making processes at all levels of government.

Cities have the legal mandate and power to administer public affairs in their jurisdiction, specifically in functional areas and matters that impact children. Cities play a critical role in children's lives and their inclusion in decision-making processes. In this context, this study discusses the South African local government landscape in relation to local governance and children, municipal governance instruments and public participation, as well as municipal mechanisms for inclusive decision-making such as councils and ward committees to ascertain whether they provide opportunities for children to participate in decision-making processes. These are collectively seen as legal tools that could be used to ensure the inclusion of children in decision-making processes in the governance of their cities.

The study acknowledges barriers in the South African local government sphere and identifies challenges that could hinder children's participatory rights at the city level. It concludes by noting that while South African law and policy provide a basis for the inclusion of children in decision-making processes at the city level, more still needs to be done to clarify and simplify the right of children to participate to ensure that cities are inclusive of children in governance.

**Keywords:** inclusive cities for children; SDG 11; child participation; Lundy model; participatory governance; decision-making processes; child-responsiveness; city-level governance

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## **LIST OF ABBREVIATIONS**

|        |                                                                     |
|--------|---------------------------------------------------------------------|
| ACERWC | African Committee of Experts on the Rights and Welfare of the Child |
| ACHPR  | African Charter on Human and Peoples' Rights                        |
| ACPF   | African Child Policy Forum                                          |
| ACRWC  | African Charter on the Rights and Welfare of the Child              |
| ADB    | Asia Development Bank                                               |
| AHRLJ  | African Human Rights Law Journal                                    |
| AHRY   | African Human Rights Yearbook                                       |
| APEVAC | African Partnership to End Violence Against Children                |
| AU     | African Union                                                       |
| AUA    | African Urban Agenda                                                |
| CASE   | Community Agency for Social Enquiry                                 |
| CBO    | Community-based Organisation                                        |
| CC     | Constitutional Court of South Africa                                |
| CCPR   | Committee on Civil and Political Rights                             |
| CCR    | Constitutional Court Review                                         |
| CCRW   | Community Child Rights Workshop                                     |
| CfCI   | Child-friendly Cities Initiative                                    |
| CILSA  | Comparative and International Law Journal of Southern Africa        |

|               |                                                                              |
|---------------|------------------------------------------------------------------------------|
| CJ            | Chief Justice                                                                |
| CLES          | South African Research Chair in Cities, Law and Environmental Sustainability |
| CoGTA         | Department of Cooperative Governance and Traditional Affairs                 |
| COP           | Conference of Parties                                                        |
| COVID-19      | Corona-Virus Disease                                                         |
| CRC Committee | Committee on the Rights of the Child                                         |
| CRPD          | Convention on the Rights of Persons with Disabilities                        |
| CSO           | Civil Society Organisation                                                   |
| DBE           | Department of Basic Education                                                |
| DCAS          | Department of Cultural Affairs and Sport                                     |
| DGD           | Day of General Discussion                                                    |
| DoE           | Department of Education                                                      |
| DoH           | Department of Health                                                         |
| DSD           | Department of Social Development                                             |
| ECOSOC        | United Nations Economic and Social Council                                   |
| ECPAT         | End Child Prostitution and Trafficking                                       |
| GC            | General Comment                                                              |
| HLPF          | High-Level Political Forum                                                   |
| IAWGCP        | Inter-Agency Working Group on Children's Participation                       |

|        |                                                                                  |
|--------|----------------------------------------------------------------------------------|
| ICCPR  | International Covenant on Civil and Political Rights                             |
| ICLEI  | Local Governments for Sustainability                                             |
| ICT    | Information and Communication Technology                                         |
| IDP    | Integrated Development Plan                                                      |
| IJCR   | International Journal of Children's Rights                                       |
| IJCYP  | International Journal of Child, Youth and Family Studies                         |
| INGO   | International Non-governmental Organisation                                      |
| IUDF   | Integrated Urban Development Framework                                           |
| JAL    | Journal of African Law                                                           |
| JCC    | Junior City Council                                                              |
| JJC    | Johannesburg Junior Council                                                      |
| LPAC   | Local Plans of Action for Children                                               |
| MDGs   | Millennium Development Goals                                                     |
| MEC    | Member of the Executive Council                                                  |
| MPPMR  | Local Government: Municipal Planning and Performance Management Regulations 2001 |
| NCPF   | National Child Participation Framework                                           |
| NCRICC | National Children's Rights Inter-sectoral Coordinating Committee                 |
| NDP    | National Development Plan 2030                                                   |
| NEMA   | National Environmental Management Act 107 of 1998                                |



|        |                                                                  |
|--------|------------------------------------------------------------------|
| NGO    | Non-Governmental Organisation                                    |
| NHRI   | National Human Rights Institution                                |
| NPAC   | National Programme of Action for Children                        |
| NPC    | National Planning Commission                                     |
| NPO    | Non-Profit Organisation                                          |
| NUA    | New Urban Agenda                                                 |
| NYDA   | National Youth Development Agency Act                            |
| OAU    | Organisation of African Unity                                    |
| OHCHR  | Office of the United Nations High Commissioner for Human Rights  |
| ORC    | Office on the Rights of the Child                                |
| PAIA   | Promotion of Access to Information Act 2 of 2000                 |
| PAJA   | Promotion of Administrative Justice Act 3 of 2000                |
| PELJ   | Potchefstroom Electronic Law Journal                             |
| PPAC   | Provincial Plans of Action for Children                          |
| RECIEL | Review of European Community and International Environmental Law |
| RECs   | Regional Economic Communities                                    |
| SA     | South Africa                                                     |
| SACN   | South African Cities Network                                     |
| SADC   | Southern African Development Community                           |

|          |                                                                        |
|----------|------------------------------------------------------------------------|
| SAHRC    | South African Human Rights Commission                                  |
| SAJELP   | South African Journal of Environmental Law and Policy                  |
| SAJHR    | South African Journal on Human Rights                                  |
| SALGA    | South African Local Government Association                             |
| SALJ     | South African Law Journal                                              |
| SAPL     | South African Public Law                                               |
| SASA     | South African Schools Act 84 of 1996                                   |
| SCA      | Supreme Court of Appeal of South Africa                                |
| SDG 11   | Sustainable Development Goal 11                                        |
| SDGs     | Sustainable Development Goals                                          |
| SDSN     | Sustainable Development Solutions Network                              |
| SGBs     | School Governing Bodies                                                |
| SOWC     | State of the World's Children                                          |
| SRSG     | UN Special Representative of the Secretary-General                     |
| Stell LR | Stellenbosch Law Review                                                |
| UCLG     | United Cities and Local Governments                                    |
| UK       | United Kingdom                                                         |
| UN       | United Nations                                                         |
| UN Women | United Nations Entity for Gender Equality and the Empowerment of Women |
| UNCRC    | Convention on the Rights of the Child                                  |

|            |                                                                  |
|------------|------------------------------------------------------------------|
| UN-DESA    | United Nations Department of Economic and Social Affairs         |
| UNDP       | United Nations Development Programme                             |
| UNECA      | United Nations Economic Commission for Africa                    |
| UNESCO     | United Nations Educational, Scientific and Cultural Organisation |
| UN-Habitat | United Nations Human Settlement Programme                        |
| UNICEF     | United Nations Children's Fund                                   |
| UNRISD     | United Nations Research Institute for Social Development         |
| VAC        | Violence Against Children                                        |
| VNR        | Voluntary National Review                                        |
| WB         | World Bank                                                       |
| WCCC       | Western Cape Commissioner for Children                           |
| WHO        | World Health Organisation                                        |
| WPLG       | White Paper on Local Government 1998                             |
| WVI        | World Vision International                                       |

# CHAPTER 1

## INTRODUCTION

### 1.1 Background

Cities are increasing in both number and size owing to unprecedented urbanisation worldwide.<sup>1</sup> It is estimated that approximately 55% of the global population lives in cities and other urban areas where half of the world's children live.<sup>2</sup> The global urban population is estimated to increase by approximately 60% by 2030<sup>3</sup> and 68% by 2050.<sup>4</sup> This means that by 2050, seven out of ten people will live in cities and urban areas.<sup>5</sup> Urbanisation is a reality in Africa<sup>6</sup> and South Africa, specifically.<sup>7</sup> It is estimated that over 67% of the South African population lives in cities.<sup>8</sup> This urban population is projected to increase by over 70% by 2030 and 80% by 2050.<sup>9</sup> Approximately, 54% of South African children<sup>10</sup> live in cities and towns. This figure

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<sup>1</sup> The term "urbanisation" is used in this study to refer to "the process in which an increasing number or proportion of the national population is concentrated in or lives in urban areas rather than in rural areas." See Crankshaw and Borel-Saladin 2019 *Urban Studies* 2006; Avis *Urban Governance: Topic Guide* 3.

<sup>2</sup> The United Nations (UN) notes that the demographics of urban populations are skewing younger and estimates that by 2030, the majority of the world's urban population will be under the age of 18 years. See *Evaluation of UNICEF Work for Children in Urban Settings* (2021) para 1.

<sup>3</sup> United Nations *World Urbanization Prospects: The 2018 Revision* 9-11. See also UN-DESA *The World's Cities, 2018* 1; UNICEF *Shaping Urbanization for Children: A Handbook on Child-Responsive Urban Planning* 13.

<sup>4</sup> UN-DESA 2018 <https://population.un.org/wup/Publications/Files/WUP2018-KeyFacts.pdf>.

<sup>5</sup> UNICEF *The State of the World's Children: Children in an Urban World* 2.

<sup>6</sup> The Abuja Declaration notes that the "challenges of urbanisation and human settlements [in Africa] have increased in scope and complexity" and also that in Africa "the emerging challenge of forced urbanisation due to, among others, conflicts, terrorism and natural disasters, which has forced populations to move from rural areas to urban centers and vice versa and across borders, stretching existing infrastructure resulting in increased insecurity and poverty." See *Abuja Declaration for Habitat III: Africa's Priorities for the New Urban Agenda* (2016). See also UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 4.

<sup>7</sup> See Nengomasha "Post-Apartheid Cities in South Africa: A Mirage of Inclusivity" 163-168.

<sup>8</sup> SACN *State of South African Cities Report 2021* 4, 17.

<sup>9</sup> See CoGTA *Localising the New Urban Agenda: South Africa Discussion Document* 11; Government of South Africa *Sustainable Development Goals: Country Report* 259. See also Karuri-Sebina "Introduction - Our Cities: Status Quo and the Long-Range Prospects" 20.

<sup>10</sup> A child is any person under 18 years, as defined in terms of section 28(1) of the *Constitution of the Republic of South Africa*, 1996 (Constitution). This South African position complies with the provisions in article 2 of the *African Charter on the Rights and Welfare of the Child* (1990) (ACRWC or African Children's Charter) and article 1 of the *Convention on the Rights of the Child* (A/RES/44/25) (1989) (UNCRC).

is expected to increase by 2030 and 2050.<sup>11</sup> This means that more children will be born in or migrate to cities and other urban communities.<sup>12</sup>

However, urbanisation is a double-edged sword. On the one hand, it has numerous benefits, such as economic possibilities, improved infrastructure, and opportunities for access to better education, healthcare and service delivery.<sup>13</sup> On the other hand, it challenges the capacity of local authorities to govern and sustainably provide basic services.<sup>14</sup> The challenges of urbanisation are exacerbated by unplanned urban sprawl, which leads to sustainability challenges in the Global South.<sup>15</sup> These challenges affect city governing authorities (who are decision-makers) and city inhabitants (who are at the receiving end of these decisions and service delivery).

Unplanned rapid urbanisation impacts how city authorities budget and govern.<sup>16</sup> The above statistics and demographics suggest increased demand for basic service delivery and infrastructure requirements, resulting in municipalities struggling to match service provision with demand.<sup>17</sup> Many municipalities in South Africa still plan and govern as they had done since the end of apartheid in 1994 when the contemporary local government system was established.<sup>18</sup> As such, their institutional structures and arrangements may not be suitable for addressing the

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<sup>11</sup> *Integrated Urban Development Framework* (2016) (IUDF) 16.

<sup>12</sup> UNICEF *The State of the World's Children: Children in an Urban World* 1, 14.

<sup>13</sup> Karuri-Sebina "Introduction - Our Cities: Status Quo and the Long-Range Prospects" 24. She notes that urbanisation is a highly complex mix of interrelated opportunities and challenges.

<sup>14</sup> On how urbanisation result in increased congestion and increased demand on the available and often limited, resources affecting the provision of basic services, see Buckley and Kallergis "Does African Urban Policy provide a Platform for Sustained Economic Growth?" 173-190.

<sup>15</sup> Halvorsen and Higgins argue that population growth in Africa "threatens to result in uncontrolled urbanisation and pressure on already scarce fresh and clean water, ... other basic resources (including especially food) and deepening inequality within cities, [among others]." See Halvorsen and Higgins "Growth or Solidarity? The Discourse of the SDGs" 14. See also Turok 2018 *Urban Studies* 988.

<sup>16</sup> See Du Plessis 2017 *Law Democracy & Development* 243.

<sup>17</sup> See Karuri-Sebina "Introduction - Our Cities: Status Quo and the Long-Range Prospects" 20.

<sup>18</sup> While there has been progressive laws and policies in the local government sphere designed to transform governance, some scholars argue that the apartheid legacy in the urban landscape (planning and governance) still taint the efforts and slowing down progress. See Rogerson, Kotze and Rogerson 2014 *Urbani Izziv* 2.

ongoing challenges arising from rapid urbanisation.<sup>19</sup> As captured in the *Report of the World Commission on Environment and Development* (commonly known as the Brundtland Report), historical urban structures were predominantly not designed to cope with rapid urban growth.<sup>20</sup> This puts pressure on limited financial and other resources at the disposal of local government, which must decide on which resources to allocate to governance issues and service delivery, including addressing contemporary municipal challenges such as energy security, human safety, social welfare and environmental concerns.<sup>21</sup>

Other results of rapid urbanisation are spatial inequity, social exclusion and marginalisation.<sup>22</sup> The inevitable consequence is that urbanisation affects vulnerable groups,<sup>23</sup> particularly children. As shown below,<sup>24</sup> children are an important constituent of urban 'governance.'<sup>25</sup> For instance, in South Africa, children constitute approximately 36% of the country's population.<sup>26</sup> In other words, one of every three people in South Africa is a child. As a significant constituent of the country's demography, children have legitimate legal and moral claims to rights and should

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<sup>19</sup> This could be due to the fact that many municipalities inherited governance structures with a view to reform governance to empower the adult black South African, specifically women, without proper planning for rapid urban growth.

<sup>20</sup> See *Our Common Future: Report of the World Commission on Environment and Development* (1987) paras 34-35.

<sup>21</sup> See Cobbinah and Darkwah 2017 *African Geographical Review* 263-270.

<sup>22</sup> UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 3. See also Magee, Third and Sweeting "Rapid Development and the Child's Future Right to the City" 338-339.

<sup>23</sup> Some of the categories of vulnerable persons include, but not limited to, children, migrants, women, persons with disabilities, the elderly and indigenous people. See Chirisa *et al* "Continuities and Discontinuities in Urban Population Policies in Post-colonial Southern African Cities: Towards a Sustainable and Inclusive Framework" 79-80.

<sup>24</sup> See 1.2 below.

<sup>25</sup> Governance refers to the relational and flexible multiple-stakeholder open-ended process of regulation, decision-making, implementation and administration of public affairs through dialogue, negotiation and compromise involving a range of public and private actors (individuals, networks and institutions). See Pieterse and Mughogho "Governing South African Cities" 69. Some note that it is a process of decision-making through active and cohesive discussion among policy and decision-makers in public and private (beyond government, to include civil society institutions) to manage common public affairs. See Kim *et al* 2005 *Public Administration Review* 647. In its application, governance has no one center, but multiple centers and no sovereign authority. See Govender, Reddy and Pillay 2011 *Administratio Publica* 188. However, in this study the concept is applied in a limited scope to focus on the decision-making processes and children.

<sup>26</sup> As of July 2022, the South African population was estimated at 60.60 million people. See Statistics South Africa *Mid-Year Population Estimates (2022)* 18-19. At the time of writing, the recent statistics had not been released by the Department of Statistics.

be included in the governance issues that affect them.<sup>27</sup> For example, any deliberate or unintentional exclusion of children from decision-making processes in the governance of their cities can potentially violate their rights and interests.<sup>28</sup>

Studies show that cities emerged on the radar of international law, governance and development policy due to rapid demographic growth and global challenges that intersect at the local level.<sup>29</sup> In recent years, cities have significantly contributed to various areas, such as sustainable development,<sup>30</sup> environmental governance,<sup>31</sup> climate change,<sup>32</sup> migration<sup>33</sup> and human rights implementation,<sup>34</sup> among others.<sup>35</sup> Cities are co-responsible organs of state and work with national governments (and other institutions at the subnational level, such as provincial governments) to ensure compliance with international law and policies.<sup>36</sup> However, cities are embedded in multifaceted social systems, structures and complex problems which significantly affect governance and service delivery.<sup>37</sup> Governance and service delivery failures

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<sup>27</sup> See 3.3.1-3.3.2 below.

<sup>28</sup> See 3.2-3.4 below.

<sup>29</sup> Aust and Du Plessis "Introduction: The Globalisation of Urban Governance - Legal Perspectives on SDG 11" 3-16; UN-Habitat *World Cities Report 2020: The Value of Sustainable Urbanization* 2-3. See also Betsill and Bulkeley 2006 *Global Governance* 141-159; Bulkeley, Broto and Edwards *An Urban Politics of Climate Change: Experimentation and the Governing of Socio-technical Transitions* 1-269.

<sup>30</sup> See De Hoop Scheffer *et al Sustainable Development Goals and Human Rights: An Invisible Bond* 1-79.

<sup>31</sup> See, for instance, Bouteligier *Cities, Networks and Global Environmental Governance* 1-200; Bulkeley and Betsill *Cities and Climate Change: Urban Sustainability and Global Environmental Governance* 1-250.

<sup>32</sup> Hughes, Chu and Mason "Introduction: Climate Change in Cities" 1-15; Bulkeley *Cities and Climate Change* 1-255; Aust 2019 *Review of European Comparative & International Environmental Law* 57-67; Brietzke and Adrianopoli 2010 *Journal of Environmental Law and Litigation* 85-122.

<sup>33</sup> See Filomeno "Global Cities and Multilevel Immigration Governance in Latin America" 145-154; Scholten "Cities of Migration: Towards a Typology" 242-250; Caponio "City Networks and the Multilevel Governance of Migration: Towards a Research Agenda" 182-192.

<sup>34</sup> Oomen "Introduction: The Promise and Challenges of Human Rights Cities" 1-20. See also 2.4.1 below.

<sup>35</sup> See Aust and Nijman "The Emerging Roles of Cities in International Law - Introductory Remarks on Practice, Scholarship and the Handbook" 4.

<sup>36</sup> See Aust 2020 *Journal of Comparative Urban Law and Policy* 82-88; Pieterse 2020 *African Journal of International and Comparative Law* 612-635.

<sup>37</sup> Da Cruz, Rode and McQuarrie 2019 *Journal of Urban Affairs* 12.

by cities affect everyone and have huge implications for children because of their increased exposure to risks and vulnerabilities.<sup>38</sup>

Local government (which comprises municipalities) is the sphere of government that is closest to the people<sup>39</sup> and can better respond to emerging local challenges that are unique to local contexts, needs and priorities.<sup>40</sup> The power and authority of municipalities emanate from constitutional autonomy and a mandate that empowers them to govern and deliver services on matters that concern and sustain urban life for all people, including children.<sup>41</sup> Thus, the local government sphere presents opportunities for members of the public, including children, to participate in governance.<sup>42</sup> Opportunities for participation are available through local institutional structures and mechanisms established in terms of prescribed laws and policies.<sup>43</sup> This implies that cities share governance obligations with national and provincial governments to provide opportunities for children to contribute to and participate in inclusive local governance.<sup>44</sup>

Children living in cities are commonly believed to be served by well-governed and better-resourced local governments than their rural counterparts.<sup>45</sup> This argument is not always true because many children across different municipal areas live in

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<sup>38</sup> On the legal recognition of children as a vulnerable group, see para 9 of the preamble of the UNCRC and paras 3-4 of the preamble of the African Children's Charter.

<sup>39</sup> De Visser 2009 *Commonwealth Journal of Local Governance* 11. See also *Final Report on Role of Local Government in the Promotion and Protection of Human Rights* (2015) paras 8 and 26.

<sup>40</sup> There is a need to be cautious in the application and use of the proximity argument because in some cases local government is often not able to respond to people's challenges and needs due to political pressure, an efficiency problem and limited resources. See Sartorius and Sartorius 2016 *Urban Studies* 3337.

<sup>41</sup> Hoffman 2019 *International Journal of Human Rights* 374-391.

<sup>42</sup> See *Final Report on Role of Local Government in the Promotion and Protection of Human Rights* paras 8, which states that "local government aims at bringing government to the grass roots and enabling citizens to participate effectively in the making of decisions affecting their daily lives. As the level closest to the citizens, local government is, in principle, in a much better position than central government to deal with matters that require local knowledge and regulation on the basis of local needs and priorities." See also Papisca "International Law and Human Rights as a Legal Basis for the International Involvement of Local Governments" 27-44.

<sup>43</sup> See 5.4 below.

<sup>44</sup> In this study, local governance and urban governance is used interchangeably.

<sup>45</sup> Muchabaiwa 2014 *African Journal of Governance and Development* 40-41. See also UNICEF *Enhancing Subnational and Local Governance to Accelerate Results for Children: Subnational and Local Governance Programming Framework* 10-14; Nasrabadi, García and Pourzakarya 2021 *Local Environment* 198.



impoverished urban neighbourhoods and informal settlements.<sup>46</sup> Others contend that children in cities have better access to governance systems than their counterparts from impoverished and low-resource rural municipalities.<sup>47</sup> For example, living in South African cities - where governance challenges are often severe and protracted - has unique challenges for children by exposing them to potential violations of their substantive and procedural rights.<sup>48</sup>

Additionally, the inequality gap in many cities is increasing.<sup>49</sup> The widening gap is compounded by gender norms, societal attitudes and discriminatory social and cultural practices that severely impact vulnerable groups such as women and children.<sup>50</sup> It also has the potential to marginalise children, specifically girls, from engaging and participating in local governance.<sup>51</sup> The exclusion of children - in general and girls specifically - from governance is aggravated by traditional and cultural perceptions that children lack the autonomy to make decisions<sup>52</sup> and their

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<sup>46</sup> In general, for many children living in impoverished urban neighbourhoods and informal settlements, life is an insecure and risky experience that exposes them to disproportionate inequalities. UNICEF shares a similar sentiment and further notes that while urban residents (including children) enjoy better access to services, a considerable number of children are left behind or marginalised in the urban context. See UNICEF *Enhancing Subnational and Local Governance to Accelerate Results for Children: Subnational and Local Governance Programming Framework* 14. See also Garzón-Vergara *Children Trapped in Fragile Cities: Communities, Organised Crime and the Rule of Law* 5.

<sup>47</sup> *CRC Committee Concluding Observations to the Second Periodic Report of the Republic of South Africa* (17 March 2015) para 320. See also UNICEF *The State of the World's Children: Children in an Urban World* 4-8; *Report of the UN Conference on Human Settlements* (1996) 9.

<sup>48</sup> Mammon "Inclusive Cities: The Pursuit of Urban Social and Spatial Freedoms for All" 152. Some of the challenges have the potential to cause short, medium and long term, impacts on the life, well-being and dignity of children living in cities. See Magee, Third and Sweeting "Rapid Development and the Child's Future Right to the City" 339; UNICEF *Shaping Urbanization for Children: A Handbook on Child-Responsive Urban Planning* 20-31.

<sup>49</sup> See Khosla *Levelling Up: The Challenges of Creating Inclusive Cities* 1.

<sup>50</sup> UN-Habitat notes that women, men, boys and girls experience the city differently due to gender norms, discriminatory laws, social and cultural rules, amongst other factors. See UN-Habitat *World Cities Report 2020: The Value of Sustainable Urbanization* 15.

<sup>51</sup> Khosla *Levelling Up: The Challenges of Creating Inclusive Cities* 2.

<sup>52</sup> See 5.5 below.

vulnerability due to developmental fragility, immaturity and dependence on adults for "protection, provision and participation."<sup>53</sup>

The exclusion of children from governance conflicts with the concept of inclusive cities.<sup>54</sup> Generally, cities must practice inclusive governance.<sup>55</sup> At face value, the concept of inclusive cities suggests that citizens of different social groups have equal and equitable opportunities for both governance and access to services.<sup>56</sup> Inclusive governance - in general and at the city level specifically - requires that the views and contributions of participants in decision-making processes be taken seriously by (city) authorities, thereby ensuring that participants have meaningful opportunities to influence decisions.<sup>57</sup> However, inclusive governance has its own challenges,<sup>58</sup> especially for children. There are numerous material barriers to involving children in city-level governance.<sup>59</sup> These include institutional, political and socio-cultural rights barriers, as explained below.<sup>60</sup>

Anttiroiko and de Jong<sup>61</sup> argue that it is difficult to include everyone (especially children) in everything, particularly in cases of material differences, conflicts of interests and governance expectations between children and adults. The inclusion of children in urban governance processes could be challenging for various reasons, such as conflicting interests between children of different age groups<sup>62</sup> and conflicting economic, political and developmental interests between children and

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<sup>53</sup> On the continuum of "protection, provision and participation" rights of children, see Hammarberg 1990 *Human Rights Quarterly* 100; Quennerstedt 2010 *International Journal of Children's Rights* 619-635. Children depend upon the state for protection from harm, for the provision of basic needs and services and for participation in matters affecting their lives.

<sup>54</sup> See 2.2-2.3 below.

<sup>55</sup> See 2.2 below.

<sup>56</sup> See 2.2 below.

<sup>57</sup> See 2.2.1 below.

<sup>58</sup> It has to be noted, of course, that not all decisions affecting life in cities are made solely by city authorities. For example, in the case of South Africa some of the most significant decisions about city life are made at the provincial and central government level. Yet, cities have a critical role to play – working within the confines of their constitutional and legislative mandate and authority.

<sup>59</sup> See 5.5 below.

<sup>60</sup> See 5.5 below.

<sup>61</sup> Anttiroiko and de Jong "Pinpointing the Urban Paradigm Shift" 16.

<sup>62</sup> While individual interests are important, in local governance the collective (best) interests of children as a group are paramount rather than individuated preferences. While it is vital, this aspect falls outside the scope of the study.

adults and political institutions.<sup>63</sup> To counter some of these challenges, the inclusion of children must consider typologies of their participation, such as Hart's ladder of participation<sup>64</sup> and Shier's participation rungs.<sup>65</sup> In addition, there is merit in applying the 'Lundy model'<sup>66</sup> to child participation to enable and facilitate effective and inclusive child-focused governance at the city level.<sup>67</sup> This understanding is partly rooted in legal and policy frameworks that enshrine the participation of children as a fundamental right and a cardinal principle of children's rights.<sup>68</sup>

Thus, there is a need to demystify the traditional assumption that 'urban law'<sup>69</sup> and policies and human rights instruments that are good for adults are also suitable for children.<sup>70</sup> Van Bueren<sup>71</sup> notes that the mere fact that an international and regional human rights instrument or global policy can be applied to children does not mean that it incorporates a coherent child rights approach that sets out all the rights and principles necessary to safeguard, protect and ensure the basic dignity of all children. Rajani further observes that laws, policies and programmes that are designed by adults for everyone, including children, "often go wrong, however well-intentioned."<sup>72</sup> On this basis, this study explores what inclusive cities for children mean for city-level governance in South Africa and analyses the legal tools and opportunities that cities can use to create participatory opportunities for children and remove real and perceived barriers to their inclusion.

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<sup>63</sup> See 5.2 below.

<sup>64</sup> See 4.2.1 below.

<sup>65</sup> See 4.2.2 below.

<sup>66</sup> For an extensive discussion on the Lundy model, see 4.5 below.

<sup>67</sup> See 4.5.1-4.5.2 below.

<sup>68</sup> See 3.2 below.

<sup>69</sup> Urban law refers to the collection of policies, laws, decisions and practices that govern the management and development of the urban environment. See UN-Habitat 2023 <https://unhabitat.org/urban-law>. It is an emerging area of legal study that provides an important lens through which to engage with the reality that cities are increasingly at the forefront of many contemporary challenges. See Davidson 2013 *Fordham Urban Law Journal* 1580-1582; Davidson and Tewari *Global Perspectives in Urban Law: The Legal Power of Cities* 1. See also Berrisford and McAuslan *Reforming Urban Laws in Africa: A Practical Guide* 9-13.

<sup>70</sup> Van Bueren *International Law on the Rights of the Child* 19.

<sup>71</sup> Van Bueren *International Law on the Rights of the Child* 19.

<sup>72</sup> Rajani *Discussion Paper: Promoting Strategic Adolescent Participation* 7.

## 1.2 Urban governance for children or with children?

Urban governance is defined differently in the literature. For instance, the United Nations Human Settlement Programme (UN-Habitat)<sup>73</sup> notes that urban governance consists of a set of institutions, guidelines and regulatory and management mechanisms in which local governments are key - but not exclusive - governing components.<sup>74</sup> Aust and Du Plessis view urban governance as encompassing the "institutional design, operations, institutions, [and] the rules and principles binding on and generated by local governments."<sup>75</sup> For Pierre,<sup>76</sup> urban governance is the process by which local authorities seek to enhance collective goals within institutional values, norms and practices.<sup>77</sup>

The United Nations Development Programme (UNDP)<sup>78</sup> and the World Bank<sup>79</sup> view urban governance as the exercise of city administrative authority comprising mechanisms, processes and institutions to manage the affairs of the people, to which citizen participation is central in the administration of public affairs. In addition, urban governance is a continuous process through which the conflicting and diverse interests of different people, including children, must be considered and accommodated,<sup>80</sup> particularly in decision-making processes. From the definitions above, the key elements for understanding urban governance in the context of this study are institutions and systems, laws (rules and principles), mechanisms and other processes (including norms and practices) for the inclusion of people, as explained below.

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<sup>73</sup> See *Habitat III Policy Paper 4: Urban Governance, Capacity and Institutional Development* (2016) para 2.

<sup>74</sup> See also Minnery *Modelling the Elements of Urban Governance* 1-2.

<sup>75</sup> Aust and Du Plessis "Introduction: The Globalisation of Urban Governance - Legal Perspectives on SDG 11" 6-9.

<sup>76</sup> Pierre 1999 *Urban Affairs Review* 374-375.

<sup>77</sup> See Peters and Pierre "Urban Governance" 67-104.

<sup>78</sup> UNDP *Governance for Sustainable Human Development* 84-86.

<sup>79</sup> World Bank *World Development Report: Governance and the Law* 2-3.

<sup>80</sup> UN-Habitat *Global Campaign on Urban Governance: Concept Paper* 14. See also UN-Habitat *Governance Assessment Framework: For Metropolitan, Territorial and Regional Management* 16.

In this study, urban governance is viewed as a process in which institutional arrangements, regulatory mechanisms and operational procedures are collectively applied continuously and simultaneously within the parameters of the applicable legal and policy framework to manage public affairs in a specified city. Urban governance consists of several city-level processes that contribute to public administration, such as decision-making, planning, budgeting, monitoring and evaluation.<sup>81</sup> This study primarily focuses on the decision-making components of urban governance.

A general understanding of urban governance is critical to understanding and contextualising the impact of governance on children. Thukral<sup>82</sup> argues that 'urban governance for children' is a system of local governance by city authorities that puts children first and ensures the realisation of their rights and interests. However, there is a distinction between 'governance for children' and 'governance with children.' The former gives the impression that authorities, who are adults in all instances, are solely responsible for urban governance and that whatever they decide or do is to protect children, although they do not engage, consult or involve children in the process.<sup>83</sup> The latter form of governance recognises children's autonomy and their ability to formulate a view and contribute to decision-making processes.<sup>84</sup> It views children as rights holders and responsible agents of change in their lives and in society.<sup>85</sup> The term 'responsible agents' implies that children can influence decision-making from any age (based on the gravity of the matter), in line with the principle of evolving capacities.<sup>86</sup> Importantly, urban governance with children fosters

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<sup>81</sup> See Peters and Pierre "Urban Governance" 69-100.

<sup>82</sup> Thukral "Children and Governance: Concept and Practice" 7.

<sup>83</sup> Thukral "Children and Governance: Concept and Practice" 7-9.

<sup>84</sup> Lundy, Tobin and Parkes "Article 12: The Right to Respect for the Views of the Child" 396. See also Thukral "Children and Governance: Concept and Practice" 7-8.

<sup>85</sup> For a detailed discussion on the agency of children, see Oswell *The Agency of Children: From Family to Global Human Rights* 37-50; Ballet, Biggeri and Comim "Children's Agency and the Capability Approach: A Conceptual Framework" 22-45; Baraldi and Iervese "Observing Children's Capabilities as Agency" 42-65.

<sup>86</sup> The concept of evolving capacities recognises that children "progressively acquire knowledge, competencies and understanding" as they grow and evolve and thus assume greater capacity to take responsibility for decisions affecting their lives. See *General Comment No.7: Implementing*

partnerships in governance wherein children influence decision-making processes and outcomes at the city level.<sup>87</sup>

The inclusion of people in the governance of their communities in South Africa is a legal imperative prescribed in terms of international and African regional law<sup>88</sup> as well as South African domestic law.<sup>89</sup> This inclusion in decision-making processes should be realised through the right of every child to participate. Thus, child participation serves as a conduit for the inclusion of children in urban governance. International and African regional children's rights law (collectively termed in this study as international children's rights law) recognises children as distinct and independent persons<sup>90</sup> and provides for their right to express their views and be heard in all matters (including decision-making processes) that affect them.<sup>91</sup> South Africa is a State Party to the UNCRC<sup>92</sup> and the African Children's Charter.<sup>93</sup> Thus, South Africa is bound to comply with the obligations set out by international children's rights law.<sup>94</sup> Some normative prescriptions provided under international

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*Child Rights in Early Childhood* (2005) para 17; Lansdown *The Evolving Capacities of the Child* 3-6. Varadan notes that the evolving capacities is an enabling principle that "affirms the child as a rights-holder under international law, recognising that as children grow, develop and mature, they acquire capacities to exercise increasing levels of agency over their rights; ... recognise children's agency in decision-making." See Varadan 2019 *International Journal of Children's Rights* 308-315.

<sup>87</sup> See 3.2.1 below.

<sup>88</sup> Broadly, public participation, beyond the right to vote, is central to human rights, democracy and environmental governance. For instance, see article 25 of the *International Covenant on Civil and Political Rights* (1966) (ICCPR) which declares that "[e]very citizen shall have the right and the opportunity to take part in the conduct of public affairs ...." See also, Principle 10 of the *Rio Declaration on Environment and Development* (1992).

<sup>89</sup> See 3.3 below.

<sup>90</sup> See the preamble of the UNCRC and the African Children's Charter.

<sup>91</sup> Article 12 of the UNCRC, Article 4(2) of the African Children's Charter. See *General Comment No.12 on the Right of the Child to be Heard* (2009) paras 1-5. See also Lundy, Tobin and Parkes "Article 12: The Right to Respect for the Views of the Child" 396-432. Lückner-Babel 1995 *International Journal of Children's Rights* 398; Peleg "International Children's Rights Law: General Principles" 147-149; Doel-Mackaway "The Right to Participate in Domestic Law and Policy Development" 54-56; Tisdall "Children and Young People's Participation: A Critical Consideration of Article 12" 185-200.

<sup>92</sup> South Africa signed the UNCRC on 21 January 1993 and adopted it on 16 June 1995.

<sup>93</sup> South Africa signed the African Children's Charter on 10 October 1997 and adopted it on 7 January 2000.

<sup>94</sup> See 3.2.1 below.

human rights law, such as the UNCRC, apply with equal force in cities and children's rights.<sup>95</sup>

Participation is defined as the process of sharing or being involved in decision-making in matters that affect one's life and the life of the community in which one lives.<sup>96</sup> Child participation in general and in city-level governance could be viewed as the informed, voluntary and free-willed involvement of children of different ages and abilities in all matters concerning them (in this case, governance), directly or indirectly, to ensure that they express their views, influence decision-making outcomes and help achieve change.<sup>97</sup> While there is a notable effort to engage children at the local level, such as through the children's parliament and (some) municipal councils, where children may share their views in decision-making processes,<sup>98</sup> there are challenges and barriers to the inclusion of children.<sup>99</sup> To this end, the inclusion of children in decision-making processes in the governance of South African cities remains under-researched.

Public decisions informed by children's views arguably lead to better policies, programmes and services.<sup>100</sup> The views of children are valuable and should be indispensable in decision-making processes at all levels.<sup>101</sup> However, in many instances, children are expected to participate in governance or public affairs when they become adults, that is, upon reaching the age of 18 years.<sup>102</sup> Sloth-Nielsen and

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<sup>95</sup> See 3.2-3.3 below.

<sup>96</sup> See Hart *Children's Participation: From Tokenism To Citizenship* 5.

<sup>97</sup> Save the Children *Regional Study on Children's Participation in Southern Africa: South Africa, Swaziland and Zambia* 4. For purposes of this study, focus is on participation of children in decision-making processes at the city level.

<sup>98</sup> See 5.4 below. In general, see also *General Comment No.12 on the Right of the Child to be Heard* para 127.

<sup>99</sup> See 5.5 below for a detailed discussion.

<sup>100</sup> See, for instance, IAWGCP *Children as Active Citizens: A Policy and Programme Guide - Commitments and Obligations for Children's Civic Rights and Civic Engagement in East Asia and the Pacific* 65; NPC *Children's Participation in Governance: Lessons from the Children's NDP Initiative* 5-19; Pendlebury "Children and School Governance: Representation, Participation and Power" 43-49; Cassidy 2017 *International Journal of Children's Rights* 330-333; Gallagher *et al* 2008 *International Journal of Children's Rights* 281-284; Woodhouse 2003 *Arizona Law Review* 751-763.

<sup>101</sup> See 3.2 below.

<sup>102</sup> Ratna "Children's Impact on State Governance: Overarching Issues" 187.

Mezmur<sup>103</sup> argue that children do not suddenly acquire the capacity and ability to assume adult duties upon reaching 18 years of age without prior experience of engagement in public affairs. Similarly, Fortin<sup>104</sup> argues that it is unreasonable and unrealistic to expect that upon attaining adulthood, children will automatically gain full autonomy to participate in governance without opening opportunities for them to develop decision-making capacities in matters concerning their childhood. Nevertheless, the inclusion of children in public affairs and decision-making processes in South African cities remains a challenge due to legal and institutional barriers discussed below.<sup>105</sup>

In local government, city authorities should be responsible for creating opportunities for children to participate in local governance informed and guided by children's evolving capacity.<sup>106</sup> However, the inclusion of children's views encounters political and cultural challenges<sup>107</sup> that often exclude them from public decision-making processes at the local government level.<sup>108</sup> This exclusion is partly because the inclusion of children's views may be "dependent on the cooperation of adults who may not be committed to [the process]."<sup>109</sup> In some instances, adults who control decision-making processes believe that children need protection and lack the capacity to make meaningful contributions to decision-making processes in governance.<sup>110</sup>

In (political) governance processes, adults set the parameters and rules of engagement, procedures and agenda on how others should be involved.<sup>111</sup> These

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<sup>103</sup> Sloth-Nielsen and Mezmur 2008 *Journal of African Law* 171.

<sup>104</sup> Fortin *Children's Rights and the Developing Law* 6-8.

<sup>105</sup> See 5.5 below.

<sup>106</sup> See 3.2 below.

<sup>107</sup> See 5.5.1-5.5.2 below.

<sup>108</sup> Historically, children were not involved in governance including in spatial planning models. See UNICEF *The State of the World's Children: Children in an Urban World* 67. See also UN-Habitat *Human Rights, Rule of Law and the New Urban Agenda* 19. This study is, however, not concerned with urban spatial planning and its impacts on children's lives.

<sup>109</sup> Lundy 2007 *British Educational Research Journal* 929.

<sup>110</sup> See Couzens "Child Participation in Local Governance" 515-532; Tisdall "Governance and Participation" 318-329.

<sup>111</sup> See Austin "Children's Participation in Citizenship and Governance" 245-253.



rules and procedures shape urban policy and decision-making processes,<sup>112</sup> which ultimately determine the extent of the promotion or obstruction of children's participatory rights, such as freedom of association, assembly and access to information. Participation processes are predominantly defined by what "political power holders"<sup>113</sup> regard as acceptable agendas for participation.<sup>114</sup>

In many South African cities, children are excluded from decision-making processes in the governance of their municipalities for numerous reasons.<sup>115</sup> For instance, long-standing South African cultural and traditional adult-child power relations and hierarchies influence how adults perceive the participation of children in city-level governance.<sup>116</sup> Deep-seated traditional and patriarchal views on the position of children in society regard them as subservient because they lack the capacity to meaningfully contribute to decision-making.<sup>117</sup> Adults dominate participation environments and forums in all spheres of government.<sup>118</sup> As noted above, governance is often driven by adults, who believe that children should be protected because of their vulnerability.<sup>119</sup> This underlying assumption has the potential to limit the ability of adults to create participatory opportunities for children and devalue the inputs of children in governance.<sup>120</sup> Scholars contend that there is a

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<sup>112</sup> Da Cruz, Rode and McQuarrie 2019 *Journal of Urban Affairs* 7. On municipal governance mechanisms, see 5.4 below.

<sup>113</sup> These powerholders include politicians, government authorities, policy makers and project funders.

<sup>114</sup> Percy-Smith and Taylor 2008 *International Journal of Children's Rights* 383. See Donaldson and Kymlicka "Inclusive Citizenship beyond the Capacity Contract" 842; Mitchell "Children's Rights and Citizenship Studies: Re-theorising Child Citizenship through Transdisciplinarity from the Local to the Global" 173; Tisdall 2008 *International Journal of Children's Rights* 422; Bacon and Frankel 2014 *International Journal of Children's Rights* 22. See also Pateman *Participation and Democratic Theory* 11-72; Maphunye and Mafunisa 2008 *Journal of Public Administration* 461-472; Fuo 2015 *African Human Rights Law Journal* 167-191.

<sup>115</sup> See 5.2-5.4 below.

<sup>116</sup> Moses 2008 *International Journal of Children's Rights* 336.

<sup>117</sup> On the children's subservient position in African society generally, see *Africa's Agenda for Children 2040: Fostering an Africa Fit for Children* (2016) 3.

<sup>118</sup> See, for example, section 1(d) of the Constitution that declares that 'adult' suffrage is a founding value in South Africa's democratic governance, connoting the place of adults in decision-making processes.

<sup>119</sup> Twum-Danso Imoh and Okyere 2020 *Children and Youth Services Review* 1-7.

<sup>120</sup> See Save the Children *Regional Study on Children's Participation in Southern Africa: South Africa, Swaziland and Zambia* 20-22; Moses 2008 *International Journal of Children's Rights* 337.

lack of legal and policy guidance to build mutual understanding and dialogue between the expectations of children and adults in relation to urban governance.<sup>121</sup>

In addition, the participation of children in South African municipalities is restricted by the nature of some governance processes, such as council meetings, consultations and deliberative processes.<sup>122</sup> While these processes reflect the democratic and governance spaces of modern democracies,<sup>123</sup> they can be considered unsuitable and restrictive for children.<sup>124</sup> This is because these processes often exclude children based on a perceived lack of understanding, skills or expertise.<sup>125</sup> Innovative legal tools for the inclusion of children could present opportunities to address this issue.<sup>126</sup>

### **1.3 Legal tools for inclusive cities for children in South Africa**

The concept of 'inclusive cities' is used in various fields such as urban studies, urban planning and urban law. It is widely referred to in literature, international urban policy documents and development policies.<sup>127</sup> This is a complex concept that infuses multiple meanings, scopes and context-specific applications. For instance, UN-Habitat notes that, in an inclusive city, all residents are valuable contributors to decision-making in governance processes.<sup>128</sup> Despite its wide use in the literature, there is no clarity on what inclusive cities for children mean for city-level governance and the features of such cities.<sup>129</sup> This study aims to move beyond the general

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<sup>121</sup> Bray and Moses 2011 *Perspectives in Education* 10-12. See also, Percy-Smith and Taylor 2008 *International Journal of Children's Rights* 379-383; Baraldi and Iervese "Observing Children's Capabilities as Agency" 46.

<sup>122</sup> See 5.4 below.

<sup>123</sup> This study will not delve into political theory in relation to the adequacy or not and place of child participation in governance.

<sup>124</sup> See 5.2-5.4 below.

<sup>125</sup> O'Toole and Gale 2008 *International Journal of Children's Rights* 373.

<sup>126</sup> To address the challenges associated with child participation, Lundy proposes a model for the effective involvement of children in governance, specifically urging the provision of "space, voice, audience and influence" for children to guarantee the inclusion of their views in governance. See Lundy 2007 *British Educational Research Journal* 932. The Lundy-model of child participation provide insights for the conceptualisation of child inclusion in the South African local government sphere.

<sup>127</sup> See 2.3 below.

<sup>128</sup> UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 26.

<sup>129</sup> See 2.4 below for a detailed discussion.

understanding of inclusive cities towards what inclusive cities for children entails and what it suggests for city-level governance. It also identifies and explores legal tools and opportunities that could assist in the pursuit of inclusive cities for children in South Africa.

### *1.3.1 Introducing the concept of inclusive cities for children*

Three important terms come to mind when discussing inclusive cities for children. The first is 'inclusion'<sup>130</sup> which is generally understood as a process concerned with identifying and removing barriers that hinder the participation of persons who are usually excluded.<sup>131</sup> In addition, inclusion concerns the recognition, involvement and participation of citizens in all areas of their lives, including urban governance. The concept of inclusion in an urban setting encompasses a complex and multidimensional web of interconnected features.<sup>132</sup> Evidence shows that due to the complexity of inclusion in the urban context, policies, interventions and programmes largely target spatial issues such as housing, land and provision of services.<sup>133</sup> This study focuses on the inclusion of children in decision-making processes in urban governance from a legal perspective through the conduit of child participation.<sup>134</sup>

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<sup>130</sup> Inclusion, inclusivity and inclusiveness are used interchangeably in this study.

<sup>131</sup> See UNESCO *Guidelines for Inclusion: Ensuring Access to Education for All* 13-15. According to Dugarova, inclusion as a process enables the participation of (all) members of society in decision-making activities that affect their lives, especially marginalised groups. See Dugarova *Social Inclusion, Poverty Eradication and the 2030 Agenda for Sustainable Development* 2.

<sup>132</sup> These include, among others, "slum upgrading and informal settlements, affordable housing, housing finance, land development/land use, land regularisation, land-based finance, urban planning guidelines, infrastructure delivery, financial inclusion, informal economy and social inclusion of excluded groups." See World Bank *Inclusive Cities Approach Paper* 20.

<sup>133</sup> Donaghy 2017 *Journal of Urban Affairs* 988-990. See also World Bank *Inclusive Cities Approach Paper* 8.

<sup>134</sup> The inclusion of children as rights-endowed citizens' entails protecting them and their rights through processes in which the children themselves should participate. See, Hart *Children's Participation: From Tokenism To Citizenship* 5; Bissell *et al Rethinking Child Protection from a Rights Perspective: Some Observations for Discussion* 28.

The second term is 'cities.' There is no singular accepted definition of a city.<sup>135</sup> or an urban area.<sup>136</sup> Cities have multiple characteristics<sup>137</sup> such as agents of transformation, actors in sustainable development and human rights discourse, and arenas of struggle and inclusion. Oomen and Durmus<sup>138</sup> illustrate this point by noting that a political science lens views cities as agents that further certain interpretations of human rights on the one hand and sustainable developmental goals and aspirations on the other. They contend that cities are positioned as "actors claiming subject-hood under international law."<sup>139</sup> They also argue that from a sociological perspective, cities are localities and arenas with a wide variety of organisations, institutions and individuals who want social justice and inclusion.<sup>140</sup> In addition, cities are viewed as governors with legal mandates and (varying) powers to govern public affairs in their jurisdiction.<sup>141</sup>

The third term is 'children,' which is used in this study to refer to persons below the age of 18 years. This definition does not distinguish children based on age, social standing, or any other status, such as migration status. For the purposes of this study, no age limit is prescribed to those who should participate in decision-making processes at the city level.<sup>142</sup> This interpretation is flexible and enables city authorities to apply the principle of evolving capacities to different age groups to

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<sup>135</sup> Schragger "What Is the City?" 18-43.

<sup>136</sup> Simon *et al* 2015 *Environment and Urbanization* 50. See also Van der Berg *Municipal Planning Law and Sustainable Cities in South Africa* 28-39. The author defined 'city' or 'urban' to include any space showing some formal concentration of a settlement, infrastructure, transport and road networks, services, amenities, and economic activity. Cognisant of the South African context, Van der Berg notes that city or urban includes large city regions (under the governance of many different municipalities); metropolitan areas (category A municipalities) as well as medium (category C municipalities) and smaller (category B municipalities) urban areas – to the of areas that are spread out with very little economic activity, no consolidated town centre or nodes, sparsely populated areas of communal land tenure, and national parks.

<sup>137</sup> This includes urban development, local institutional capacities, economic growth or stagnation, socio-economic factors such as poverty, unemployment, environmental (ecological) conditions and the legal and policy regulatory frameworks.

<sup>138</sup> Oomen and Durmus 2019 *Journal of Legal Pluralism and Unofficial Law* 146-147.

<sup>139</sup> Oomen and Durmus 2019 *Journal of Legal Pluralism and Unofficial Law* 146-147.

<sup>140</sup> See Oomen and Durmus 2019 *Journal of Legal Pluralism and Unofficial Law* 147.

<sup>141</sup> See 5.2-5.4 below.

<sup>142</sup> It is noted that providing an age limit or range restricts other groups of children from participating in decision-making processes in city-level actions, programmes and interventions. For instance, city authorities could engage younger children in the design stages of the built environment such as parks and public spaces, taking into account all the child safeguarding measures.

consult and collaborate with in city-level governance.<sup>143</sup> However, while children are viewed as a collective group in this study it is acknowledged that child participation in public affairs is often done – in practice – by children aged 10-17 years.

This study conceptualises the meaning of inclusive cities for children in city-level governance from a legal perspective. It focuses on the inclusion of children in decision-making processes in urban governance. As alluded to above, the term inclusive cities is used within a limited scope that focuses on the participation of children in urban governance, particularly in decision-making processes. Decision-making is one of the many ways to ensure that cities are inclusive of children.

### *1.3.2 South African law and policy on inclusive cities for children*

South African laws and policies generally provide for inclusive governance.<sup>144</sup> Da Cruz, Rode and McQuarrie<sup>145</sup> note that successful governance at any level depends on sound and robust legal and policy frameworks. For example, South African law and policy provide for public participation, which is one of the many avenues to include people in governance and decision-making processes.<sup>146</sup> Public participation is entrenched as a constitutional imperative underpinning the rights of communities to participate in and be involved in public affairs.<sup>147</sup> The constitutional and legislative requirement for public participation is supposed to be exercised in all three spheres of government: national, provincial and local.<sup>148</sup>

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<sup>143</sup> See 3.2.1.2 below.

<sup>144</sup> See 5.3 below.

<sup>145</sup> See Da Cruz, Rode and McQuarrie 2019 *Journal of Urban Affairs* 7.

<sup>146</sup> See 5.3 below.

<sup>147</sup> Specific to public participation in local governance, see section 152 of the Constitution. On this, Fuo aptly notes that "there is no enumerated right to public participation in government decision-making processes in the Bill of Rights", yet it is guaranteed in terms of section 19 of the Constitution. See Fuo 2015 *African Human Rights Law Journal* 172. See also the Constitutional Court decision in *Doctors for Life International v Speaker of the National Assembly* 2006 6 SA 416 (CC) paras 101, 106-107.

<sup>148</sup> Section 40(1) of the Constitution declares that "[i]n the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated." See also sections 16-21 of the *Local Government: Municipal Systems Act* 32 of 2000 (Municipal Systems Act) that emphasise on the need for public participation in governance.

The Constitution of the Republic of South Africa, 1996 (the Constitution), which is the supreme law of the land, establishes a robust commitment towards the inclusion of the public in governance and decision-making.<sup>149</sup> Importantly, the Constitution entrenches a justiciable Bill of Rights in which the rights of all persons, including children, are protected.<sup>150</sup> Children are entitled to the protection and benefit of the law and to the enjoyment of all rights in the Constitution,<sup>151</sup> except for the right to vote. Specifically, section 28 of the Constitution (the children's rights clause) elaborates on the rights of children as a special group of persons.<sup>152</sup> When the children's rights clause is read with section 7(2) of the Constitution, the effect is that all three spheres of government are obligated to "respect, protect, promote and fulfil"<sup>153</sup> the rights of children. This is an integral part of the Bill of Rights.

Section 195 of the Constitution sets out the basic values and principles governing public administration in all spheres of government, including responding to people's needs and encouraging the public to participate in policy-making.<sup>154</sup> In addition, section 152(1) of the Constitution provides for the objects of local government. It specifically declares that municipalities must encourage the involvement of communities and community organisations in local governance.<sup>155</sup> Legislatively, the

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<sup>149</sup> See 3.3 below.

<sup>150</sup> Section 7(1) of the Constitution proclaims that the "Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of 'all people' in [the] country and affirms the democratic values of human dignity, equality and freedom."

<sup>151</sup> This is a significant constitutional recognition and a critical ingredient for the involvement of children in decision-making process in urban governance.

<sup>152</sup> Section 28(1)-(2) of the Constitution provides for the rights of children including name and nationality; family or parental care; basic nutrition, shelter, basic health care service; protection from maltreatment, neglect, abuse or degradation, child labour; legal aid services; and to have the best interests are of paramount importance in every matter concerning the child.

<sup>153</sup> The concept to respect, protect, promote and fulfil human rights implies the following: "(a) respect means duty-bearers must refrain from actions that violates rights or should not directly or indirectly interfere with the enjoyment of, or aid and abet any infringement of, children's rights and that the state must not engage in, support or condone abuses of children's rights; (b) protect means duty-bearers must take all necessary, appropriate and reasonable measures to prevent third parties from interfering, causing, contributing or violating the rights of children; (c) promote means that duty-bearers must take practical and proactive measures to ensure the advancement of the rights of children; and (d) fulfil means taking positive measures or action to facilitate, promote, provide for and ensure the full realisation of the rights of children." See Karp 2019 *International Theory* 83-108; Shue *Basic Rights* 1-25.

<sup>154</sup> Section 195(1)(e) of the Constitution.

<sup>155</sup> Section 152(1)(e) of the Constitution.

*Local Government: Municipal Systems Act* 32 of 2000 (Municipal Systems Act) obligates municipalities to establish local governance tools (public participation and integrated development plans, among others)<sup>156</sup> and institutional structures, mechanisms, processes and procedures (municipal councils, ward committees and junior city councils)<sup>157</sup> to enable citizen participation in local governance.<sup>158</sup> This means that municipalities are legally bestowed with the status, rights, duties, functions, powers and mechanisms to govern their constituencies in an inclusive manner.<sup>159</sup>

The *Children's Act* 38 of 2005 (Children's Act) acknowledges participation as a legal right and a pathway for the involvement of children in matters concerning them. In particular, section 10 of the Children's Act is dedicated to the right of every child to participate in all matters affecting them.<sup>160</sup> Section 8 of the Act instructs that all organs of the state in any sphere of government must respect, protect and promote the rights of children contained in the Act. This implies that local governments must foster a culture of inclusive and participatory governance, including building the capacity of local communities to participate in urban governance.<sup>161</sup>

Inclusive and participative governance is also included in some of South Africa's national policies.<sup>162</sup> For instance, the *National Development Plan 2030* (NDP)<sup>163</sup> lays down the principle of active participatory citizenship in governance practices as a fundamental policy and priority for the promotion of equality, inclusivity and sustainability in cities (and towns).<sup>164</sup> The *Integrated Urban Development*

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<sup>156</sup> See 5.3 below.

<sup>157</sup> See 5.4 below.

<sup>158</sup> See sections 16-20 of the *Municipal Systems Act*.

<sup>159</sup> Sections 151, 152, 153 and 156 of the Constitution.

<sup>160</sup> *Children's Act* 38 of 2005.

<sup>161</sup> See section 16(1)(b) of the *Municipal Systems Act*.

<sup>162</sup> See, for instance, the *Integrated Urban Development Framework* (IUDF) 7; Joseph, Bickford and Magn "The Spatial Transformation of South Africa's Cities: From Abstract Concept to Meaning and Means" 47. In addition, on the evidence on the incorporation of the NUA into legislation and institutional policy frameworks, see CoGTA *Localising the New Urban Agenda: South Africa Discussion Document*. See also UNECA, AU and UN-Habitat *A Harmonized Implementation Framework for the New Urban Agenda in Africa* 28.

<sup>163</sup> *National Development Plan 2030: Our Future - Make it Work* (2012).

<sup>164</sup> See 3.3.2.3 below.

*Framework*, 2016 (IUDF),<sup>165</sup> which sets out South Africa's urban transformation, provides for the inclusion of people and the empowerment of communities to ensure effective governance.<sup>166</sup>

Although South African urban law and policy frameworks aim to address urban challenges and transform cities and other urban human settlements, material problems exist at the community level. Some of these are of a legal and political nature and restrict the participation of children in municipal governance.<sup>167</sup> For instance, municipal participation mechanisms such as municipal councils and ward committees are designed to meet adult demands by utilising political mechanisms and participation models.<sup>168</sup> Although legislative and policy positions broadly provide for inclusion in local governance through participation, there is little evidence that these mechanisms are suitable for children.<sup>169</sup> As such, this study critically examines what inclusive cities for children entail for city-level governance and explores the legal tools for the inclusion of children in decision-making processes at the city level in South Africa.

#### **1.4 Research question**

What are the legal tools, as well as opportunities in South African law and policy for the inclusion of children in urban governance against the background of inclusive cities?

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<sup>165</sup> The adoption of the *Integrated Urban Development Framework* is a response to the post-2015 [SDGs], in particular aligning with SDG 11 and it also builds on the NDP.

<sup>166</sup> See 3.3.2.4 below.

<sup>167</sup> For example, section 17(1) of the *Municipal Systems Act* provides for the participation of communities through political structures for participation and mechanisms, processes, and procedures for participation in municipal governance.

<sup>168</sup> For an extensive discussion on these mechanisms, see 5.4 below.

<sup>169</sup> *Integrated Urban Development Framework* 94. See also Couzens 2011 *Stellenbosch Law Review* 156-157.



## **1.5 Objectives**

The primary objective of this study is to identify the legal tools to achieve inclusive cities for children and explore the opportunities in law and policy for the inclusion of children in urban governance in South Africa.

Secondary objectives include the following:

- To explore theoretical perspectives on inclusive cities to ascertain what it means, identify its features, and frame the concept of inclusive cities for children, with a special focus on the nexus between inclusive cities and the participation of children in local governance.
- To outline the multi-level (international, African regional and South African) law and policy framework that demands and provides for the participation of children in decision-making processes, particularly in public governance.
- To identify and discuss typologies, forms, methods and models of child participation to clarify how city authorities could include children in decision-making processes at the city level.
- To critically evaluate South African local government law, identify legal tools for inclusive cities for children, and explore opportunities for child participation in the domestic legal and policy framework, specifically in local governance.
- To arrive at a conclusion and make recommendations on how inclusive cities for children should meaningfully involve children in urban governance and optimise opportunities in South African law and policy within the local government sphere.

## **1.6 Research methodology**

This study adopts an in-depth desktop review and analysis of relevant primary and secondary sources of law and scholarly literature. A critical interpretation of these sources provides a theoretical and conceptual understanding of inclusivity in cities and delineates the concept of inclusive cities for children. First, the scholarly literature on urban policy and urban studies is systematically analysed to identify the definition of inclusive cities in general and, subsequently, the features of inclusive

cities for children. The analysis is anchored in the literature review of international urban policy and law.

Second, the study investigates the existing law and policy framework of international and African regional (children's rights) law and South African law and policy, which require and facilitate the inclusion of children in decision-making through the conduit of participation. Such an exploration is crucial as it provides a legal basis that serves as a guide for decision-makers, as prescribed by international and African regional law, to which South Africa is a signatory. In the domestic sphere, the study analyses domestic law and policy frameworks and jurisprudence as courts play a significant role in the interpretation of law (including international law). The study further consults relevant literature on the typologies, forms and models of child participation, such as the Lundy model of participation,<sup>170</sup> with a view to laying the foundation for how it could be used to overcome potential barriers to participation in urban governance. Pertaining to the local sphere, this study considers local government law and legal and governance tools in South Africa through a desktop review of the legal, policy and scholarly literature.

This study has several limitations. As a desktop research method, no empirical work was conducted due to limitations in the availability of resources and time.<sup>171</sup> It does not include personally captured experiences of children and their voices, views or perspectives. The biggest drawback of this study is that it relies on identifying opportunities for participation for the inclusion of children from the literature and does not conduct an empirical study to test and validate the conclusions found in the literature. Also, the study does not adopt case studies of cities exploring the existing city-level initiatives, laws, policies and governance instruments to ascertain whether and if so: (a) what are the key features of inclusive cities for children and (b) how they ensure the participation of children in decision-making processes in

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<sup>170</sup> See 4.5 below.

<sup>171</sup> Two points are worth noting. First, part of the study was undertaken during the COVID-19 pandemic against the background of global and South African health restrictions. Second, the researcher worked and lived in 3 different countries in Eastern and Southern Africa during the course of the study.

South Africa.<sup>172</sup> In addition, the study does not distinguish between children of different ages or those with and without disabilities. This general blanket approach, while intended to give city authorities flexibility, has its own limitations with respect to children who are differently abled or younger children.

South African cities have "unique typologies and characteristics"<sup>173</sup> that differ in institutional and financial capacity.<sup>174</sup> They are at different levels of urban development owing to varying socio-economic challenges.<sup>175</sup> This means that cities have different institutional and financial capacities, which could have implications for the level of commitment towards the inclusion of children in decision-making processes in urban governance.

## **1.7 Structure of the study**

The study proceeds as follows:

Chapter 2 explores some theoretical perspectives on inclusive cities by analysing the literature and international urban policy to ascertain its meaning for city-level governance. This analysis frames the concept of inclusive cities for children.

Chapter 3 critically analyses the multi-level (international, African regional and South African) legal and policy framework for the participation of children in governance decision-making with a view to establishing the normative legal basis for the inclusion of children in public governance.

Chapter 4 identifies the typologies, forms and methods of the Lundy model of child participation that could make the inclusion of children practical at the city level

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<sup>172</sup> However, it should be noted that in some instances the study cites or refer to best practices from other cities purely to demonstrate and reinforce the argument put forward.

<sup>173</sup> CoGTA *Localising the New Urban Agenda: South Africa Discussion Document* 12.

<sup>174</sup> De Visser and Steytler notes that municipalities cannot be seen as "a uniform institution, operating in the same manner, facing the same challenges." See De Visser and Steytler 2014 *Constitutional Court Review* 1.

<sup>175</sup> As observed by Mitleton-Kelly, each city has its own history, economy, politics, social dynamics and varying human capital (professionals with the necessary competencies and commitment to advance sustainable and inclusive governance). See Mitleton-Kelly *Urban Governance: A Complexity Theory Approach* 1.

possible. The chapter also discusses procedural rights and child rights principles as enablers of the participation of children in public decision-making processes.

Chapter 5 discusses South African local government law and the concept of inclusive cities for children with a view to identifying opportunities for the participation of children in urban governance. The objective is to explore the local government sphere and adjust the models identified earlier to optimise opportunities for the inclusion of children in urban governance.

Chapter 6 concludes the study. It outlines the key findings of the research and proposes recommendations on how South African cities could leverage legal tools and opportunities available in law and policy to become inclusive cities for children.

## **CHAPTER 2**

### **THE CONCEPT OF INCLUSIVE CITIES FOR CHILDREN**

#### **2.1 Introduction**

This chapter conceptualises the notion of inclusive cities and identifies its features in the scholarly literature and international urban policy. It then frames the key features of inclusive cities for children in a democracy such as South Africa. This is necessary for this study to the extent that it lays the foundation for understanding the concept of inclusive cities for children against the background of inclusive cities.

Part 1 of the chapter begins by defining inclusivity from a public governance perspective through a review of a wide range of literature on urban governance. This analysis is followed by a historical review of the concept of inclusivity in the city context (urban inclusivity) in light of escalating urbanisation, inequalities and exclusion. A historical review of the concept of urban inclusivity provides an understanding of the theoretical development of inclusive cities. This discussion is based on the fact that cities have always been sites of contest for exclusion and inclusion.<sup>1</sup> Cities also perform local governance functions through local authorities.<sup>2</sup>

In Part 2, this chapter conceptualises inclusive cities based on relevant theoretical perspectives and international urban policies. At a global level, this part reviews the Sustainable Development Goals (SDGs), particularly SDGs 11 and 16 and the *New Urban Agenda* (NUA). At the African regional level, this part examines the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local*

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<sup>1</sup> Literature on urban inclusivity abounds in relation to how cities play a key role in recognising and ensuring inclusion of marginalised groups such as slums dwellers, migrants, persons with disabilities and children. See Mammon "Inclusive Cities: The Pursuit of Urban Social and Spatial Freedoms for All" 126-159; Khosla *Levelling Up: The Challenges of Creating Inclusive Cities* 1-26; Broadhead *Inclusive Cities: Inclusive Practices for New Comers at City-level and Examples of Innovation from Overseas* 1-36. See also UN-Habitat *Migration and Inclusive Cities: A Guide for Arab City Leaders* 1-64.

<sup>2</sup> See 2.3 below.

*Development*, 2014 (Decentralisation Charter),<sup>3</sup> the *African Urban Agenda* 2013 (AUA), the *Abuja Declaration* and the draft *African Union (AU) Model Law on Housing, Human Settlement and Urban Development*, to ascertain how the concept of inclusive cities is embedded in urban developmental policies. Despite the availability of literature and international urban policy on inclusive cities, there is a gap in conceptualising and understanding what inclusive cities for children mean for city-level governance. To this end, Part 3 of this chapter draws from scholarly literature and urban policy elements that are child-focused and refer to children or young people, as shown in Table 1 below. Some of the features of inclusive cities for children are respecting and promoting children's human rights, upholding participatory governance, and child-responsiveness. These are distilled from international urban policy and literature. The last part is a summary of this chapter.

## **2.2 The concept of inclusive cities**

This part defines inclusivity with a view to understanding what it means in general and specifically from a legal perspective. It then discusses the historical evolution of urban inclusivity in a mixture of literature and governance theory before linking it to the concept of inclusive cities and inclusive urban governance. A discussion of inclusive cities as an emerging concept in urban planning and practice and how it is linked to urban governance follows below.

### *2.2.1 Defining inclusivity*

The concept of inclusivity in the ordinary sense of the word is broadly defined. Inclusivity is a dynamic concept with different context-driven policy implications.<sup>4</sup> The literature in various disciplines is awash with the terms inclusivity, inclusive and inclusion, which are used interchangeably in various contexts. For instance, they are

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<sup>3</sup> *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development* (2014).

<sup>4</sup> See S nit *et al* "Inclusiveness" 118; and Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 39.

used in the following contexts: promoting disability inclusion,<sup>5</sup> inclusive education,<sup>6</sup> inclusive gender parity,<sup>7</sup> inclusive migration policies,<sup>8</sup> inclusive urban development and inclusive governance (including decision-making processes). Inclusivity is an evolving concept that adapts to and changes as circumstances demand.<sup>9</sup>

Inclusion generally refers to the involvement of all groups in a given society in decision-making processes regarding matters affecting their lives and granting people unfettered access to services and opportunities.<sup>10</sup> In principle, inclusion and exclusion have the opposite effect. In the context of governance, exclusion is a process of intentionally or unintentionally precluding certain individuals, groups or classes from socio-relational and institutional engagement with others, thereby preventing the secluded from full participation in the normal, traditional and normatively prescribed activities of society.<sup>11</sup>

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<sup>5</sup> Disabilities studies: this discipline is concerned with the mainstreaming of persons with disabilities in community activities and decision-making processes. See, for instance, Kamuzhanje "Urbanisation, Inclusive Cities and the Plight of the People with Disability" 97-114; *General Comment No.9 on the Rights of Children with Disabilities* (2006); Abualghaib *et al* 2019 *Sustainability* 1-11; Hansungule and Boezaart 2017 *African Disability Rights Yearbook* 40-63; Niewohner, Pierson and Meyers 2020 *Disability & Society* 1171-1176.

<sup>6</sup> Mostly found in child law and education law, it concerns the creation of opportunities for children from all backgrounds without discrimination and ensuring access to equal and quality education. See SDG 4; Mateusi, Khoaeane and Naong 2014 *Int J Educ Sci* 263-273; Lundy and O'Lynn "The Education Rights of Children" 259-275; UNESCO *Guidelines for Inclusion: Ensuring Access to Education for All* (2006); *General Comment No.9 on the Rights of Children with Disabilities* paras 66-67.

<sup>7</sup> Mostly found in gender studies, it relates to the creation of opportunities for women and girls in education, employment and politics. See, for instance, Razavi 2016 *Gender & Development* 25-41; Esquivel and Sweetman 2016 *Gender & Development* 25-41; Koehler 2016 *Gender & Development* 53-68.

<sup>8</sup> Migration studies on the integration of migrants, internally displaced persons and refugees in development and humanitarian situations. See Fiske 2006 *International Journal of Human Rights* 219-229.

<sup>9</sup> Apart from the difficulty in defining it, it is often under-defined. As Anttiroiko and De Jong note, it is unclear, in many instances, to state who is excluded, from what and what specific activities, opportunities, or spaces. See Anttiroiko and de Jong "Pinpointing the Urban Paradigm Shift" 16.

<sup>10</sup> See World Bank *Inclusive Cities Approach Paper* 1-8. This observation aligns with the view expressed by Sénit *et al* that inclusiveness is a normative concept that cuts across participation, inclusive development, justice (and democratic legitimacy). See Sénit *et al* "Inclusiveness" 118.

<sup>11</sup> See Silver *Social Exclusion: Comparative Analysis of Europe and Middle East Youth* 15.

Some argue that inclusion comprises three critical dimensions: recognition, representation, and distribution.<sup>12</sup> Recognition fosters a sense of belonging.<sup>13</sup> Silver<sup>14</sup> argues that inclusion reflects the ideological notion of belonging to a community, society, class or group. According to Beall,<sup>15</sup> people can be included or excluded based on "who they are" and/or "where they are." Inherent to the 'who' is, among other factors, inclusion or exclusion on the basis of age (in the case of the elderly and children). In fact, exclusion is also context-specific, especially where there is a legitimate reason. For instance, 'where' implies that exclusion means different things to different persons in (urban and rural) South Africa. It means different things to people displaced by conflict in Sudan, Ethiopia or Syria, for example. While the law can provide legitimate reasons why children may not be included in certain matters, such as electoral voting, some scholars argue that official age restrictions take away children's independent access to governance processes.<sup>16</sup>

In addition, inclusiveness may be understood as intersectional.<sup>17</sup> The intersectionality of factors, such as age, gender (especially in relation to girls),<sup>18</sup> (dis)ability, indigeneity, sexual identity, and cultural practices, adds another layer of exclusion. Inclusion may also be understood along the lines of different divides.

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<sup>12</sup> Kalfagianni *et al* "Justice" 75–87. See also Sénit *et al* "Inclusiveness" 118–119, noting that matter of recognition entails that all people are free from physical threats, have complete and equal political rights...; representation means that all can fully participate in decision-making; and that distribution is about opportunities and risks, burdens and responsibilities are fairly divided.

<sup>13</sup> See Sénit *et al* "Inclusiveness" 118–119; Gupta and Vegelin 2023 *International Environmental Agreements* 115–121.

<sup>14</sup> Silver *Social Exclusion: Comparative Analysis of Europe and Middle East Youth* 15.

<sup>15</sup> Beall 2002 *Environment and Urbanization* 45–49.

<sup>16</sup> Anttiroiko and de Jong "Dimension of Exclusion" 44. This exclusion manifest despite the understanding that inclusion in governance increases the legitimacy of the decision-making outcomes. See De Barbieri 2018 *Florida State University Law Review* 92.

<sup>17</sup> Sénit *et al* "Inclusiveness" 117.

<sup>18</sup> On how intersectionality affects girls, see ACPF *Framework for Analysing the Rights of Girls in Africa* 11–33.



Examples of this include social,<sup>19</sup> economic,<sup>20</sup> spatial<sup>21</sup> and political inclusion.<sup>22</sup> To delimit its scope, this study focuses only on social and political inclusion.<sup>23</sup> Social and political inclusion refers to the state of creating conditions conducive to enabling everyone to participate in daily decision-making processes regarding the governance and welfare of their community.<sup>24</sup> According to Dugarova, social inclusion creates a "society for all, in which every individual, each with rights and responsibilities, has an active role to play,"<sup>25</sup> particularly in the governance of their community. Möller<sup>26</sup> argues that social inclusion is a multidimensional process that aims to ensure equal opportunities, regardless of background, age, gender and race, to ensure that people achieve their full potential. Silver<sup>27</sup> views social inclusion as

[A multifaceted] relational process of increasing opportunities for social participation, enhancing capabilities to fulfil normatively prescribed social roles, broadening social ties of respect and recognition and at the collective level, enhancing social bonds, cohesion, integration, or solidarity.

The World Summit for Social Development declared that an inclusive society is "a society for all" in which every person, each with rights, duties and responsibilities,

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<sup>19</sup> Social inclusion is defined as the process of improving the terms on which individuals and groups participate in society - improving and enhancing their ability, access to opportunities and the dignity of those disadvantaged on the basis of age, sex, disability, race, ethnicity or other status. See World Bank 2020 <https://www.worldbank.org/en/topic/social-inclusion>.

<sup>20</sup> Economic inclusion relates to aspects of poverty reduction and income equality, amongst other issues. It denotes economic opportunities for all; implying the ability of everyone, including the most marginalised, to contribute to the economy and also to share in the benefits of local economic growth. Silver *The Contexts of Social Inclusion* 5-6. See also World Bank *Inclusive Cities Approach Paper* 12-13.

<sup>21</sup> Spatial inclusion is about improving access or ensuring equal access to affordable land, housing, infrastructure and basic public services such as water and sanitation. See World Bank *Inclusive Cities Approach Paper* 12-13.

<sup>22</sup> Political inclusion is shaped by fundamental principles of human rights that concern the involvement, consultation, or active participation of all social groups to ensure maximum representativeness in political governance and decision-making processes across large segments of society. See Anttiroiko and de Jong "Pinpointing the Urban Paradigm Shift" 16.

<sup>23</sup> Arguably, social inclusion fosters recognition and representation of children in decision-making and governance processes.

<sup>24</sup> Anttiroiko and de Jong "Conceptualising Exclusion and Inclusion" 30.

<sup>25</sup> See Dugarova *Social Inclusion, Poverty Eradication and the 2030 Agenda for Sustainable Development* 1.

<sup>26</sup> Möller "From Exclusion to Inclusion: The Understanding, Capacity and Will to Change Local Government Practices" 333.

<sup>27</sup> Silver *The Contexts of Social Inclusion* 2-3.

plays an active role in governance.<sup>28</sup> Considering this definition, it is important to note that inclusion concerns creating an enabling environment through the adoption of laws, policies and other measures for the active participation of every member of society.<sup>29</sup> In the South African context, inclusion is understood against the background of colonial and apartheid governance processes, laws and regulations that systematically excluded residents, specifically women and children, from decision-making.<sup>30</sup>

Scholars such as Duragova, Möller and Silver agree that social inclusion is the process of improving the conditions and terms of participation of disadvantaged groups through opportunity creation and enhancing their voices in decision-making processes. In addition, social inclusion fosters respect for fundamental human rights and freedoms.<sup>31</sup> This buttresses the point that social inclusion is based on respect for fundamental freedoms and human rights, participation, social justice and due consideration of the special needs and interests of vulnerable and disadvantaged groups.<sup>32</sup>

For this study, inclusion in urban governance processes and procedures, such as public participation at the municipal council level, is a form of inclusion that intersects social inclusion and political inclusion.<sup>33</sup> The primary focus of this study is participatory governance,<sup>34</sup> which is the participation of children in urban governance.<sup>35</sup> Despite the wide scope of urban governance, this study focuses specifically on decision-making processes in governance.<sup>36</sup> Typically, decision-making processes include consultations in the development and evaluation of

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<sup>28</sup> *Report of the World Summit for Social Development* (1995) para 66.

<sup>29</sup> Möller "From Exclusion to Inclusion: The Understanding, Capacity and Will to Change Local Government Practices" 334. Social inclusion eradicates concerns of exclusion that emanates from state-sanctioned exclusion and other forms of exclusion that emanates from societal norms.

<sup>30</sup> Khosla *Levelling Up: The Challenges of Creating Inclusive Cities* 2. See also UN-Habitat *Human Rights, Rule of Law and the New Urban Agenda* 18.

<sup>31</sup> UN-DESA *Leaving No-one Behind: The Imperative of Inclusive Development* 17.

<sup>32</sup> See *Report of the World Summit for Social Development* para 66. See also UN-DESA *Leaving No-one Behind: The Imperative of Inclusive Development* 20.

<sup>33</sup> See 5.4 below.

<sup>34</sup> See 2.4.2 below.

<sup>35</sup> See 1.2 above.

<sup>36</sup> See 3.2-3.3 below.

integrated development plans. As a legal study, it primarily reviews legal and policy instruments found in international and African regional as well as South African frameworks that provide a normative environment for the participation of children and their inclusion in urban governance.<sup>37</sup>

### 2.2.2 *Urban inclusivity and the right to the city*

The concept of inclusivity has a long history in various disciplines, such as political theory, city planning, housing and slum upgrading, urban design and urban law and policy.<sup>38</sup> Tracing its historical trajectory, a remarkable example of the process depicting the origins of the struggle for urban inclusion relates to the 1968 French political context. During this time, mass student riots and protests erupted due to demands for inclusion in city life by the disenfranchised and marginalised urban populace.<sup>39</sup> As a result of these protests, cities were characterised as sites of contest for a better life. They were also considered places of exclusion, marginalisation and discrimination.<sup>40</sup> The riots and protests led to the acclaimed articulation of the notion of the "right to the city," accredited to the French philosopher Henri Lefebvre.<sup>41</sup>

The right to the city is a conceptual notion meaning a "cry and demand".<sup>42</sup> for urban inclusion.<sup>43</sup> It is a theoretical and political framework that was used to challenge exclusionary development, marginalisation and discrimination in city life during the French political struggles and challenges in the 1960s.<sup>44</sup> Although not legally recognised in any formal way, the right to the city expresses the deep yearning of

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<sup>37</sup> See 3.2 below.

<sup>38</sup> Urban inclusivity has also received extensive scholarly attention in the context of urban mobility and transport, economic equity and recovery, migration and governance.

<sup>39</sup> Purcell 2002 *GeoJournal* 99-101. See also Purcell 2003 *International Journal of Urban and Regional Research* 564-590.

<sup>40</sup> UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 20. This characterisation is still the same in some parts in other cities globally.

<sup>41</sup> The development of the right to the city is attributed to the work of Lefebvre. See Lefebvre *Le Droit à la Ville* 1-40; Lefebvre *The Urban Revolution* 1-190.

<sup>42</sup> See Lefebvre *Le Droit à la Ville* 6.

<sup>43</sup> The concept of urban inclusivity has its roots in the right to the city discourse.

<sup>44</sup> Lefebvre wrote about the struggle for inclusion in urban space and city life within the French context – and the same principles are applicable in current South African challenges. Lefebvre *Le Droit à la Ville* 1-40; Lefebvre *The Urban Revolution* 1-90. See also Shields 2013 *Space and Culture* 345-348.

the excluded and marginalised urban groups for their "recognition, empowerment, participation, self-determination and human rights protection"<sup>45</sup> at the city level.

The right to the city has two central, interdependent and interconnected pillars – appropriation and participation.<sup>46</sup> These pillars have governance implications for how city residents relate to the urban fabric. First, appropriation embodies being present in the existing urban space, structures and mechanisms from which the majority of poor and vulnerable groups are excluded.<sup>47</sup> The appropriation of urban governance space guarantees dignified life and access to city mechanisms, structures and resources. As Purcell<sup>48</sup> argues, the ability to use, define and shape the governance space to maximise its value is central to the idea of appropriation. Additionally, appropriation demands capacity development and the ability of urban citizens (including children) for self-determination and active participation in governance processes that address their material and social needs.<sup>49</sup> In the case of children, appropriation relates to the opportunities available for them to participate in urban governance.<sup>50</sup>

Participation relates to yearning for inclusion in governance. This entails that all city inhabitants (of appropriate ages and maturity to participate)<sup>51</sup> should play a role in decision-making by local public authorities. It requires the establishment of institutional frameworks and mechanisms for inhabitants to fully, meaningfully and effectively participate in the governance and decision-making processes that affect

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<sup>45</sup> Pieterse 2014 *South African Law Journal* 176-193. See UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 20; Mitchell *The Right to the City: Social Justice and the Fight for Public Space* 1-12.

<sup>46</sup> See Lefebvre *The Urban Revolution* 1-90; Butler *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* 144; Purcell *Recapturing Democracy: Neoliberalization and the Struggle for Alternative Urban Futures* 94.

<sup>47</sup> See Purcell *Recapturing Democracy: Neoliberalization and the Struggle for Alternative Urban Futures* 94.

<sup>48</sup> Purcell 2003 *International Journal of Urban and Regional Research* 578. The right to the city also relates to some aspects that are not part of this study, such as urban planning among others with significant impacts on children in cities. For example, the built environment: street design, parks and recreational facilities and other public places do not form part of this study and are only mentioned to illustrate the far-reaching elements of appropriation.

<sup>49</sup> Butler *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* 144.

<sup>50</sup> See 4.4 below.

<sup>51</sup> See 3.2 below.

their urban life.<sup>52</sup> From a legal standpoint, participation is a central democratic right<sup>53</sup> that confers a legal entitlement to contribute to good governance. Participation also entails having a meaningful say in processes that define and produce the urban environment,<sup>54</sup> such as those aimed at the development of integrated development plans.

The right to the city entitles all urban inhabitants, including children, to opportunities to meaningfully participate in the development, governance and substantive transformation of the city.<sup>55</sup> Coggin and Pieterse<sup>56</sup> argue that the right to the city puts the rights of urban dwellers and users of multiple services into practice.<sup>57</sup> Applied within a cocktail of urban policies and laws, the authors<sup>58</sup> argue that the right to the city:

[C]onsists of claims of habitation (to inhabit the city, to use its spaces and share in its spoils), *appropriation* (to be present in, to experience and make use of the fullness of the city) and *participation* (to imagine the city and to constitute its form, meaning and operation, through the practices of daily life). The right to the city is thus simultaneously grounded in the reality of present, everyday life in the city and in a continuously shifting and contested vision of a future city, that is impossible to pin down but is actively imagined, struggled and strived for by inhabitants individually as well as by collectives.<sup>59</sup>

The philosophy behind the right to the city is to foster the inclusion of marginalised groups in governance, which is linked to the concept of cities for all.<sup>60</sup> To that end, Coggin and Pieterse note that the right to the city extends to all people inhabiting the city, not only those who are legally recognised or tolerated, or those who legally

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<sup>52</sup> Reuter 2019 *Journal of Human Rights* 382-390.

<sup>53</sup> For detailed discussion on public participation, citizens' active engagement and meaningful contribution in urban governance, see 5.3-5.4 below.

<sup>54</sup> Purcell 2003 *International Journal of Urban and Regional Research* 578-579.

<sup>55</sup> Strauss *A Right to the City for South Africa's Urban Poor* 89.

<sup>56</sup> See Coggin and Pieterse 2012 *Urban Forum* 259-260.

<sup>57</sup> Coggin and Pieterse 2012 *Urban Forum* 259-260.

<sup>58</sup> Coggin and Pieterse argue that it constitutes a package of interrelated, mutually supportive and interdependent rights, comprising, mainly, the rights to equality, life (in the broad sense), freedom of movement, physical safety, freedom of assembly and association, the right to a healthy environment, amongst others. See Coggin and Pieterse 2012 *Urban Forum* 261-263. Some of the rights, suggested, intersect with the rights of children.

<sup>59</sup> Own emphasis.

<sup>60</sup> See Coggin 2018 *Fordham Urban Law Journal* 10.

qualify for rights protection because of their political citizenship.<sup>61</sup> In other words, the right extends to everyone seeking inclusion, habitation and participation in the city. This refers to marginalised groups and people living in the urban periphery or urban slums.<sup>62</sup> Among other things, the right to the city aims to promote cities with enhanced participation, equality and non-discrimination in governance. Pieterse argues that the right to the city shifts focus and attention from the national government to the local sphere of government, which is the embodiment of public power in the context of urban governance.<sup>63</sup> The right to the city is infringed upon when laws, practices and social structures exclude people from any of its constituent elements.<sup>64</sup>

The concept of the right to the city has been pivotal in global discussions of the legal recognition of cities.<sup>65</sup> Although the attempt to legally recognise the right to the city failed, it should be acknowledged that the right to the city adds to the understanding of urban inclusion from a governance perspective. The discussion on urban inclusivity has evolved over time and has recently found expression in SDG 11 and the NUA. Inclusion must be broadly understood in a constantly changing urban environment (determined and shaped by political, economic and legal factors) that significantly impacts the development, meaning and scope of urban inclusivity.

It is difficult to define inclusivity in the urban context. For example, in South Africa, the term urban inclusivity has been used to broadly refer to the inclusion of people of all classes in all aspects of urban life, considering the exclusionary practices suffered under the apartheid regime.<sup>66</sup> Magidimisha-Chipungu and Chipungu<sup>67</sup> recently published a book on urban inclusivity in Southern African cities in which

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<sup>61</sup> Coggin and Pieterse 2012 *Urban Forum* 259-260.

<sup>62</sup> On the concept of urban periphery and urban marginality, see Pieterse 2019 *Urban Studies* 1182-1197.

<sup>63</sup> Pieterse 2014 *South African Law Journal* 155.

<sup>64</sup> Coggin and Pieterse 2012 *Urban Forum* 260.

<sup>65</sup> *Habitat III Policy Paper 4: Urban Governance, Capacity and Institutional Development* 27-28. See also Coggin 2018 *Fordham Urban Law Journal* 10.

<sup>66</sup> Magidimisha-Chipungu and Chipungu "Southern African Cities at a Glance: An Introduction" 16.

<sup>67</sup> Magidimisha-Chipungu and Chipungu "Southern African Cities at a Glance: An Introduction" 11-20; Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 39-51.

they interchangeably use urban inclusivity and inclusive cities broadly, as explained below.<sup>68</sup>

### 2.2.3 *The emergence of the concept of inclusive cities*

The term 'inclusive city' was coined for the first time in 2000 by Ximena De La Barra<sup>69</sup> in the context of urban planning and practice.<sup>70</sup> Later, the United Nations (UN), through its agency for human settlements and sustainable urban development – the UN-Habitat – popularised the concept of inclusive cities in its 2001 premier report on the State of World Cities to include a governance angle.<sup>71</sup>

The concept of inclusive cities evolved over time and across disciplines such as legal and urban planning.<sup>72</sup> Based on the evolution of the concept, a bibliometric study on inclusive cities conducted by Liang *et al*.<sup>73</sup> shows that over a period of 20 years (2000-2020), research focusing on inclusive cities was steady for the first 15 years – between 2000-2015. They further note that after 2015, there has been a tremendous increase in research on inclusive cities, signifying how it became a key policy issue with strong developmental momentum in the context of sustainable urbanisation and inclusive urban governance.<sup>74</sup> The increased interest and attention could be attributed to the adoption of the UN 2030 Agenda for Sustainable Development (Agenda 2030),<sup>75</sup> specifically SDG 11, and subsequently, the NUA.<sup>76</sup>

Various disciplines provide different meanings and perspectives based on the primary subject matter, discipline and the issues under consideration. Since the concept of inclusive cities is complex to define, there is a risk of prescribing a view biased towards one's discipline. To avoid such a risk, many accounts proffer

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<sup>68</sup> See 2.2.3 below. See also Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 39-51.

<sup>69</sup> De La Barra 2000 *Planning Practice & Research* 7.

<sup>70</sup> See Liang *et al* 2021 *International Journal of Sustainable Development & World Ecology* 62-63.

<sup>71</sup> UN-Habitat *The State of the World's Cities* 2001 7.

<sup>72</sup> See ADB *Enabling Inclusive Cities: Tool Kit for Inclusive Urban Development* 1-119; De La Barra 2000 *Planning Practice & Research* 7-16; Alessandria 2016 *Procedia Soc Behav Sci* 6-10.

<sup>73</sup> Liang *et al* 2021 *International Journal of Sustainable Development & World Ecology* 66.

<sup>74</sup> Liang *et al* 2021 *International Journal of Sustainable Development & World Ecology* 66.

<sup>75</sup> *Transforming our World: the 2030 Agenda for Sustainable Development* (2015).

<sup>76</sup> See 2.3 below.

characteristics or features of what inclusive cities should ideally look like. A 2001 World Habitat Day policy paper observes three interrelated ideals that characterise inclusive cities: respect for human rights, good urban governance and equitable growth.<sup>77</sup> In addition, the World Bank proposes what it terms a multidimensional approach to inclusive cities anchored on the interlinkages of the social, spatial and economic dimensions.<sup>78</sup> The social dimension is relevant to this study and is a building block premised on the fundamental principles of human rights, ensuring the participation of all in development and decision-making and enhanced safety and security.<sup>79</sup>

A policy paper issued at the 2019 World Summit of Local and Regional Leaders notes that an inclusive city is an urban area or place where everyone, regardless of their gender, age, ethnicity, disability, sexual identity, or migration status, among other factors, is "enabled and empowered to fully participate in the social, economic, cultural, and political opportunities that cities have to offer."<sup>80</sup> This study proposes essential pillars for (urban) inclusivity, such as non-discrimination; meaningful and active participation; accessibility; inclusive legislative measures, policies and programmes; capacity-building; and data for development and governance.<sup>81</sup> These pillars are linked to the ideals proposed by the UN-Habitat, namely the "respect for human rights, good urban governance, and equitable growth."<sup>82</sup> These manifest in social, spatial and economic spheres, as observed by the World Bank.<sup>83</sup>

According to the UN-Habitat,<sup>84</sup> inclusive cities have characteristics that enable and empower them to

[E]nact urban policies and legalisation that align urban development with social equity; develop urban planning and design solutions that aim at making cities

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<sup>77</sup> UN-Habitat *Inclusive Cities: Towards Cities for All 2*.

<sup>78</sup> World Bank *Inclusive Cities Approach Paper* 11-12. See also Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 41-44.

<sup>79</sup> See World Bank *Inclusive Cities Approach Paper* 11.

<sup>80</sup> UCLG Congress "Inclusive and Accessible Cities" 4.

<sup>81</sup> UCLG Congress "Inclusive and Accessible Cities" 5-8.

<sup>82</sup> See UN-Habitat *Inclusive Cities: Towards Cities for All 2*.

<sup>83</sup> See World Bank *Inclusive Cities Approach Paper* 12.

<sup>84</sup> UN-Habitat *Migration and Inclusive Cities: A Guide for Arab City Leaders* 18.



more inclusive, sustainable, resilient, vibrant and safe; promote the development of local economy and the creation of jobs that open up sustainable livelihood opportunities for vulnerable city residents; invest in basic urban services and essential infrastructure that improve the living conditions of disadvantaged households and respond to their distinct needs; and communicate and engage effectively with their residents and advocate for their rights.<sup>85</sup>

In addition, UN-Habitat notes that in an inclusive city, all residents are valuable contributors to decision-making processes.<sup>86</sup> In South Africa, for example, such decision-making processes include integrated development planning.<sup>87</sup> UN-Habitat further notes that the participation of residents guarantees them a stake in contributing to urban development and governance.<sup>88</sup>

Magidimisha-Chipungu and Chipungu<sup>89</sup> argue that inclusive cities are places where people freely exercise and enjoy fundamental freedoms, including freedom of expression, which is linked to participation. In other words, cities create conditions of enablement, empowerment and citizen participation to promote equity, thereby ensuring that everyone is enabled and empowered to participate fully in the social and political opportunities that cities offer.<sup>90</sup> Similarly, the South African Cities Network (SACN) notes that inclusive cities aim to ensure that no resident, despite justified differentiation, is deprived of urban life benefits and excluded from governance.<sup>91</sup>

In addition, Magidimisha-Chipungu and Chipungu<sup>92</sup> offer a broad view of the characteristics of inclusive cities. They argue that inclusive cities provide people with access to basic services and opportunities to engage in productive livelihoods, recognise people's cultural rights, and provide spaces for people to express these

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<sup>85</sup> UN-Habitat *Migration and Inclusive Cities: A Guide for Arab City Leaders* 18.

<sup>86</sup> UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 26.

<sup>87</sup> See 5.3 below.

<sup>88</sup> It notes that citizenship and civic rights are all inseparable from urban inclusiveness. See UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 26.

<sup>89</sup> See Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 44.

<sup>90</sup> See UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 26.

<sup>91</sup> SACN *State of the Cities Report, 2004* 12.

<sup>92</sup> Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 40-41.

rights, including through creative expression. Magidimisha-Chipungu and Chipungu further argue that inclusive cities are cities that:

[C]herishes and propagates human rights; that [are] proactive in meeting development challenges as well as having the foresight to plan ahead to militate against new challenges; where people have political freedom and political expression; [that are] not only socially cohesive but spatially integrated as well; [where] everyone feels welcome regardless of race, ethnicity, nationality, socio-economic background.<sup>93</sup>

Similarly, Anttiroiko and de Jong<sup>94</sup> argue that inclusive cities integrate and embrace everyone and create opportunities for everyone to enjoy, including vulnerable, marginalised and other persons facing exclusion in society.<sup>95</sup> In other words, inclusive cities value all people, their views and their needs equally. Hence, they are cities where all residents (including the most marginalised) contribute to governance, planning and budgeting processes.<sup>96</sup> Moreover, inclusive cities enable residents to live sustainable livelihoods, which include access to housing and affordable basic services, such as water and sanitation, electricity supply, land tenure, and employment.<sup>97</sup>

Based on the above, it could be observed that inclusive cities provide mechanisms that open opportunities and positive outcomes for everyone in the urban community.<sup>98</sup> This means that inclusive cities aim to benefit everyone through governance processes.<sup>99</sup> To that end, Pineda<sup>100</sup> asserts that inclusive cities have a range of mechanisms and institutions that facilitate participatory policy and decision-

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<sup>93</sup> Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 40-41.

<sup>94</sup> Anttiroiko and de Jong "Conceptualising Exclusion and Inclusion" 35.

<sup>95</sup> Some argue for cultural inclusion as a key element of inclusive cities. See Espino *Building the Inclusive City: Theory and Practice* 3.

<sup>96</sup> Douglas *Commentary: What We Mean by "Inclusive Cities"* available on <https://nextcity.org/informalcity/entry/commentary-what-we-mean-by-inclusive-cities>.

<sup>97</sup> These are broad issues that may not directly link to governance, yet they have an impact in local governance. While these are wide ranging issues, it is crucial to note that they are linked to and flow from good urban governance.

<sup>98</sup> UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 3, 26.

<sup>99</sup> See SACN *State of the Cities Report, 2004* 12. This is, however, very hard to achieve in a democratic dispensation where the will of the majority reigns.

<sup>100</sup> See Pineda *Building the Inclusive City: Governance, Access and the Urban Transformation of Dubai* 10.

making, accountability and strong recognition of the complementary role of all spheres of government in achieving inclusive governance. Liang *et al*<sup>101</sup> elaborate that the concept of inclusive cities theoretically focuses on how they enhance inclusionary approaches by facilitating the participation of local stakeholders and allowing people to contribute to governance. Such facilitation demands the adoption of multi-sectoral and integrated approaches.<sup>102</sup>

One can observe that inclusive cities are characterised by respect for human rights, the creation of democratic spaces for engagement, the involvement of people in governance processes, the availability or enactment of legal and regulatory frameworks for accountability, and the sustainable provision of services for the benefit of all residents.<sup>103</sup> In addition, inclusive cities respect and embrace the diversity of people of all ages while emphasising the individual and the relationship between local governing authorities and the individual or classes of people.<sup>104</sup> The following section discusses the concept of inclusive cities as envisaged in international and African regional urban policies.

### **2.3 International urban policy framework on inclusive cities**

In general, international urban policies (including African regional policies) aim to address current urban development and urban governance challenges.<sup>105</sup> The development of urban policies and global initiatives for shaping city governance, mainly through the UN-Habitat series of conferences, has a long history.<sup>106</sup> However, it is only recently that the concept of inclusive cities has attracted considerable legal and urban policy debate, notably in Agenda 2030,<sup>107</sup> which

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<sup>101</sup> Liang *et al* 2021 *International Journal of Sustainable Development & World Ecology* 75.

<sup>102</sup> ADB *Enabling Inclusive Cities: Tool Kit for Inclusive Urban Development* 6.

<sup>103</sup> See 2.4 below.

<sup>104</sup> Du Plessis "The Global Aspiration of 'Safe, Sustainable, Resilient and Inclusive' Cities: South African Local Government Shaping Up" 20-21.

<sup>105</sup> See 2.3.1–2.3.5 below.

<sup>106</sup> Habitat III *Issue Paper 1: Inclusive Cities* 1-10. See also Habitat III *Issue Paper 6: Urban Governance* 1-8; UN-Habitat *Inclusive Cities: Towards Cities for All* 1-17; Habitat III *Issue Paper 5: Urban Rules and Legislation* 1-9.

<sup>107</sup> *Transforming our World: the 2030 Agenda for Sustainable Development* (2015).

contains 17 SDGs.<sup>108</sup> and the NUA.<sup>109</sup> These global policies are soft law instruments with no legally binding force and are implemented on a voluntary basis.<sup>110</sup>

Inclusiveness is central to SDGs.<sup>111</sup> This can be inferred from the notion of leaving no one behind, embedded in Agenda 2030, the SDGs, and the NUA.<sup>112</sup> The motto to leave no one behind arguably entrenches inclusivity as a central agenda for urban development policies.<sup>113</sup> For example, Agenda 2030 aspires for a "just, equitable, tolerant, open and socially inclusive"<sup>114</sup> world in which the needs of the most vulnerable, specifically children, are met. In particular, SDG 10.2 aims to promote the social, economic and political inclusion of all members of society irrespective of "age, sex, disability, race, ethnicity, ... or other status,"<sup>115</sup> and applies with equal force in the case of children.

Agenda 2030 commits states to providing children with a nurturing environment for the full realisation of their rights and capabilities. It also recognises that children are critical agents of change and that the SDGs present a platform to channel their infinite capacities for participatory activism into the creation of a better world for everyone.<sup>116</sup> Thus, the concept of inclusivity fosters the involvement of all members of society in governance processes and decision-making without any distinction on any ground, such as age.

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<sup>108</sup> Generally, the SDGs have no binding legal force, yet they have a real potential to advance the global developmental agenda in unprecedented ways. The implementation of the SDGs is voluntary. See Kotzé "The Sustainable Development Goals: An Existential Critique Alongside New-millennial Analytical Paradigms" 41-65 who critiqued the adequacy of the SDGs for a sustainable future.

<sup>109</sup> *New Urban Agenda* (2016).

<sup>110</sup> See the Voluntary National Review, in respect of the SDGs.

<sup>111</sup> See Sénit *et al* "Inclusiveness" 116-139. Broadly, the authors explore the extent to which the pursuit of the SDGs leads to inclusiveness within and among countries, including the inclusion of vulnerable and marginalised groups.

<sup>112</sup> See Agenda 2030 para 4; *New Urban Agenda* para 14(a).

<sup>113</sup> See UN-DESA *Leaving No-one Behind: The Imperative of Inclusive Development* 17. On the principle to leave no one behind in the SDGs, see MacNaughton 2017 *International Journal of Human Rights* 1050-1072; Weber 2017 *Globalizations* 399-414; Winkler and Satterthwaite 2017 *International Journal of Human Rights* 1073-1097.

<sup>114</sup> Agenda 2030 para 8.

<sup>115</sup> See 2.3.1 below.

<sup>116</sup> See Agenda 2030 paras 25 and 51, respectively.

In addition, there is recognition and special mention of children and their rights and interests in global policy. For instance, Local Agenda 21 emphasises the importance and role of children in participatory processes that shape their cities.<sup>117</sup> Similarly, the 1996 *Istanbul Declaration on Human Settlements and the Habitat Agenda* (Habitat II) explicitly observe that:

The needs of children and youth, ... have to be taken fully into account. Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighbourhoods; ... and to make use of their insight, creativity and thoughts...<sup>118</sup>

Regionally, the AU has not yet adopted a continental urban policy or strategy.<sup>119</sup> The AU *Agenda 2063: The Africa We Want* (Agenda 2063) is silent on addressing issues related to cities.<sup>120</sup> However, a purposive reading of legal and developmental policies that guide Africa's human rights and sustainable development agenda indicates the inclusion of all people in the governance of their communities. For instance, Agenda 2063 has a broad commitment to accelerating programmes that provide all Africans opportunities to have decent and sustainable housing and improve people's lives in slums and informal settlements.<sup>121</sup> Importantly, Agenda 2063 focuses on ensuring the active involvement of all citizens, including children, in decision-making in all aspects of governance.<sup>122</sup>

In addition, *Africa's Agenda for Children 2040* (Agenda 2040)<sup>123</sup> declares that children's views matter and should be protected and upheld in decision-making and governance processes.<sup>124</sup> In particular, Aspiration 10 of Agenda 2040 declares that the participation of children should be promoted at all levels of governance.<sup>125</sup>

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<sup>117</sup> Chapters 25 and 28 of the *UN Conference on Environment and Development: Agenda 21* (1992).

<sup>118</sup> *Report of the UN Conference on Human Settlements* para 13. See also para 38.

<sup>119</sup> See 2.3.3-2.3.4 below.

<sup>120</sup> See *Agenda 2063: The Africa We Want* (2015).

<sup>121</sup> *Agenda 2063: The Africa We Want* para 74(B).

<sup>122</sup> *Agenda 2063: The Africa We Want* para 47.

<sup>123</sup> *Africa's Agenda for Children 2040: Fostering an Africa Fit for Children*.

<sup>124</sup> See 3.2.2 below.

<sup>125</sup> See 3.2.2 below.

The following discussion is an analysis of how the concept of inclusive cities is embedded and promoted through international urban policy frameworks with a view to distilling the features or characteristics of inclusive cities that are relevant to and for children. This is done by identifying the features that resonate with the characteristics of inclusive cities as defined in section 2.2 above, synthesising them in these policy instruments, and specifically focusing on aspects that are relevant and applicable to children.<sup>126</sup> Distilling the features of international urban policy is vital, as this will enable the formulation and replication of a set of best practices that could be used in domestic policies and laws.

### *2.3.1 Sustainable Development Goal 11*

Sustainable Development Goal 11 aims to make "cities inclusive," safe, resilient and sustainable by 2030. The incorporation of SDG 11.<sup>127</sup> - the urban goal - into the SDGs was a ground-breaking achievement in the UN developmental goal-setting history.<sup>128</sup> It is necessary to briefly highlight the significance of SDG 11 in its global goal-setting before expounding on the concept of inclusiveness that is embedded in it. First, the SDGs stand as the main international policy framework to elevate the status of cities in global development.<sup>129</sup> They achieve this by embedding a stand-alone urban goal.<sup>130</sup> The idea of a stand-alone urban goal was campaigned for

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<sup>126</sup> See 2.4 below.

<sup>127</sup> It constitutes of ten targets that underpin its implementation.

<sup>128</sup> See Parnell 2016 *World Development* 530. See also Valencia *et al* 2019 *International Journal of Urban Sustainable Development* 5; Thomas, Hsu and Weinfurter 2020 *Urban Analytics and City Science* 2.

<sup>129</sup> Although the predecessor to the SDGs, the Millennium Development Goals (MDGs), had aspects relevant to the urban context, cities were by and large ignored, forgotten or neglected and excluded from the MDGs goal setting. See MDG 7.11 which aimed at ensuring environmental sustainability, with an urban dimension. Its target was to achieve, by 2020, "a significant improvement in the lives of at least 100 million slum dwellers." See also Klopp and Petretta 2017 *Cities* 93.

<sup>130</sup> The success of incorporating the urban goal is attributed to the efforts, activism and support of various urban-focused institutions and organisations. For example, the Compact of Mayors, UN-Habitat, Sustainable Development Solutions Network (SDSN) and the World Urban Campaign, as well as city networks like the Local Governments for Sustainability (ICLEI) and United Cities and Local Governments (UCLG), amongst others. See Simon *et al* 2015 *Environment and Urbanization* 49-50.

during the negotiations of the SDGs<sup>131</sup> on the basis that it would accelerate policy intervention and awareness of urban challenges while giving cities "more visibility for advocacy and funding purposes."<sup>132</sup> SDG 11 is the first-ever urban goal in a global policy document to introduce the role that subnational authorities such as cities could play in global governance.<sup>133</sup>

In general, SDG 11 does two things, which are turning global attention to the critical importance of cities for humanity and bringing urban planning, governance, and policy to the centre of a complex and intricate developmental enterprise and dialogue globally<sup>134</sup> and in the African region. As Parnell<sup>135</sup> notes, SDG 11 signals global acceptance of -

[D]evolution in [local] governance, the imperative of an integrated vision of sustainable urban development that does not exclude social, economic, or ecological imperatives and (implicitly) a collective acknowledgement that the spatial concentration of resources and flows that cities represent can act as a driver of sustainable development.

The focus of SDG 11 and its targets in cities and other urban communities goes beyond the usual focus on housing and slum upgrading to embrace issues such as safety, inclusiveness, participatory and integrated urban planning, transport and mobility, and green and public spaces. According to Du Plessis,<sup>136</sup> SDG 11 endorses that globally, cities "can be drivers of change" in addressing contemporary challenges associated with urbanisation. This implies that SDG 11 draws the

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<sup>131</sup> The process for the in-cooperation of cities in the developmental agenda was a result of the global campaign which started in 2013. Prior to that, in 2012 at the Rio+20 Conference, the UN recognised that "cities have enabled people to advance socially and economically. However, they [cities] face challenges such as congestion and lack of funds. Overcoming these challenges will allow cities to thrive and grow, while improving resource use." See Saner-Yiu and Saner 2014 *Asia Pacific Journal of Public Administration* 90.

<sup>132</sup> Lucci *An Urban Dimension in a New Set of Development Goals* 17; Valencia *et al* 2019 *International Journal of Urban Sustainable Development* 5.

<sup>133</sup> Aust and Du Plessis "Introduction: The Globalisation of Urban Governance - Legal Perspectives on SDG 11" 1-16; Lin *Governing Climate Change: Global Cities and Transnational Lawmaking* 61-68; Du Plessis "Climate Governance in South African Municipalities: Opportunities and Obstacles for Local Governance" 353-387.

<sup>134</sup> Klopp and Petretta 2017 *Cities* 96.

<sup>135</sup> Parnell 2016 *World Development* 530.

<sup>136</sup> Du Plessis "The Global Aspiration of 'Safe, Sustainable, Resilient and Inclusive' Cities: South African Local Government Shaping Up" 13.

attention of planners, policy-makers and city authorities toward urban development and governance enterprises.<sup>137</sup>

SDG 11 elevates the central role of cities to achieve inclusive and sustainable development. According to Kanuri *et al*,<sup>138</sup> SDG 11 is the "strongest expression" of the critical role that cities play in the present and future development of the world.<sup>139</sup> While SDG 11 is the principal point of departure, De Hoop Scheffer *et al*<sup>140</sup> note that:

[I]n effect all the SDGs require the responsibility and commitment of ... city authorities. While it is states as subjects of international law that conclude treaties, cities must take the lead in efforts to achieve the SDGs.

In international global policy, the urban goal entrenches what Scholten<sup>141</sup> describes as a "localist approach"<sup>142</sup> in which local problems require local solutions driven by and demanding the involvement of local people and local leadership.<sup>143</sup> It has been argued that within SDG 11, there are tremendous opportunities for cities to engage in robust implementation strategies to advance inclusive urban governance.<sup>144</sup>

SDG 11 aims to enhance inclusive and participatory governance and sustainable urban planning and management,<sup>145</sup> including the adoption of "inclusive, integrated policies and plans."<sup>146</sup> From a governance perspective, Target 3 aims to enhance inclusive and sustainable governance and ensure the participatory and integrated

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<sup>137</sup> Klopp and Petretta 2017 *Cities* 94.

<sup>138</sup> Kanuri *et al* *Getting Started with the SDGs in Cities: A Guide for Stakeholders* 15.

<sup>139</sup> Reference to present and future development can arguably be construed within the conceptual understanding of intragenerational and intergenerational equity.

<sup>140</sup> De Hoop Scheffer *et al* *Sustainable Development Goals and Human Rights: An Invisible Bond* 14.

<sup>141</sup> Scholten "Two Worlds Apart? Multilevel Governance and the Gap Between National and Local Integration Policies" 158-159.

<sup>142</sup> According to Scholten, the localist approach involved a bottom-up relational arrangement wherein local government are empowered to make policies to address local problems. On the other hand, there is the centralist perspective which assumes a top-down relationship between national and local government, wherein the local government's involvement is primarily in implementation of laws and policies enacted by national government.

<sup>143</sup> Scholten "Two Worlds Apart? Multilevel Governance and the Gap Between National and Local Integration Policies" 159.

<sup>144</sup> Kanuri *et al* *Getting Started with the SDGs in Cities: A Guide for Stakeholders* 11. However, this argument is subjected to a lot of criticism considering how constraint cities are in terms of domestic constitutional law. See below for some of the critique.

<sup>145</sup> SDG 11.3.

<sup>146</sup> SDG 11.7. See also Habitat III *Issue Paper 1: Inclusive Cities* 1-8.



management of cities.<sup>147</sup> From a spatial lens, Target 7 aims at universal access to safe, "inclusive" and accessible, green and public spaces, in particular for children and other vulnerable groups. In addition, SDG 11 explicitly focuses on the needs of children in urban governance, laying a solid foundation for the inclusion of children in governance processes at the city level.<sup>148</sup>

However, there is no definition of "inclusive" or "inclusion" within SDG 11, as would be expected in a document like Agenda 2030 as this would enable governments to flexibly interpret and implement the urban goal in their local contexts. While the term "inclusion" is not explicitly defined in Agenda 2030, it can be argued that the concept of inclusivity embedded in SDG 11 aims to substantially increase city policy models towards inclusive urban governance.

Aust and Du Plessis<sup>149</sup> argue that the concept of inclusive cities concerns matters of social justice, cohesion and participation. This entails respect for all people residing in the city and their rights. It also embraces the diversity of people and emphasises the relationships of municipalities, communities and individuals or categories of people.<sup>150</sup> In addition, inclusivity in SDG 11 could be viewed beyond the engagement of urban dwellers in the planning and decision-making processes to include how intragovernmental and intergovernmental agencies cooperate to deliver inclusive governance to the people.<sup>151</sup> However, an extensive discussion of this form of inclusivity is outside the scope of this study.

Nevertheless, it should be noted that the argument for intragovernmental and intergovernmental cooperation promotes the spirit of cooperative governance to

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<sup>147</sup> This is reinforced by SDG 11, target 3, indicator 2 that focuses on the proportion of cities with direct participation structure and mechanisms in urban management operating in a regular and democratic fashion.

<sup>148</sup> See Fambasayi 2021 *International Journal of Children's Rights* 879.

<sup>149</sup> Aust and Du Plessis "Good Urban Governance as a Global Aspiration: On the Potential and Limits of SDG 11" 216.

<sup>150</sup> Du Plessis "The Global Aspiration of 'Safe, Sustainable, Resilient and Inclusive' Cities: South African Local Government Shaping Up" 20-21.

<sup>151</sup> See Du Plessis "Shifting Features of Urban Governance as Cities respond to Global Climate Change" 11.

achieve improved decision-making for the benefit of residents,<sup>152</sup> specifically children. Some scholars argue that cooperative or collaborative urban governance must be participatory<sup>153</sup> and that inclusiveness is at the centre of public decision-making processes.<sup>154</sup> Accordingly, all stakeholders should accept responsibility and be accountable to others to ensure inclusive governance.<sup>155</sup>

Although SDG 11 is critical for achieving inclusivity in cities, some scholars note that it is a challenging goal. They contend that SDG 11 may be too ambitious for smaller cities or urban areas, particularly those in the Global South.<sup>156</sup> South Africa is no exception to the challenges posed by the ambitious urban goal. For instance, Aust and Du Plessis<sup>157</sup> argue that the aspirations of SDG 11 are extensive and too broad. This creates an impression that it is both beneficial and problematic. On the problematic side, they argue that SDG 11 is very broad and creates operational challenges for local authorities regarding what to prioritise and how to go about the implementation process.<sup>158</sup> To exacerbate the complexity, the concept of inclusivity is intricately ridden with different meanings and dimensions and covers a wide range of issues.<sup>159</sup> Notwithstanding these potential challenges, SDG 11 and its targets can be utilised and integrated within existing urban processes, policies, and strategies to improve and promote the inclusion of children in city governance and decision-

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<sup>152</sup> See 5.2-5.3 below.

<sup>153</sup> Du Plessis views collaborative governance as "an inward-looking understanding of cooperation" that asks how cities are prepared to revisit their internal alliances, intergovernmental and external relations. See Du Plessis "Shifting Features of Urban Governance as Cities respond to Global Climate Change" 11.

<sup>154</sup> Brink and Wamsler 2018 *Environmental Policy and Governance* 83.

<sup>155</sup> Gollagher and Hartz-Kap 2013 *Sustainability* 2347. By so doing, state and non-state actors utilise the concept of inclusivity to work together and support the engagement of all persons in the governance of their community. Yet, some criticise participatory and inclusive urban governance as expensive claiming that such initiatives and programmes impose additional costs. See De Barbieri 2018 *Florida State University Law Review* 86.

<sup>156</sup> Simon *et al* 2015 *Environment and Urbanization* 52. On criticism that the SDGs have had very little real impact so far, see Sénit *et al* "Inclusiveness" 116-136; Biermann *et al* "The Sustainable Development Goals as a Transformative Force? Key Insights" 204-226.

<sup>157</sup> Aust and Du Plessis "Good Urban Governance as a Global Aspiration: On the Potential and Limits of SDG 11" 216.

<sup>158</sup> In other words, the four SDG 11 modifiers of "safe, inclusive, resilient and sustainable" are literally broad and encompass multiple targets, meanings, variables and demand different levels of commitment and funding. See Aust and Du Plessis "Good Urban Governance as a Global Aspiration: On the Potential and Limits of SDG 11" 216.

<sup>159</sup> See 2.2 above.

making processes.<sup>160</sup> For instance, an emphasis on 'inclusive and participatory' governance could encourage local authorities to ensure children's engagement and representation of their interests in decision-making.<sup>161</sup>

It is worth noting that there are multiple interactions and synergies within and between the SDGs,<sup>162</sup> specifically SDG 11 and its aspects related to urban inclusivity. The SDGs are integrated, interdependent and indivisible.<sup>163</sup> The battle for the implementation of all other SDGs is either won or lost at the city level.<sup>164</sup> This reflects synergies between the urban goal and the remaining 16 SDGs.<sup>165</sup> Within the SDGs framework, approximately 234 indicators are directly linked to urban policies,<sup>166</sup> some of which are related to inclusivity.<sup>167</sup> These significantly impact cities and other urban communities, with almost one-third of the indicators measured at the local level.<sup>168</sup> In the case of SDG 16, for example, some of its targets aim to promote "inclusive societies" and "inclusive institutions" for everyone at all levels of government. Specifically, SDG 16 seeks to ensure inclusive and participatory decision-making at all levels (including the city level)<sup>169</sup> and promotes non-discriminatory laws and policies for sustainable development. In addition, it urges

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<sup>160</sup> This is so because SDG 11's broad aspirations give decision-makers the latitude to plan and prioritise based on critical issues affecting their communities and localise SDG 11 as well as align existing policies towards a sustainable development trajectory. Also, flexibility enables local authorities to adopt shape their policies from a child rights perspective, for example.

<sup>161</sup> See 4.4 and 5.4 below.

<sup>162</sup> Valencia *et al* 2019 *International Journal of Urban Sustainable Development* 5.

<sup>163</sup> See *Transforming our World: the 2030 Agenda for Sustainable Development* para 18.

<sup>164</sup> See Kauzya "African Local Governments and Cities in the Implementation of the 2030 Agenda to Achieve Sustainable Development Goals" 122. In addition, Daniel argues that "it will be under the auspices of cities where we will succeed or fail in achieving our goals of poverty eradication, equality, climate change reduction and ensuring healthy lives. It will be the cities that determine if we achieve inclusive economic growth or yield to greater inequality... And, it will be cities that determine if we will continue our steadily increasing usage of the world's resources or if we can realise a more sustainable path..." See Daniel *Goal 11 - Cities Will Play an Important Role in Achieving the SDGs* 1.

<sup>165</sup> HLPF *SDG 11 Synthesis Report: Tracking Progress Towards Inclusive, Safe, Resilient and Sustainable Cities and Human Settlements* 10.

<sup>166</sup> HLPF *Accelerating SDG11 Achievement: Policy Brief in Support of the First SDG 11 Review at the High-Level Political Forum* 1-2.

<sup>167</sup> See SDGs 5, 8, 9, 12, 13, 15 and 16.

<sup>168</sup> HLPF *Accelerating SDG11 Achievement: Policy Brief in Support of the First SDG 11 Review at the High-Level Political Forum* 1-2.

<sup>169</sup> See SDG 16.7.

cities to adopt and implement integrated policies and plans for inclusive governance.<sup>170</sup> Taken together, SDGs 11 and 16 share a common agenda of promoting inclusive participatory governance for everyone. Hence, they are applicable in the context of inclusive cities for children.

Further, SDG 11 and other SDGs call for the inclusion of vulnerable groups in decision-making at multiple levels of governance, including the city level. While references to the inclusion of vulnerable groups are made in general terms, it should be noted that the explicit mention of children as a specifically vulnerable and under-represented group provides a strong foundation for more inclusive governance that involves children and their interests in decision-making processes.<sup>171</sup> Considered in the assortment of policies discussed below,<sup>172</sup> SDG 11 provides an international policy goal for promoting and fostering inclusive governance for and with children.<sup>173</sup> at the city level.

### 2.3.2 *The New Urban Agenda*

The NUA was adopted to contribute to the implementation and localisation of the SDGs, particularly SDG 11. UN-Habitat notes that the NUA builds and expands on the relatively limited means of implementing SDG 11 by delving into processes that produce better urban outcomes, such as national urban policies, legislation and planning.<sup>174</sup> In other words, there are synergies between SDG 11 and the NUA in focusing on the urban goal while also reiterating the importance of inclusivity at the local level.<sup>175</sup> The term inclusivity appears approximately 46 times in the NUA.<sup>176</sup> The vision of the NUA is cities for all, implying

The equal use and enjoyment of cities and human settlements seeking to promote inclusivity and ensure that all inhabitants of present and future generations, without discrimination of any kind, are able to inhabit and produce

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<sup>170</sup> See SDG 16.b.

<sup>171</sup> See Couzens "Child Participation in Local Governance" 516-520.

<sup>172</sup> See 2.3.2–2.3.5 below.

<sup>173</sup> See 1.2 above.

<sup>174</sup> UN-Habitat *World Cities Report 2020: The Value of Sustainable Urbanization* xvi.

<sup>175</sup> See Gomes da Silva 2018 *Netherlands Quarterly of Human Rights* 310.

<sup>176</sup> UN-Habitat *Human Rights, Rule of Law and the New Urban Agenda* 1.

just, safe, healthy, accessible, affordable, resilient and sustainable cities ... to foster prosperity and quality of life for all.<sup>177</sup>

In addition, the NUA is centred on expansive and transformative commitments to ensure sustainable urban development and urban governance for social inclusion, as well as inclusive urban prosperity that creates opportunities for all.<sup>178</sup> These commitments expand to and have a bearing on the lives of children. Like the SDGs,<sup>179</sup> the commitment towards the inclusion of children is anchored on the principle underpinning the NUA, which is to "leave no one behind."<sup>180</sup> Essentially, in this context, the principle implies leaving no children behind in any city.<sup>181</sup>

The NUA promotes inclusive governance at the national and subnational (including local) levels of government, urging the promotion of participatory and age- and gender-responsive cities.<sup>182</sup> From a human rights perspective,<sup>183</sup> the NUA is sensitive to vulnerable groups, particularly children. For instance, paragraph 34 of the NUA declares a commitment to the promotion of equitable access to sustainable basic physical and social infrastructure for all without discrimination. It seeks to ensure that services are responsive to the rights and needs of women, 'children,' and the youth.<sup>184</sup> Further, the NUA declares the need to eliminate "legal, institutional, socio-economic and physical barriers"<sup>185</sup> that actually or potentially stifle inclusive urban governance.<sup>186</sup>

According to Gomes da Silva,<sup>187</sup> the NUA places inclusivity and human rights<sup>188</sup> at the centre of urban governance and the core of every urban policy. One of the key

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<sup>177</sup> *New Urban Agenda* para 11.

<sup>178</sup> *New Urban Agenda* paras 25-80. See UNECA, AU and UN-Habitat *A Harmonized Implementation Framework for the New Urban Agenda in Africa* 7.

<sup>179</sup> See 2.3.1 above.

<sup>180</sup> The "leave no one behind" principle is at the heart of the SDGs.

<sup>181</sup> *New Urban Agenda* para 14(a). See Lin *Governing Climate Change: Global Cities and Transnational Lawmaking* 66-67.

<sup>182</sup> *New Urban Agenda* paras 148 and 155. See Habitat III *Issue Paper 1: Inclusive Cities* 1-8.

<sup>183</sup> See 2.4.1 below.

<sup>184</sup> It is noted that the NUA is applicable to children as is for any other group of persons, and there is a need to use a child-focused lens.

<sup>185</sup> See 5.5 below.

<sup>186</sup> *New Urban Agenda* para 34.

<sup>187</sup> Gomes da Silva 2018 *Netherlands Quarterly of Human Rights* 307-308.

<sup>188</sup> See 2.4.1 below.

features of the NUA is its emphasis on the crucial role of city authorities in achieving inclusive governance by strengthening the interaction of all relevant stakeholders through the adoption of age and gender-responsive approaches to urban governance and sustainable urban development.<sup>189</sup> In the eyes of Lin,<sup>190</sup> the NUA theoretically (when read with SDG 11) guides city governments and other local stakeholders on how to think about urbanisation and sustainable urban development in the context of inclusive urban governance.

The NUA further urges city authorities to promote the role of children and youth.<sup>191</sup> in shaping organisational and institutional governance processes.<sup>192</sup> In particular, it declares the need to create democratic spaces for children to participate in decision-making processes in urban governance.<sup>193</sup> In addition, the NUA recognises the contribution of children to urban governance as critical to its implementation. More specifically, the NUA notes that:

[G]irls and boys, young women and young men are key agents of change in creating a better future [with] great potential to advocate on behalf of themselves and their [cities and] communities. Ensuring more and better opportunities for their meaningful participation [is] essential for the implementation of the [NUA].<sup>194</sup>

Furthermore, the NUA emphasises the value and importance of all relevant stakeholders, including children, and urges governments to adopt age and gender-responsive approaches to inclusive urban governance.<sup>195</sup> Specifically, the NUA envisages cities that are "participatory and promote civic engagement"<sup>196</sup> and cities

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<sup>189</sup> *New Urban Agenda* paras 22 and 42. See Gomes da Silva 2018 *Netherlands Quarterly of Human Rights* 291.

<sup>190</sup> Lin *Governing Climate Change: Global Cities and Transnational Lawmaking* 67.

<sup>191</sup> There is an overlap between the ages of children and youth. For example, youth is defined as every person between the ages of 14 and 35 years and thereby some children fall in the category of youth. See the *African Youth Charter* (2006). Any reference to youth in this study specifically relates to children between the ages of 14 and 17 years.

<sup>192</sup> *New Urban Agenda* para 148.

<sup>193</sup> *New Urban Agenda* para 148. See UN-Habitat *World Cities Report 2020: The Value of Sustainable Urbanization* 7.

<sup>194</sup> *New Urban Agenda* para 42.

<sup>195</sup> *New Urban Agenda* para 42.

<sup>196</sup> *New Urban Agenda* para 13(b).

that engender a sense of belonging among all inhabitants, including children. For instance, it expresses a commitment to promoting institutional, political and legal mechanisms that broaden inclusive platforms to allow meaningful participation in decision-making and planning processes.<sup>197</sup> The reference to participation in "decision-making and planning processes for all"<sup>198</sup> is open to broad interpretation, which could result in the exclusion of children – a vulnerable group that should contribute to decision-making.<sup>199</sup> However, the NUA remains vague regarding what these "institutional, political and legal mechanisms" are or should be. This lack of prescriptive exactitude is arguably the nature of global instruments and policy documents to give governments the latitude to enact the mechanisms in line with local needs and priorities.<sup>200</sup>

The NUA envisages inclusiveness to recognise the gendered vulnerability of girls and ensure their involvement in shaping organisational and institutional governance processes to enable and enhance their effective participation in decision-making processes.<sup>201</sup> It also urges city authorities to promote capacity development initiatives to empower children (age dimension) and specifically girls (gender dimension) for their effective contribution in shaping governance processes and engagement in dialogue that promotes meaningful participation in decision-making.<sup>202</sup>

In addition, inclusiveness is facilitated and flourishes when people have access to information, user-friendly communication technology policies and people-centred digital governance tools that enable urban residents, including children, to exercise their civic rights and responsibilities.<sup>203</sup> The NUA notes that inclusive cities promote effective participatory governance and are equipped with institutional mechanisms

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<sup>197</sup> *New Urban Agenda* para 41.

<sup>198</sup> *New Urban Agenda* para 41.

<sup>199</sup> See 3.2 below.

<sup>200</sup> There are risks that the interests of children and other vulnerable groups may be overlooked in the processes of establishing or promotion of institutional, political and legal mechanisms for urban governance.

<sup>201</sup> *New Urban Agenda* para 148.

<sup>202</sup> *New Urban Agenda* para 155.

<sup>203</sup> *New Urban Agenda* para 156.

that expand inclusive engagement and age and gender responsiveness while upholding human rights and recognising children's special needs and vulnerabilities.

### *2.3.3 Africa's Decentralisation Charter*

Regionally, the AU adopted the Decentralisation Charter in 2014, which emphasises the need to inculcate and deepen local participatory democracy, community empowerment and inclusiveness in local governance.<sup>204</sup> Article 4(a) of the Charter sets "community--based participation and inclusiveness" as one of the core values that shape local governance in Africa. In article 10, titled "inclusion, equity and equality", the Charter emphasises inclusivity in local governance. It declares that:

Local authorities shall discharge their responsibilities and duties in a manner that ...is inclusive, equitable and gives equal treatment to all local residents..<sup>205</sup>

Local authorities shall develop pro-poor initiatives and pay particular attention to women and the youth, as well as vulnerable groups including but not limited to the elderly, persons with disabilit[ies] and [children, among others]..<sup>206</sup>

The inclusion of everyone and, specifically, vulnerable groups in the governance of their cities through the conduit of participation is central to the spirit of the Decentralisation Charter. The Charter devotes article 12 towards "participation" which has its foundational pillars anchored in international human rights, as discussed in Chapter 3 below. Article 12 of the Charter stipulates that local authorities should

[P]romote participation of all segments of society in the planning, implementation, monitoring, and evaluation of policies, programmes, and projects through structured community platforms and other forms of participation to ensure the delivery of quality services..<sup>207</sup>

The reference to 'all segments of society'<sup>208</sup> should be interpreted to include children as an important constituent in the governance of their communities. The Charter

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<sup>204</sup> The ratification of the Charter is still very low in the continent.

<sup>205</sup> Article 10(1) of the Decentralisation Charter.

<sup>206</sup> Article 10(3) of the Decentralisation Charter.

<sup>207</sup> Article 12(3) of the Decentralisation Charter.

<sup>208</sup> See article 12(3) of the Decentralisation Charter.



refers to children in one provision.<sup>209</sup> This is the same for the youth.<sup>210</sup> It declares that local authorities should integrate gender, youth and disability in the process of formulating policy, planning for development, and providing services.<sup>211</sup> In doing so, it urges them to enhance the participation of "youth" and persons with disabilities in all matters relating to local governance.<sup>212</sup> As observed earlier,<sup>213</sup> youths in this study include children between the ages of 14 to 17 years.<sup>214</sup>

The drafters of the Decentralisation Charter attempted to make the Charter all-encompassing by using terms such as "all peoples"<sup>215</sup> which should be interpreted broadly to include children. However, it must be noted that there is a risk that some city authorities may fail to include children in decision-making and governance processes due to the lack of direct obligations towards children made in the Charter. From a child rights perspective, the broad reference to "all peoples" in an international and regional instrument does not mean that children will automatically be the primary beneficiary of the provision,<sup>216</sup> unless domestic authorities adopt a deliberate interpretation of the provision to explicitly include children. The argument of the risk of non-inclusion or for children being overlooked under the phrase "all peoples" is acknowledged by the AU through the adoption of the African Children's Charter,<sup>217</sup> Agenda 2040, the Banjul Charter<sup>218</sup> and Agenda 2063. The AU's adoption of child-specific regional legal and policy instruments demonstrates an

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<sup>209</sup> Article 10(3) of the Decentralisation Charter.

<sup>210</sup> Article 15 of the Decentralisation Charter.

<sup>211</sup> Article 15(1) of the Decentralisation Charter.

<sup>212</sup> Article 15(3) of the Decentralisation Charter.

<sup>213</sup> See 2.3.2 above.

<sup>214</sup> Given the political nature central to the Decentralisation, there is a possibility that "youth" could be used to refer young adults with the competence to take "leadership and management positions in local governance and local development." See article 15(3) of the Decentralisation Charter.

<sup>215</sup> The preamble of the Decentralisation Charter notes that AU member states are determined to "promote the values and principles of decentralisation, local governance and local development in Africa as a means for improving the livelihood of 'all peoples' on the continent."

<sup>216</sup> See Van Bueren *International Law on the Rights of the Child* 16.

<sup>217</sup> The *African Charter on the Rights and Welfare of the Child* (1990).

<sup>218</sup> The *African Charter on Human and Peoples' Rights* (1981).

acknowledgement of the highest level of political and governance structures that children deserve special recognition and treatment differently from adults.<sup>219</sup>

Despite the above criticism, it is important to note that the Decentralisation Charter instructs local authorities to give due regard to sustainable development, taking into account the interests of future generations, intergenerational equity and sustainability governance in the discharge of their duties and responsibilities.<sup>220</sup>

In addition, article 16(2)(b) of the Decentralisation Charter encourages local authorities to embrace the use of information and technology to facilitate accessible and effective local governance, a component that should be embraced to facilitate governance for children in the era of digital technology and social media.<sup>221</sup> Overall, the Decentralisation Charter provides a framework within which the spirit of inclusivity at the city level should be embraced by states that are parties to the Charter.<sup>222</sup>

#### *2.3.4 The African Urban Agenda*

Building on the spirit of the Decentralisation Charter, the AUA aims to improve the profile of sustainable urban development and inclusive governance.<sup>223</sup> The AUA is inspired by the Decentralisation Charter, specifically provisions that urge local governments to strive towards inclusive governance.<sup>224</sup> The conceptual framework of AUA is embedded in strengthening partnerships through regional blocks (also

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<sup>219</sup> This does not dispel the fact that both the Banjul Charter and Agenda 2063 ordinarily apply to everyone, including children.

<sup>220</sup> Article 10(5) of the Decentralisation Charter.

<sup>221</sup> See 4.6.1 below.

<sup>222</sup> Ziswa expressed a concern on the application of the Charter given that it is only enforceable upon ratifying member states, which slows its effective operation in the continent. See Ziswa *An Analysis of the Decentralisation Framework provided for in the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development, 2014* 10-11. See also Chigwata and Ziswa 2018 *Hague Journal on the Rule of Law* 296-297.

<sup>223</sup> UN-Habitat *Sustainable Urban Development in Africa* 6.

<sup>224</sup> See article 10(1) of Decentralisation Charter.

known as regional economic communities (RECs)) and other development partners. It also encourages policy dialogues with local governments across Africa.<sup>225</sup>

While the AUA is not a legally binding instrument or an adopted policy,<sup>226</sup> it embodies the spirit of the SDGs, particularly SDG 11, and is anchored in the ethos of the Decentralisation Charter and aspirations of Agenda 2063. However, Agenda 2063 does not have aspirations that are specific to inclusive cities. However, the broad commitment in Agenda 2063 towards the provision of decent, affordable and sustainable housing and improving people's lives in slums and informal settlements for "all Africans"<sup>227</sup> is central to the AUA.

At the time of writing, there is no evidence that the AUA gained momentum to deliver an inclusive urban Africa.<sup>228</sup> However, it has great potential to propel the continent towards inclusive urban governance. It has a unique pan-African lens that recognises the multi-level interaction between continental, RECs and national and local governments as propellers to drive an African agenda for sustainable and inclusive cities. Inclusivity is central to the spirit of the AUA. Hence, there is great potential to leverage it to expand and promote inclusive cities in Africa.

### 2.3.5 *The Abuja Declaration for Habitat III*

To localise the implementation of the NUA, Africa adopted the *Abuja Declaration for Habitat III: "Africa's Priorities for the New Urban Agenda, 2016* (Abuja Declaration).<sup>229</sup> Children and youth also participated in the Habitat III Africa

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<sup>225</sup> UN-Habitat *Sustainable Urban Development in Africa* 7. There is slow effort towards local government and ministerial initiatives on local government at the sub-regional level. For instance, in the East African region, ministers of local government adopted the *Munyonyo Declaration on Leadership Capacity Building for Local Governance and Service Delivery in the East African Community*. There is, of course, a need to mainstream children's rights in these platforms to ensure that the interests and needs of children are prioritised by cities.

<sup>226</sup> At the time of writing, there is no evidence of its adoption by the AU. In 2015, the then Chairperson of the AU, Dr. N. Dlamini-Zuma acknowledged and emphasised the importance of urbanisation in Africa's development and specifically the AUA. See UN-Habitat *Africa Urban Agenda Programme* 1.

<sup>227</sup> *Agenda 2063: The Africa We Want* para 74(B). On the criticism of relying on the broad reference to all peoples or all Africans, see 2.3.4 above.

<sup>228</sup> The AUA has not had political uptake at the AU level.

<sup>229</sup> *Abuja Declaration for Habitat III: Africa's Priorities for the New Urban Agenda*.

Regional meeting held in Abuja, Nigeria, from 24 to 26 February 2016, setting the tone for the mainstreaming of their rights and interests.<sup>230</sup> The Abuja Declaration sets Africa's priorities for the NUA by acknowledging the challenges of urbanisation, which are continuously increasing in scope and complexity.<sup>231</sup> It also recognises that sustainable urban development and inclusive governance in Africa encompass

a holistic and integrated concept of human settlements in a continuum which reinforces economic, social and environmental linkages across metropolises, cities and medium-sized towns ... where most of the continent's population still reside, requiring a multi-sectoral approach [that] strengthens partnerships at all levels including with non-state actors.<sup>232</sup>

In addition, the Abuja Declaration addresses inclusivity in the urban context to broadly encompass inclusive economic growth, system strengthening for well-connected cities, inclusion through participatory approaches, and consultative frameworks. It also includes the participation of city dwellers in urban governance, decentralised urban management and governance, and strengthening and harmonising urban legislation and regulation.<sup>233</sup> Although there is no explicit reference to inclusive cities in the Abuja Declaration, one could argue that the spirit of the Abuja Declaration is to promote inclusive cities in Africa.<sup>234</sup>

### 2.3.6 AU Model Law on Housing, Human Settlements and Urban Development

To complement efforts under the Decentralisation Charter, the AUA and the Abuja Declaration, the AU undertook to develop a *Model Law on Housing, Human Settlements and Urban Development in Africa* (Model Law), a regional document for promoting sustainable urban development and inclusive urban governance in

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<sup>230</sup> See para 1 of the preamble to the *Abuja Declaration for Habitat III: Africa's Priorities for the New Urban Agenda*.

<sup>231</sup> See para 13 of the preamble to the *Abuja Declaration for Habitat III: Africa's Priorities for the New Urban Agenda*.

<sup>232</sup> See para 14 of the preamble to the *Abuja Declaration for Habitat III: Africa's Priorities for the New Urban Agenda*.

<sup>233</sup> *Abuja Declaration for Habitat III: Africa's Priorities for the New Urban Agenda* paras 1-3.

<sup>234</sup> It is a build up to the efforts in the Decentralisation Charter and African Urban Agenda. See 2.4 below.

Africa.<sup>235</sup> In its drafting stages, the Model Law will potentially serve as an instrument to guide AU member states in their efforts towards sustainable urban development and inclusive urban governance.<sup>236</sup> It may eventually provide guidance on "translating obligations emanating from international [urban law and policy] into detailed national [and local] legislation."<sup>237</sup>

Moreover, the Model Law could help AU member states fulfil their commitments and obligations at the domestic level by enacting or amending laws and policies in tandem with international norms on good urban governance,<sup>238</sup> specifically in the context of inclusive cities for everyone and children in particular.

The above discussion shows that the concept of inclusive cities is embedded in international urban policies. The discussion shows that at a global scale, SDG 11 (and its targets), the NUA, and at the regional level, the Decentralisation Charter underscore the need to ensure "inclusiveness" in cities, which can be pursued in multiple ways.<sup>239</sup> For instance, inclusiveness is pursued through the promotion of "participatory" governance, which considers everyone in decision-making processes. Inclusiveness is also built on the developmental agenda motto to "leave no-one behind." The SDGs and the NUA emphasise the importance of inclusive urban governance.

International urban policy arguably entrenches transformative commitments towards sustainable urban development and inclusive urban governance.<sup>240</sup> It emphasises the use of a human rights-based approach to inclusivity, and the

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<sup>235</sup> At the time of writing, the Model Law is still being developed under the technical guidance of African Union Commission, UN-Habitat and UNECA and it has not yet been finalised. See AU *Consultative Meeting on the Development of a Model Law on Housing, Human Settlements and Urban Development in Africa* (2018).

<sup>236</sup> UNECA, AU and UN-Habitat *A Harmonized Implementation Framework for the New Urban Agenda in Africa* 26.

<sup>237</sup> UNECA, AU and UN-Habitat *A Harmonized Implementation Framework for the New Urban Agenda in Africa* 26.

<sup>238</sup> UNECA, AU and UN-Habitat *A Harmonized Implementation Framework for the New Urban Agenda in Africa* 26.

<sup>239</sup> See also the AUA, Abuja Declaration and Model Law.

<sup>240</sup> See *New Urban Agenda* paras 25-80.

application of gender and age-responsive approaches at the city level.<sup>241</sup> It has various features in the literature, including respect for human rights, good urban governance, equitable economic growth, harmonisation of laws and policies, and access to information.<sup>242</sup> Inclusive cities should aim to place residents, their views, and contributions at the centre of decision-making in governance to ensure sustainable living.<sup>243</sup> The transformative nature of urban policy standards and commitments lies in the ability of governments to implement them at the city level.

The following discussion frames the concept of *inclusive cities for children* as a subset of the overarching concept of inclusive cities.

## **2.4 Framing the concept of inclusive cities for children**

Up to this point, the discussion provided an overview of the concept of inclusive cities and their general features. Building on this, this section frames the concept of inclusive cities for children based on literature and international urban policy. As demonstrated in Table 1, these features are distilled from international urban policy, specifically SDG 11, the NUA, and the Decentralisation Charter, given their centrality in what inclusive cities should be or look like in general. These are adapted and framed to help understand what the concept of inclusive cities for children entails. The concept of inclusive cities for children addresses the vulnerabilities and interests of children, specifically those living in an urban context.

As elaborated further in this study, embracing the concept of inclusive cities for children implies that city authorities must mainstream the special interests and needs of children in laws, policies, strategies, governance programmes and decision-making processes. Inclusive cities for children, as envisaged in this study, entail cities that respect the human rights of children, create spaces for the democratic engagement and involvement of children, are child-responsive, and enact legal and regulatory frameworks to protect the interests of children and future generations.

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<sup>241</sup> *New Urban Agenda* paras 148 and 155. See Habitat III *Issue Paper 1: Inclusive Cities* 1-8.

<sup>242</sup> See 2.3.1-2.3.5 above.

<sup>243</sup> See 2.3 above.

Magidimisha-Chipungu and Chipungu<sup>244</sup> propose "tailor-made city inclusivity" - an approach wherein the concept of inclusive cities is designed to suit local contexts, institutions and specific groups – cognisant of local struggles and barriers that could hinder genuine inclusivity. This study adopts a similar approach and argues for the tailor-made inclusion of children in decision-making processes and governance of their cities. It is important to note that the features of inclusive cities for children are not prescriptive, as this will enable local authorities to adapt flexibly to their varying local contexts. The features of inclusive cities for children could help local authorities theoretically understand the concept and implement the features in the day-to-day governance of their cities.

Table 1<sup>245</sup> below highlights the sources from which the features of inclusive cities for children are drawn.<sup>246</sup> This demonstrates, as noted above, that the features are extracted from international urban policy discussed in 2.3 above.

**Table 1. Features and sources of inclusive cities for children**

| Features                                                  | Source                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Respect and promotion of [the] human rights (of children) | <p>Para 26 of the NUA: We commit to the <i>realisation of human rights and fundamental freedoms</i>, ... ending all forms of discrimination and violence and empowering all individuals and communities while enabling their full and meaningful participation.</p> <p>Para 28 of the NUA: We commit ourselves to ensure <i>full respect for the human rights</i> of [people in migrant situations] and support their host cities in the spirit of international cooperation.</p> |

<sup>244</sup> See Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 44.

<sup>245</sup> A detailed discussion of the features follows in 2.4.1-2.4.4 below.

<sup>246</sup> It is acknowledged that these should be understood in a synergistic relationship with other features of an inclusive city that are not related to governance. In fact, inclusiveness of the city should be seen as a whole.

|                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                           | <p>Para 155 of the NUA: We will promote capacity development initiatives to empower and strengthen the skills and abilities of women and girls, children and youth ... and persons with disabilities ... as well as persons in vulnerable situations, for shaping governance processes, engaging in dialogue and promoting and protecting human rights ... to ensure their effective participation in ... decision-making.</p> <p>Article 4(c) of the Decentralisation Charter: [the core values of the Charter include] respect for human and peoples' rights (to include children's rights).</p>                                                                                                                                                                        |
| Participatory governance<br>(mechanisms and institutions) | <p>SDG 11.3: [E]nhance inclusive and sustainable urbanisation and capacity for participatory, integrated and urban planning and management in all countries.</p> <p>SDG 16.7: Ensure responsive, inclusive, participatory decision-making at all levels.</p> <p>Para 13 of the NUA: We envisage participatory cities and human settlements, promoting civic engagement and engendering a sense of belonging and ownership among all their inhabitants ...</p> <p>Para 92 of the NUA: We will promote participatory age-responsive approaches at all stages of the urban and territorial policy and planning processes.</p> <p>Article 4(a) of the Decentralisation Charter: [the core values of the Charter include] community-based participation and inclusiveness.</p> |
| Age (child) responsiveness                                | <p>Para 13(f) of the NUA: We envisage cities that promote age-responsive planning.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |



|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | <p>Para 15(c) of the NUA: Commitment to the adoption of people-centred, age-responsive and integrated approaches ... by implementing policies, strategies, capacity development and actions at all levels.</p> <p>Para of the 26 NUA: We commit to urban development that is age-responsive.</p> <p>Para 92 of the NUA: We will promote participatory age-responsive approaches at all stages of the urban policy and planning processes, from conceptualisation to design, budgeting, implementation, evaluation and review.</p> <p>Article 4(i) of the Decentralisation Charter: [the core values of the Charter include] responsiveness.</p> |
| Sustainability governance | <p>Para 63 of the NUA: We recogni[s]e that cities and human settlements face unprecedented threats from unsustainable consumption and production patterns, ... the way they are planned, financed, developed, governed and managed has a direct impact on sustainability.</p>                                                                                                                                                                                                                                                                                                                                                                   |

Subsequent subsections discuss the distinguishable yet mutually complementary features of inclusive cities for children. The purpose of the discussion is to further elaborate on the features of inclusive cities for children, as summarised in Table 1 above. This will enable city authorities to understand these features and how they can be applied in their local contexts, thereby building on and ensuring inclusive cities for children in South Africa.

#### *2.4.1 Cities that respect and promote the human rights of children*

The study proceeds on the understanding that respect and promotion of human rights in general and children's rights, in particular, is a cornerstone of inclusive cities for children. This means that, among other governance processes, children's rights are essential to inform decision-making processes and the implementation of

decisions. In other words, inclusive cities for children mainstream the prescripts and principles of children's rights as a guiding torch, as per international children's rights law discussed in Chapter 3.

There has been criticism of the effectiveness and legitimacy of human rights and international human rights laws to deliver on the promise of a just and sustainable world for everyone, including children.<sup>247</sup> Fostering respect for and promotion of human rights in cities creates a safe and liveable environment with equitable access to good urban governance for all as a fundamental human right.<sup>248</sup> This calls for the adoption of a rights-based approach to urban governance, wherein cities aim to:

[P]rotect and promote [human] rights; provide access to services and ensure equal opportunities for all; representative democracy through participation of all communities; foster tolerance and fight against discrimination and racism; mitigate ethnic, cultural and religious tensions and conflicts of interest within urban communities; [and] foster social cohesion and shared belonging.<sup>249</sup>

The role of cities in promoting and respecting human rights within the local sphere is undeniable.<sup>250</sup> However, one contentious question is whether municipalities have direct and independent obligations under international human rights law.<sup>251</sup> The traditional view accepts that states are the subjects of international law in that they sign and ratify international and African regional human rights treaties.<sup>252</sup> The argument further stresses that states are bound to comply with and realise the obligations emanating from these international instruments. Cities have no independent sovereign status and are thus not bound by international treaties. Yet, cities play a critical role in the implementation of human rights norms and

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<sup>247</sup> See Oomen and Baumgärtel 2018 *European Journal of International Law* 614.

<sup>248</sup> ADB *Enabling Inclusive Cities: Tool Kit for Inclusive Urban Development* 4.

<sup>249</sup> Taran, Neves de Lima and Kadyshcheva *Cities Welcoming Refugees and Migrants: Enhancing Effective Urban Governance in an Age of Migration* 22.

<sup>250</sup> Nijman "Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors" 209-242. See Oomen and Baumgärtel 2018 *European Journal of International Law* 607-630.

<sup>251</sup> Oomen and Baumgärtel "Human Rights Cities" 710. Also see Oomen and Durmus 2019 *Journal of Legal Pluralism and Unofficial Law* 142.

<sup>252</sup> Oomen and Baumgärtel "Human Rights Cities" 720-723. See Darling "Defying the Demand to 'Go Home': From Human Rights Cities to the Urbanization of Human Rights" 158; Jordán and Infante 2012 *Local Environment* 534-535; De Feyter "Sites of Rights Resistance" 11-39.

standards.<sup>253</sup> To that end, Schapper<sup>254</sup> argues that the implementation of children's rights is a multi-level governance process that manifests at the national and subnational (including local) levels.

Local governments have emerged as key actors and agents in responding to and implementing international law and development policies on environmental governance,<sup>255</sup> climate change,<sup>256</sup> migration,<sup>257</sup> and human rights implementation at the local level.<sup>258</sup> The governance responsibility of cities that intersect with the human rights of children is recognised in the Brundtland Report<sup>259</sup> and the Earth Summit Agenda 21 (through Chapter 28, which establishes Local Agenda 21),<sup>260</sup> and recently in the Sendai Framework for Disaster Risk Reduction,<sup>261</sup> the Addis Ababa Action Agenda,<sup>262</sup> the Paris Agreement,<sup>263</sup> and importantly, the SDGs<sup>264</sup> and

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<sup>253</sup> See Aust 2020 *Journal of Comparative Urban Law and Policy* 82-88.

<sup>254</sup> Schapper 2017 *Human Rights Quarterly* 104-129.

<sup>255</sup> See Bulkeley and Betsill *Cities and Climate Change: Urban Sustainability and Global Environmental Governance* 1-216; Bouteligier *Cities, Networks and Global Environmental Governance* 1-178.

<sup>256</sup> See Hughes, Chu and Mason "Introduction: Climate Change in Cities" 1-15; Bulkeley *Cities and Climate Change* 1-255; Aust 2019 *Review of European Comparative & International Environmental Law* 57-67; Brietzke and Adrianopoli 2010 *Journal of Environmental Law and Litigation* 85-122.

<sup>257</sup> See Filomeno "Global Cities and Multilevel Immigration Governance in Latin America" 145-154; Scholten "Cities of Migration: Towards a Typology" 242-250; Caponio "City Networks and the Multilevel Governance of Migration: Towards a Research Agenda" 182-192.

<sup>258</sup> Aust 2015 *European Journal of International Law* 266-270. See also institutional networks behind the work of cities. See the preamble of Constitution UCLG (2013) that recognises the vital role of local government for the promotion of human rights and other challenges associated with urbanisation. See [https://www.uclg.org/sites/default/files/eng\\_constitution\\_2013\\_.pdf](https://www.uclg.org/sites/default/files/eng_constitution_2013_.pdf).

<sup>259</sup> *Our Common Future: Report of the World Commission on Environment and Development* paras 71-74. According to Parnell, the first debate on the developmental role of cities actually took place earlier than the Brundtland Report, in particular before the approval of the *Universal Declaration of Human Rights* (GA res 217A (III), UN Doc A/810 at 71) (1948) under the rubric of international discussions on the technical details of colonial policy. See also Parnell 2016 *World Development* 530-533.

<sup>260</sup> See *UN Conference on Environment and Development: Agenda 21*, Chapter 28 (1). Local governments contributed to the development of Agenda 21, in Rio 1992. The participation and cooperation of local authorities was a determining factor in fulfilling the objectives of the conference.

<sup>261</sup> See *Sendai Framework for Disaster Risk Reduction, 2015-2030* (2015) paras 19(f), 27(g)-(h).

<sup>262</sup> See *Addis Ababa Action Agenda of the Third International Conference on Financing for Development* (2015) paras 34, 130.

<sup>263</sup> See the preamble and articles 7, 11 of the *Paris Agreement* (2015).

<sup>264</sup> See Kanuri *et al* *Getting Started with the SDGs in Cities: A Guide for Stakeholders* 66.

the NUA.<sup>265</sup> This demonstrates the recognition and acknowledgement of the role cities play in development and human rights implementation.

Scholars coined the term "human rights city,"<sup>266</sup> which refers to the role of cities in the respect, promotion and protection of the norms and principles of human rights at the local level.<sup>267</sup> Some call the notion of human rights cities human rights from below.<sup>268</sup> This description seeks to recognise the degree to which local level governance practices and processes are constitutive of global human rights principles, norms and standards. Blank<sup>269</sup> argues that cities guard individual rights, as they are places where more authentic, meaningful and participatory democracy is realised.

One may ask whether cities are responsible for children's human rights. The answer is affirmative and supported by international law on state responsibility, which underscores that all spheres of government are equally responsible for commitments emanating from international human rights law.<sup>270</sup> The Human Rights Council declares that obligations under international human rights law are binding on the State Party as a whole, implying that all branches of government and other public or governmental authorities at all levels (national, regional, provincial, and local) are included.<sup>271</sup> As the national government has a duty to comply with international law

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<sup>265</sup> See Robin, Steenmans and Acuto 2019 *Urban Research & Practice* 137.

<sup>266</sup> See Oomen and Baumgärtel "Human Rights Cities" 709-729. See also Starl "Human Rights and the City: Obligations, Commitments and Opportunities" 199-219; Grigolo *The Human Rights City: New York, San Francisco, Barcelona* 1-35; Soohoo "Human Rights Cities: Challenges and Possibilities" 257-275.

<sup>267</sup> Creutz has argued more broadly, with the support from judicial decisions from other jurisdictions, that local authorities are often held accountable for human rights violations. See Creutz "Responsibility" 140.

<sup>268</sup> See De Feyter "Sites of Rights Resistance" 11-39.

<sup>269</sup> Blank "International Legal Personality/ Subjectivity of Cities" 113.

<sup>270</sup> See article 27 of the *Vienna Convention of the Law of Treaties* (1969).

<sup>271</sup> See *General Comment No.31: The Nature of the General Legal Obligation imposed on States Parties to the Covenant* (2004) para 4.

and normative standards, the local sphere of government cannot escape the responsibility of implementing, protecting and promoting children's human rights.<sup>272</sup>

The Committee on the Rights of the Child (CRC Committee) – the UN child rights monitoring body – argues that the responsibility for children's rights cuts across all spheres of the government.<sup>273</sup> However, it cautions that decentralisation, devolution and delegation of governmental powers should not be viewed as reducing the direct responsibility and obligations towards children's rights implementation, regardless of the governmental structure.<sup>274</sup> Thus, cities are co-responsible organs of the state for children's rights implementation.

One important but overlooked argument is that the UNCRC and African Children's Charter not only speak directly to State Parties but also to juristic and natural persons. For instance, article 3 of the UNCRC and article 4 of the African Children's Charter impose a duty upon any person, public or private institution, court of law, and any authority to give the best interests of the child paramountcy in all actions or matters affecting the child. It is common for cities to be clothed with legal personalities as they often act as administrative authorities and public institutions. One could argue that under international children's rights law, the best interests principle directly applies to natural and juristic persons, such as cities.<sup>275</sup> With this understanding, there is a legitimate expectation that cities should comply with children's rights laws encapsulated in national law, as it mirrors international law standards.

The increased focus on cities in global governance makes them central actors in the promotion and protection of human rights as well as in dealing with social justice

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<sup>272</sup> A key related area not explored in this study is how cities play an important role in the protection of children from rights violation or danger. See Fambasayi and Katsidzira 2022 *International Journal of Child, Youth and Family Studies* 55.

<sup>273</sup> *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* (2003) paras 40-41.

<sup>274</sup> *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* paras 40-41.

<sup>275</sup> On the application of the best interests of the child principle, see 4.6.2.2 below.

issues.<sup>276</sup> In addition, cities play a critical role in the implementation, review and monitoring of development policies such as SDGs.<sup>277</sup> The trend of city authorities governing matters relating to human rights and sustainable development is an emerging movement in contemporary times.<sup>278</sup> According to Aust and Nijman,<sup>279</sup> cities are expected to comply with normative standards emanating from international law. As organs of the state, cities are arguably bound to comply with principles and norms of international human rights law.<sup>280</sup> This means that cities are inevitably bound by formal obligations and human rights commitments made by the national government.<sup>281</sup> Such commitments include ensuring access to information and opening up the space for freedom of expression and association for people to enjoy fundamental freedoms.<sup>282</sup> For Soohoo,<sup>283</sup> cities are often better equipped to lobby and implement human rights through the bottom-up approach, wherein communities articulate human rights commitments.<sup>284</sup> This view is supported by Oomen,<sup>285</sup> who opines that cities have the power to localise human rights implementation in tandem with the local context and practices.

Quennerstedt<sup>286</sup> argues that special attention should be given to children's rights because children are a distinct group of persons with unique circumstances, social conditions and status. Eekelaar<sup>287</sup> argues that children's human rights play an important role in securing their protection and participation. He further notes that children's rights are an acknowledgement that:

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<sup>276</sup> Reuter 2019 *Journal of Human Rights* 382.

<sup>277</sup> Reuter 2019 *Journal of Human Rights* 383.

<sup>278</sup> See Oomen "Introduction: The Promise and Challenges of Human Rights Cities" 1-2.

<sup>279</sup> Aust and Nijman "The Emerging Roles of Cities in International Law - Introductory Remarks on Practice, Scholarship and the Handbook" 5, 1.

<sup>280</sup> Aust and Nijman "The Emerging Roles of Cities in International Law - Introductory Remarks on Practice, Scholarship and the Handbook" 5, 10.

<sup>281</sup> See Starl "Human Rights and the City: Obligations, Commitments and Opportunities" 199-202.

<sup>282</sup> See 4.6.1 below.

<sup>283</sup> Soohoo "Human Rights Cities: Challenges and Possibilities" 257-258.

<sup>284</sup> See also De Hoop Scheffer *et al Sustainable Development Goals and Human Rights: An Invisible Bond* 14.

<sup>285</sup> Oomen "Introduction: The Promise and Challenges of Human Rights Cities" 3.

<sup>286</sup> Quennerstedt 2010 *International Journal of Children's Rights* 628.

<sup>287</sup> Eekelaar "Why Children? Why Rights?" 21.

There are certain things [that] we should provide for children, not just because adults think it would be nice if they [children] had them, but because we are prepared to recognise that children [are rights holders].<sup>288</sup>

In cities, like anywhere else, children's rights are a powerful legal tool for protecting them as a vulnerable group.<sup>289</sup> Tobin argues that the language of rights regulates the relationship between the "powerful and the powerless, the governed and the governing."<sup>290</sup> In addition, rights for children serve to constrain those in power, for example, the state and politicians, from acting in ways that increase the vulnerability of children.<sup>291</sup>

Inclusive cities for children observe the norms and principles of international children's rights law and national laws for the protection of children at the city level. Cities have both positive and negative human rights obligations spelt under international and domestic level, regarding the protection and promotion of the human rights of children.<sup>292</sup> They explicitly anchor their local laws, policies, programmes and practices on and are guided by children's rights and child rights principles within governance processes.<sup>293</sup>

Some scholars argue for the need to be mindful of the fact that human rights norms operate not only in certain spaces, such as cities but also through them.<sup>294</sup> For instance, Davis<sup>295</sup> contends that depending on the local context, cities have a vertical or horizontal relationship that places them in a position of collaboration with national governments in engaging with and implementing human rights norms and standards. For instance, many democratic states, such as South Africa, have transferred and decentralised important powers to local authorities, many of which

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<sup>288</sup> Eekelaar "Why Children? Why Rights?" 21.

<sup>289</sup> Freeman 1992 *International Journal of Law Policy and the Family* 69.

<sup>290</sup> Tobin "Justifying Children's Rights" 273. See also Ferguson *Global Social Policy Principles: Human Rights and Social Justice* 23.

<sup>291</sup> Brennan "Children's Choice or Children's Interests: Which do their Rights Protect?" 54.

<sup>292</sup> For an extensive human rights discussion, see chapter 3 below.

<sup>293</sup> Oomen and Durmus 2019 *Journal of Legal Pluralism and Unofficial Law* 144.

<sup>294</sup> Darling "Defying the Demand to 'Go Home': From Human Rights Cities to the Urbanization of Human Rights" 123. See also Miellet 2019 *Journal of Legal Pluralism and Unofficial Law* 214.

<sup>295</sup> Davis "Finding International Law 'Close to Home': The case of Human Rights Cities" 233.

are concerned with the implementation of children's rights, such as safety, health, early childhood education and governance.<sup>296</sup>

The responsibility of local authorities for children's rights and legal obligations is often a matter of domestic constitutional law and legislative formulation.<sup>297</sup> While local situations regarding the human rights of children vary across different states depending on the legal and policy context, the constitutional status of children's rights in the case of South Africa provides children with legitimate claims to participate in governance.<sup>298</sup> Based on the above, inclusive cities for children should respect, propagate and mainstream the human rights of children in governance and decision-making processes.<sup>299</sup>

#### *2.4.2 Cities that promote participatory governance with children*

In view of the discussion in 2.4.1 above, this study adopts the view that inclusive cities for children are those that adopt, promote and uphold participatory governance for and with children.<sup>300</sup> A UN-Habitat issue paper on inclusive cities notes that participation is a pathway to inclusive cities.<sup>301</sup> In particular, it underscores the need to promote participatory governance that allows the marginalised to share their views, with a special focus on the participation of children in decision-making at all levels.<sup>302</sup> This is an essential aspect of ensuring the inclusion and meaningful participation of the excluded groups. This also relates to children's democratic engagement and involvement in the governance of their cities. In this study, participatory governance entails the direct, active and meaningful

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<sup>296</sup> Oomen and Baumgärtel "Human Rights Cities" 713.

<sup>297</sup> Oomen and Baumgärtel 2018 *European Journal of International Law* 607-613.

<sup>298</sup> See 3.3.1 below on the impact of the constitutionalisation of children's rights in South Africa.

<sup>299</sup> See Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 44. See also Alessandria 2016 *Procedia Soc Behav Sci* 6-10.

<sup>300</sup> On the distinction between 'for children' and 'with children', see 1.2 above.

<sup>301</sup> Habitat III *Issue Paper 1: Inclusive Cities* 5.

<sup>302</sup> Habitat III *Issue Paper 1: Inclusive Cities* 5-6.



engagement of children in decision-making processes<sup>303</sup> (both individually and collectively) in urban governance matters that affect them.<sup>304</sup>

While a detailed discussion of the theories, models and types of democracy is not within the scope of this study, it is vital to note that at its core, democracy proclaims that decisions affecting members of a community should be taken by the members of that particular constituent.<sup>305</sup> The underlying principles of some models are also applicable to children, except for those that require universal suffrage and electoral rights. For instance, participatory democracy<sup>306</sup> essentially encourages direct, robust and meaningful participation in decision-making processes on governance matters that affect a community.<sup>307</sup> Participatory democracy is closely linked to deliberative democracy,<sup>308</sup> which encourages collaborative and collective decision-making.<sup>309</sup>

One of the fundamental principles of deliberative democracy<sup>310</sup> is the reciprocal duty to consult, deliberate and provide feedback on the reasons for a decision to the public for accountability purposes.<sup>311</sup> Govender, Reddy and Pillay<sup>312</sup> note that deliberation is a discursive approach to decision-making in which people come together in a non-coercive environment to identify and discuss public problems and find possible solutions. This deliberative and collaborative approach lies at the heart of entrenching participatory governance with children.<sup>313</sup> As demonstrated below,<sup>314</sup> children are legitimate constituencies in governance and decision-making processes

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<sup>303</sup> See 4.4 below.

<sup>304</sup> See 3.2 below.

<sup>305</sup> See Pateman *Participation and Democratic Theory* 1-21.

<sup>306</sup> Participatory democracy is about which citizens having the power to influence and to make policy decisions which enables legitimate and more effective governance.

<sup>307</sup> Nabatchi and Leighninger *Public Participation for 21st Century Democracy* 14-16.

<sup>308</sup> Deliberative democracy is emerging as a central paradigm in urban governance. See Purcell *Recapturing Democracy: Neoliberalization and the Struggle for Alternative Urban Futures* 46.

<sup>309</sup> Pateman 2012 *Perspectives on Politics* 8.

<sup>310</sup> See Purcell *Recapturing Democracy: Neoliberalization and the Struggle for Alternative Urban Futures* 46; Friedman 2006 *Journal of Public Deliberation* 17-20.

<sup>311</sup> Gutmann and Thompson *Democracy and Disagreement* 8. See also Govender, Reddy and Pillay 2011 *Administratio Publica* 284-285.

<sup>312</sup> Govender, Reddy and Pillay 2011 *Administratio Publica* 193.

<sup>313</sup> See 4.3.2 below.

<sup>314</sup> See 4.2 below.

at the city level. Deliberation with children can occur in community halls, schools and any other designated places.<sup>315</sup>

The World Bank notes that participatory governance is increasingly considered a significant factor in achieving inclusion through the engagement and involvement of communities in governance and decision-making.<sup>316</sup> In addition, UNICEF notes that participatory governance practices support the systematic participation of children in local decision-making processes.<sup>317</sup> However, participatory governance is one of the most significant challenges in urban governance.<sup>318</sup> According to social theorists, community engagement creates opportunities for public participation in policies and decision-making, thereby directly influencing governance outcomes.<sup>319</sup> Community engagement is a critical socio-political objective that enhances good governance and local ownership of decisions, programmes and actions.<sup>320</sup> This means that inclusive cities have spaces and mechanisms designed to involve children in governance and decision-making processes.<sup>321</sup>

The literature shows that efforts to engage children in governance are often *ad hoc* and lack collectiveness because children are not given the opportunity to influence policy decisions.<sup>322</sup> This could be attributed to the lack of systemic coordination across government departments regarding how to involve children in urban governance and decision-making processes.<sup>323</sup> Generally, participation in urban governance requires effective systems, structures and institutional mechanisms,

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<sup>315</sup> See 4.4.4 below.

<sup>316</sup> World Bank *Inclusive Cities Approach Paper* 9.

<sup>317</sup> UNICEF *A Local Governance Approach to Programming: Guidance for Achieving Multisectoral Results through Working with Local Governments* 19-22. See also UNICEF *Child Participation in Local Governance* 9.

<sup>318</sup> Da Cruz, Rode and McQuarrie 2019 *Journal of Urban Affairs* 3.

<sup>319</sup> See Khosla *Levelling Up: The Challenges of Creating Inclusive Cities* 3.

<sup>320</sup> Eckhardt, Kaletka and Pelka 2020 *European Planning Studies* 992.

<sup>321</sup> See 4.5 and 5.4 below.

<sup>322</sup> For a discussion on the exclusion of people in the governance of their cities, see Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 45.

<sup>323</sup> See World Bank *Inclusive Cities Approach Paper* 9.

such as municipal councils, ward committees and other forums, that enable the involvement of all concerned and interested people.<sup>324</sup>

Participatory governance functions well in dialogue and negotiation forums through participation and representation for both adults and children.<sup>325</sup> Institutional mechanisms for dialogue and deliberation should be established at the local level in terms of legal and policy instruments.<sup>326</sup> Participatory governance promotes transparency and accountable management of public affairs in general,<sup>327</sup> and specifically for child rights commitments.<sup>328</sup> Thus, legal and policy frameworks in inclusive cities for children provide for systems, mechanisms and structures that promote participatory governance.<sup>329</sup>

The adoption of participatory urban governance processes with children is anchored on the understanding that children are bearers of civil and political liberties<sup>330</sup> and that they constitute a legitimate constituent of decision-making processes.<sup>331</sup> Some scholars argue for the concept of "citizenship for children"<sup>332</sup> which recognises children as holders of rights within the civic space. There is a consensus in child rights scholarship that children are citizens.<sup>333</sup> While the concept of citizenship for children is controversial, given its attachment to nationality, Doek argues that

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<sup>324</sup> UN-Habitat *State of the World's Cities 2010/2011: Bridging the Urban Divide* 26.

<sup>325</sup> See 4.3-4.4 below.

<sup>326</sup> This is however, is dependent on the kind of governing authority municipalities have. Institutional mechanisms are often prescribed in terms of national legislation to local governments and also by-laws and policies.

<sup>327</sup> World Bank *Inclusive Cities Approach Paper* 25.

<sup>328</sup> See 2.4.1 above.

<sup>329</sup> See 5.4 below.

<sup>330</sup> Assim "Civil Rights and Freedoms of the Child" 391-411.

<sup>331</sup> Roche 1999 *Childhood* 475-489; Roche "Children, Citizenship and Human Rights" 43-55.

<sup>332</sup> See Lister "Unpacking Children's Citizenship" 9-19; Mitchell "Children's Rights and Citizenship Studies: Re-theorising Child Citizenship through Transdisciplinarity from the Local to the Global" 169-171; Liebel "Citizenship from Below: Children's Rights and Social Movements" 32-43.

<sup>333</sup> Ennew "Children as 'Citizens' of the United Nations" 66-78; Roche "Children, Citizenship and Human Rights" 43-55; Doek "Foreword" xii.

citizenship for children is broadly concerned with the entitlements of children to enjoy all fundamental rights and freedoms.<sup>334</sup>

Children are born with civil, political, social and economic rights that they exercise subject to their evolving capacities. These rights enable them to practice citizenship to some degree.<sup>335</sup> Thus, children are entitled to enjoy all rights under the national and international human rights laws. Doek<sup>336</sup> argues for the full respect for and implementation of the rights of children and the facilitation of their active and constructive participation in the community. In fact, this argument is settled by accepting that children are rights holders with the right to equal treatment and protection by law.<sup>337</sup>

The principle of evolving capacities entitles children to involvement in decision-making and the governance of their cities, as it is their fundamental right.<sup>338</sup> Inclusive cities for children should recognise that they have the right to participate in matters that affect their lives. In the South African context, some of the mechanisms that could be leveraged by children to participate in urban governance include municipal councils, ward committees, IDP representative forums, and other children's forums.<sup>339</sup> While these structures and mechanisms have the potential to enhance the inclusion of children, they currently do not benefit children in 99% of South African municipalities.<sup>340</sup> As shown below,<sup>341</sup> there are various ways in which local authorities can take children's views into account through consultation and collaboration with children using focus group discussions that create space for

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<sup>334</sup> Doek underscores that the citizenship of the child should not be dealt with only as a nationality issue. He further argues that while nationality is undoubtedly an essential element of citizenship, citizenship for children is broadly concerned with the entitlements of children to enjoy all the rights, including civil liberties enshrined in the UNCRC and other child-related law and policy instruments. See Doek "Foreword" xii.

<sup>335</sup> IAWGCP *Children as Active Citizens: A Policy and Programme Guide - Commitments and Obligations for Children's Civic Rights and Civic Engagement in East Asia and the Pacific* 3-5.

<sup>336</sup> Doek "Foreword" xii.

<sup>337</sup> See Mitchell "Children's Rights and Citizenship Studies: Re-theorising Child Citizenship through Transdisciplinarity from the Local to the Global" 171.

<sup>338</sup> See 3.2–3.3, 5.4 below.

<sup>339</sup> See 5.4.1–5.4.4 below.

<sup>340</sup> See 5.4 below.

<sup>341</sup> See 4.4 below.

children and give them the audience and opportunities to influence the governance of their cities.<sup>342</sup>

### 2.4.3 *Cities that are child-responsive*

The third feature of inclusive cities for children is that they are child-responsive. The concept of child-responsiveness has not been clearly defined in the literature. For example, UNICEF defines child-responsive urban settings through a framework with five benefits: "health, safety, citizenship, environment and prosperity."<sup>343</sup> This leads to a vague definition. Recently, UN-Habitat and UNICEF developed guidance on child-responsive urban policies, laws and standards to guide practitioners in the development and operationalisation of subnational urban policies from a children's perspective.<sup>344</sup> However, the normative document does not define what the term 'child-responsive' means. In this study, child-responsiveness is viewed as an approach in which the practical and strategic needs of children are considered and effectively addressed through policy and planning. Akin to gender responsiveness, an approach used to prioritise and mainstream gender vulnerability in policy issues, child-responsiveness recognises the vulnerability of children in the broad governance spectrum from an age perspective.<sup>345</sup>

The UN-Habitat paper on inclusive cities underscores that there is the need to promote age-responsive access to urban benefits, specifically using age and gender-responsive laws, policies and institutional frameworks.<sup>346</sup> Jacob<sup>347</sup> argues that child-responsiveness is akin to child-friendliness, which is used in different contexts, such as budgeting. There are links between child-responsive and child-friendly cities. The Child-Friendly Cities Initiative was launched by UNICEF and UN-Habitat in 1996

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<sup>342</sup> See 4.5.2 below.

<sup>343</sup> UNICEF *Shaping Urbanization for Children: A Handbook on Child-Responsive Urban Planning* 38-40.

<sup>344</sup> See UN-Habitat and UNICEF *Child-responsive Urban Policies, Laws and Standards: A Guidance* 1-75.

<sup>345</sup> See Save the Children *Child Responsive Budgeting in South Sudan: A Guide for Policy Makers and Child-focused Organizations* 10.

<sup>346</sup> Habitat III *Issue Paper 1: Inclusive Cities* 6.

<sup>347</sup> See Jacob *Child Responsive Budgeting as a Public Finance Management Tool: A case of Karnataka, India* 4-5.

based on the recognition that a healthy habitat,<sup>348</sup> particularly in urban settings, is central to the realisation of the rights, well-being and development of children.<sup>349</sup> The UN recognises urbanisation as a transformative trend and the significant role that city governments play in national political and economic systems towards respecting, protecting, promoting and fulfilling human rights.<sup>350</sup> Thivant notes that child-friendly cities<sup>351</sup> prioritise the rights, interests, well-being and development of children in planning and governance.<sup>352</sup>

The concept of child-responsive cities encompasses both the spatial and governance dimensions. The spatial dimension relates to physical space, built environment, safety and security, and mobility and transport, among others.<sup>353</sup> For example, in relation to safety and security, child-responsive cities aim to foster the protection of children from real, pending or potential threats, dangers, exploitation, sexual abuse and violence in public spaces in order to assure them of a safe environment.<sup>354</sup> Thus, it concerns the creation of violence-free public spaces and playgrounds, safe

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<sup>348</sup> The initiative is led by UNICEF. A city interested in joining the initiative applies to UNICEF and has to demonstrate commitment to a comprehensive child rights approach in many aspects of local governance; display commitment to creating spaces for inclusive and meaningful child participation; and a demonstrated dedication to the elimination of all forms of discrimination against children. Therefore, the participating cities commit themselves to a set of values, a programme frame of action, implementation and monitoring of children's rights at the local level. See Thivant *Child-Friendly Cities and Communities: Handbook* 13.

<sup>349</sup> Thivant *Child-Friendly Cities and Communities: Handbook* 1-13.

<sup>350</sup> UNICEF *Building Child Friendly Cities: A Framework for Action* 1.

<sup>351</sup> UNICEF defines a child-friendly city as "a city, town, or [more generally] any system of local governance committed to fulfilling child rights as articulated in the [UNCRC]. It is a city or community where the voices, needs, priorities and rights of children are an integral part of public policies, programmes and decisions." See Thivant *Child-Friendly Cities and Communities: Handbook* 10. See also Elshater 2018 *Journal of Urban Design* 435.

<sup>352</sup> Thivant *Child-Friendly Cities and Communities: Handbook* 1-13.

<sup>353</sup> Some studies have explored and highlighted the role of the environment, transportation, play and recreation, among other factors, on the lives of children in cities. See Krishnamurthy 2019 *Cities & Health* 86-87.

<sup>354</sup> Regarding safe environments, it could be linked to the responsibility of cities in ensuring the protection of children from the threats of environmental and climate change crisis, including the rights of future generation. However, extensive discussion in this regard falls outside the scope of the study.

streets and safe transportation systems for children.<sup>355</sup> Although a vital piece in relation to children in cities, the spatial dimension is beyond the scope of this study.

The governance dimension refers to the inclusion of children in how decisions are made and implemented in urban spaces.<sup>356</sup> It is critical to provide children with opportunities to contribute to decision-making in their cities.<sup>357</sup> A child-responsive approach offers cities and other urban communities the opportunity to respond appropriately and promptly based on the unique vulnerabilities of children in all aspects of governance. This shifts the focus to children's rights, needs and interests at the city level.

Child-responsive cities should adopt a system of local governance committed to children's rights and well-being. They should also consider the best interests of the child in the local government sphere.<sup>358</sup> In other words, child-responsive cities enable governance with their children.<sup>359</sup> They are anchored to the right of every child to be valued and respected as a distinct individual with the right to participate, be heard and live in a healthy environment.<sup>360</sup> Closely linked to and mutually reinforcing the feature of respect for human rights, child-responsive cities are grounded in laws and policies that encourage children to engage in participatory and decision-making processes at the local level.<sup>361</sup> Municipal laws, governance policies and resource allocation should be tailored to create opportunities for children to participate and engage in city development and governance.

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<sup>355</sup> Horelli 2007 *Children, Youth and Environment* 271-272. Part of ensuring urban safety includes the upgrading and rehabilitation of green public spaces, mobility and pedestrian pathways to ensure and enhance the protection of children and expand children's awareness of urban safety. See also Nasrabadi, García and Pourzakarya 2021 *Local Environment* 202; UNICEF *Building Child Friendly Cities: A Framework for Action* 1.

<sup>356</sup> There are variations, of course, wherein it determines issues around which decisions are being made, for example, planning and land use, housing, recreational matters, among others.

<sup>357</sup> See 3.2.1 below.

<sup>358</sup> Horelli 2007 *Children, Youth and Environment* 200. See also Derr and Tarantini 2016 *Local Environment* 1535.

<sup>359</sup> See 1.2 above.

<sup>360</sup> Thivant *Child-Friendly Cities and Communities: Handbook* 11-12.

<sup>361</sup> See Nasrabadi, García and Pourzakarya 2021 *Local Environment* 199-200.

A critical component of child-responsiveness is that cities are sensitive to the special needs of children of all ages in all respects, including their governance approaches.<sup>362</sup> It should be noted that child-responsiveness also considers the gender element by ensuring that both boys and girls are treated and protected in a suitable manner within the urban context while getting the same opportunities to participate in governance.

#### *2.4.4 Cities that foster sustainability governance*

Despite its contested definitions and dimensions, sustainability is rooted in international legal and developmental policies.<sup>363</sup> Sustainability governance is viewed in the context of sustainable development<sup>364</sup> in three ways.<sup>365</sup> In this context, the focus is on sustainability governance that protects the interests of present and future generations and, in particular, the future interests of today's children and children who are yet to be born. The recently adopted *Maastricht Principles on the Human Rights of Future Generations* 2023 (Maastricht Principles on Future Generations) notes that the rights of future generations "demands an evolution of decision-making processes" that considers and ensures "justice and 'sustainability' across an array of timescales", to include the present, near and distant future.<sup>366</sup> In the context of this study, sustainability is forward-looking with a future long-term orientation and links the actions of present generations to the needs and capabilities of future generations.<sup>367</sup>

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<sup>362</sup> See UN-Habitat and UNICEF *Child-responsive Urban Policies, Laws and Standards: A Guidance* 14-22.

<sup>363</sup> The concept in the urban context comprises the built environment, on one hand and the extent to which the features contribute to, or counteract, sustainable development, on the other hand. See Næss, Saglie and Richardson 2020 *European Planning Studies* 147; Nasrabadi, García and Pourzakarya 2021 *Local Environment* 201.

<sup>364</sup> The Brundtland Report defines sustainable development as development "that meets the needs of the present generation without compromising the ability of future generations to meet their own needs." See *Our Common Future: Report of the World Commission on Environment and Development* 7.

<sup>365</sup> There are scholars that argue that sustainable development is unsustainable. See Kotzé and Adelman 2022 *Law and Critique* 1-22.

<sup>366</sup> See para VI of the *Maastricht Principles on the Human Rights of Future Generations* (2023).

<sup>367</sup> Kuhlicke, Kabisch and Rink "Urban Resilience and Urban Sustainability" 18-22.



Using a governance lens, it is important to consider two aspects of sustainability. First, sustainability entails local governments embracing and adopting sustainable long-term plans, policies and strategies that minimise the negative impacts of consumption on present and future generations.<sup>368</sup> At the city level, sustainability governance connotes that planning, programming and governance facilitate and promote the developmental interests and welfare of children.<sup>369</sup> In other words, it places a duty on decision-makers to plan, frame and embrace sustainable decision-making, recognising intergenerational equity and intragenerational equity in governance.<sup>370</sup>

Second, sustainability can be viewed from the understanding that the involvement of children in the decision-making process adds value to the economic, social, cultural and environmental aspects that affect their lives.<sup>371</sup> The Maastricht Principles on Future Generations emphasise that children occupy a unique position and play an important role in providing perspectives in decision-making processes that inform sustainability governance.<sup>372</sup> Thus, children should be given the opportunity to share their views on legal requirements.<sup>373</sup> This can be done in local environmental governance<sup>374</sup> or city-level climate change mitigation and adaptation,<sup>375</sup> among other local decisions that affect the current and future lives of children.

Interestingly, there is no explicit right of children to sustainable development under international and African regional children's rights law.<sup>376</sup> However, this does not absolve states from the duty to ensure that the effects of their decisions and actions are sustainable and that children are involved in decision-making processes.<sup>377</sup> The

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<sup>368</sup> See Mega "Intergenerational Cities Embracing Diversity and Social Justice" 127-140.

<sup>369</sup> Jenks, Burton and Williams "Compact Cities and Sustainability: An Introduction" 4.

<sup>370</sup> Robinson "Planning for Sustainability: Moving from Plan to Action" 84.

<sup>371</sup> See Nasrabadi, García and Pourzakarya 2021 *Local Environment* 201.

<sup>372</sup> See para VII of the *Maastricht Principles on the Human Rights of Future Generations*.

<sup>373</sup> See 3.2 below.

<sup>374</sup> Fambasayi 2021 *Stellenbosch Law Review* 395-407.

<sup>375</sup> See Du Plessis "The Global Aspiration of 'Safe, Sustainable, Resilient and Inclusive' Cities: South African Local Government Shaping Up" 18.

<sup>376</sup> See Fambasayi 2021 *Stellenbosch Law Review* 393-394.

<sup>377</sup> See Boshoff and Damwet 2019 *African Human Rights Yearbook* 130-132.

duty emanates from international human rights law and regional policy frameworks that embed sustainability for children, such as Agenda 2040. Although Agenda 2040 is not specific to the urban context, Aspiration 6 considers sustainability in certain aspects of children's rights.<sup>378</sup> In some countries, sustainable development is entrenched in the Bill of Rights (in the Constitution) and other legislative provisions applicable to children.<sup>379</sup> Importantly, local governments in South Africa have environmental and ecologically sustainable development functions and duties<sup>380</sup> which have implications for how municipalities govern.<sup>381</sup> Thus, cities play a role in ensuring 'sustainable governance for children. Inclusive cities for children make decisions not only for the present but also considering the future implications or intergenerational consequences of those decisions on the life, well-being and interests of present and future residents.

## 2.5 Conclusion

At a conceptual level, this chapter sought to understand the notion of inclusive cities in literature to frame the concept of inclusive cities for children and what it means for city governments. To build an understanding of inclusive cities, this chapter traced the historical development of the concept of inclusivity in general, inclusivity in the urban context, and the origins and development of the concept of inclusive cities. The chapter has shown that the exclusion of people in urban governance has a long history, which prompted an uprising in France with demands for inclusion. The theoretical and notional right to the city, meaning a "cry and demand,"<sup>382</sup> is one such example wherein the yearning of students and urban residents for inclusion in urban areas sparked riots and protests. Over time, the concept of inclusive cities developed and became incorporated into international and African regional urban

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<sup>378</sup> It links sustainable development with education (knowledge and skills), sustainable lifestyles, appreciate cultural diversity and contribute to sustainable development, which could be construed to apply to the urban context. See also *Agenda 2063: The Africa We Want* para 10.

<sup>379</sup> See section 24 of the Constitution; section 73 of the Zimbabwean Constitution.

<sup>380</sup> See Nel, Du Plessis and Retief "Key Elements for Municipal Action" 2.1-2.42; Karsten *Local Government Accountability in South Africa: An Environmental Law Reading* 12.

<sup>381</sup> Section 152(1)(b) of the Constitution provides that the objects of local government include to ensure the provision of services to communities in a 'sustainable' manner.

<sup>382</sup> See Lefebvre *Le Droit à la Ville* 173-174.

policies and laws. International urban policies, such as SDG 11 and the NUA, provide features and guidance on the meaning of inclusive cities and could be used to frame the features of inclusive cities for children.

The proposed features of inclusive cities for children in this study are non-exhaustive and not prescriptive. They provide a conceptual lens that can help and guide city authorities to understand the concept of inclusive cities for children<sup>383</sup> and ensure inclusive decision-making at the city level. Understanding inclusive cities for children facilitates a better understanding by local authorities of their commitments to children based on international and African regional urban policies coupled with international children's rights law (as discussed in 3.2 below). Based on the above, city authorities must:

- Respect, promote and protect the rights and interests of children in urban governance. This entails mainstreaming the rights and interests of children in decision-making and evaluating how decisions may impact the well-being of children living in their jurisdictions.<sup>384</sup>
- Promote participatory governance practices and processes. This implies establishing decision-making systems and mechanisms that enable children to share their views and contribute to the governance of their cities.<sup>385</sup>
- Be child-responsive and ensure that all decisions, policies, laws, practices and interventions at the city level are sensitive to the needs, interests and rights of children.<sup>386</sup> In so doing, city authorities go beyond the child-friendly cities approach to a more solid and practical way to address issues concerning and affecting children in their jurisdictions.
- Foster sustainability governance and ensure that their decisions have both intragenerational and intergenerational benefits. This implies that city authorities must protect the lives of children and, at the same time, safeguard

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<sup>383</sup> See 4.3–4.4 below.

<sup>384</sup> See 3.2–3.3 below.

<sup>385</sup> See 4.4–4.5, 5.4 below.

<sup>386</sup> See 4.6.2 below.

the outside environment that may negatively impact the well-being of children.

This understanding of inclusive cities for children and how they should involve children in decision-making processes paves the way for further exploration of multi-level law and policy frameworks for the inclusion of children in decision-making processes in local governance through the conduit of the right of children to participate.

## CHAPTER 3

# MULTI-LEVEL LAW AND POLICY FRAMEWORKS ON THE INCLUSION OF CHILDREN IN URBAN GOVERNANCE

### 3.1 Introduction

International policy development shows growing consensus on the involvement of children in global governance. This is evidenced by the inclusion of children and their views on the development of Agenda 2030,<sup>1</sup> Voluntary National Reviews for measuring progress in implementing Agenda 2030,<sup>2</sup> the development of UNCRC General Comments,<sup>3</sup> and global climate change dialogues such as the Conference of Parties.<sup>4</sup> The participation of children in global, regional, national, and local governance finds support in international children's rights law.<sup>5</sup> The inclusion of children's voices in local governance is amplified by the CRC Committee, which notes that the practical implementation of child participation occurs at the local level and

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<sup>1</sup> More than 800 000 children were involved in consultations that shaped Agenda 2030 and the SDGs. See Human Rights Council *Discussion on the Rights of the Child and the 2030 Sustainable Development Agenda* 5. Arguably, children's participation added an invaluable contribution to the negotiations and potentially steered the SDGs in a direction that considered their present and future best interests, which could not have been possible without hearing their views and perspectives.

<sup>2</sup> For instance, see Office of the SRSV VAC *Ending Violence against Children: Reflections on Reporting in the 2021 Voluntary National Reviews* 5.

<sup>3</sup> The CRC Committee seriously takes the views of children to inform the development of General Comments. For instance, on the General Comment relating to public budgeting for children, consultations were made with children from 71 countries who are from different backgrounds, age, gender, ability, socio-economic context, language, ethnicity, school enrolment, displacement and experience shared their views. See *General Comment No. 19 on Public Budgeting for the Realisation of Children's Rights (Art. 4)* (2016) para 8. Also, recently, the views of children informed the *General Comment No. 26 on Children's Rights and the Environment with a Special Focus on Climate Change* (2023). For other views on the involvement of children, see Human Rights Watch *Submission on the General Comment on Children's Rights and the Environment with a Special Focus on Climate Change* (2023).

<sup>4</sup> *Youth and Future Generations Day at COP 27* (2022). See also Makary 2022 <https://egyptianstreets.com/2022/11/17/cop27-gives-children-and-youth-a-voice-through-first-of-its-kind-pavilion/>. See also the 2021 Conference of Parties (COP 26), held in Glasgow, United Kingdom. See Cities Alliance *COP26 - Cities 4 Children: Our Climate, Our Future* (11 November 2021) <https://www.citiesalliance.org/newsroom/events/cop26-cities-4-children-our-climate-our-future>.

<sup>5</sup> See 3.2 below.

urges governments to create spaces for participation in local governance.<sup>6</sup> In addition, the place of children as key actors in local participatory processes and decision-making is found in Agenda 21,<sup>7</sup> the *Istanbul Declaration and Habitat Agenda*, 1996,<sup>8</sup> and Agenda 2030,<sup>9</sup> among others. However, significant challenges remain regarding the participation of children in local governance, specifically in Africa<sup>10</sup> in countries such as South Africa. This is despite the fact that it is nearly 35 years after the adoption of the UNCRC.

From a legal standpoint, one of the hurdles in the implementation of international children's rights law on child participation at the city level is that central governments ratify international law.<sup>11</sup> In terms of international law, State Parties are bound to domestic international children's rights law in their legislation, policies, and standards. Thus, it goes without saying that cities assume constitutional and legislative obligations to respect and comply with national laws, policies and standards. This arguably compels cities to (indirectly) comply with international normative human rights standards.<sup>12</sup> However, children's rights and local government law scholarship remains mute on the direct obligations of city authorities towards observing and complying with international children's rights law, and specifically on the status and role of children in urban governance.

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<sup>6</sup> *General Comment No.12 on the Right of the Child to be Heard* paras 127-128.

<sup>7</sup> See *UN Conference on Environment and Development: Agenda 21*, Chapter 28(2)(d).

<sup>8</sup> See *Report of the UN Conference on Human Settlements* para 13.

<sup>9</sup> Agenda 2030 recognises children as critical agents of change and that the SDGs present a platform to channel their infinite capacities for participatory activism into the creation of a better world for everyone. See Agenda 2023 para 51.

<sup>10</sup> See the remarks of the ACERWC in this regard in *General Comment No.5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* (2018) para 4.4. It notes that "[c]onsulting with children and taking their views into account is still a very recent trend amongst State [P]arties, and efforts to include children are still mostly new and uncoordinated."

<sup>11</sup> Cities have no say in the process of ratification. Yet, the role of local authorities in the life of children is recognised by the UN General Assembly in the 1959 *Declaration of the Rights of the Child* which explicitly calls upon local authorities (and national governments) to recognise the rights of children and declares the need to strive to observe them through legislative and other measures. See para 5 of the preamble of the *Declaration of the Rights of the Child* A/RES/14/1386 (1959).

<sup>12</sup> See, for example, Fambasayi and Katsidzira 2022 *International Journal of Child, Youth and Family Studies* 55.

City authorities are the level of government closest to the people and children. This means that local governments should create opportunities for children to participate in the decision-making processes and governance.<sup>13</sup> For example, in the context of South Africa, it is expected that there are mechanisms and forums for children to express themselves in the governance of their cities.<sup>14</sup>

This chapter critically explores the multi-level law and policy<sup>15</sup> that provide for the inclusion of children in decision-making in local governance. It focuses on how city authorities can achieve this through the realisation of the right to participate. The exploration of child participation as provided for in international, African regional, and South African laws and policies (as legal tools) helps build an understanding of the legal obligations imposed on city authorities (in South Africa) as duty-bearers to ensure the inclusion of children in decision-making processes.

The focus on the participation of children in the local sphere of government is premised on the understanding that local governments play a role in implementing children's human rights at the city level,<sup>16</sup> including the right to participate.<sup>17</sup> Many modern democracies, such as South Africa, have decentralised governance on matters that impact the lives of children,<sup>18</sup> such as law, policy-making, and decision-making on action plans and programmes. Ordinarily, decentralisation occurs when the central government transfers governance responsibility and authority for planning, management, and resource allocation to subnational authorities, such as municipalities.<sup>19</sup> While other scholars are concerned over an excessive focus on the human rights duties and obligations of central governments to the exclusion of local

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<sup>13</sup> This also includes other aspects such as formulating policies, strategies and the implementation of plans and programmes. See *General Comment No.12 on the Right of the Child to be Heard* para 122.

<sup>14</sup> See 5.4 below.

<sup>15</sup> Consideration, in this study, is given to international children's rights law and South African law and policy.

<sup>16</sup> See 2.4.1 above.

<sup>17</sup> See 3.2.1 below.

<sup>18</sup> *Final Report on Role of Local Government in the Promotion and Protection of Human Rights* paras 19-21. See also Petrasek *Local Rule: Decentralisation and Human Rights* 1.

<sup>19</sup> UNICEF *Enhancing Subnational and Local Governance to Accelerate Results for Children: Subnational and Local Governance Programming Framework* vii.

governments,<sup>20</sup> decentralisation changes this narrative. According to Hoffman,<sup>21</sup> the levers of control over law and policy that affect the implementation of children's rights in many states fall within the mandate, authority, and governance spheres of city authorities.<sup>22</sup>

Thus, the first part of this chapter critically examines international children's rights law<sup>23</sup> to understand the normative obligations and standards that should be domesticated and translated to the city level.<sup>24</sup> From the onset, it should be noted that South Africa signed and adopted the UNCRC<sup>25</sup> and African Children's Charter.<sup>26</sup> This implies that they have an obligation to comply with international human rights laws. For interpretational guidance, the first part draws insights from the CRC Committee<sup>27</sup>, the African Children's Committee,<sup>28</sup> and various General Comments.<sup>29</sup> Based on the discussion in Part 1, the second part explores whether and how South African law and policy provide for child participation in urban governance as a form of public governance. This section discusses judicial decisions regarding the

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<sup>20</sup> See, for example, Petrasek *Local Rule: Decentralisation and Human Rights* 2.

<sup>21</sup> Hoffman 2019 *International Journal of Human Rights* 374-375.

<sup>22</sup> See also Bosire who argues that the local sphere of government is well-positioned to fulfil and implement participation of people in governance as a fundamental human right and principle. Bosire 2011 *African Human Rights Law Journal* 153, 159.

<sup>23</sup> Section 39(1)(b) of the Constitution declares that international law should be used to help interpret national law, including the Bill of Rights. This also includes principles of children's rights such as child participation in local governance.

<sup>24</sup> These could provide opportunities at the local level. See 3.3 below.

<sup>25</sup> Signed on 21 January 1993 and adopted it on 16 June 1995.

<sup>26</sup> Signed the African Children's Charter on 10 October 1997 and adopted it on 7 January 2000.

<sup>27</sup> Established in terms of article 43 of the UNCRC, the CRC Committee has the mandate to monitor the implementation of the Convention and providing interpretational guidance to member states in respect of the rights of children. This includes the mandate to issue General Comments that guide State parties on the implementation of the rights in the UNCRC, among other responsibilities towards children's rights globally.

<sup>28</sup> Established in terms of article 32 of the African Children's Charter, the African Children's Committee has the mandate to promote and protect the rights of children through collecting and documenting information, formulating principles and rules for the protection of children, and monitor the implementation of the Charter. In addition, the African Children's Committee has the mandate of interpreting the provisions of the Charter giving meaning and scope to the rights, which includes the issuance of General Comments on thematic child rights issues. See article 42 of the African Children's Charter.

<sup>29</sup> As a general practice under international law, General Comments are set to clarify the scope, reach, implication, explain and address a component(s) of the rights enshrined in an international legal instrument. General Comments are not binding and do not have legal force. Yet, they provide persuasive value and interpretative guidance on how state parties ought to implement and monitor the rights of children.



participation of children in South Africa. To this end, it examines how the Constitutional Court interprets provisions in law and policy. The final section concludes the chapter.

### **3.2 The right to participate under international children's rights law**

Arguments in favour of child participation are often divided into two categories: the instrumental approach and the rights-based approach.<sup>30</sup> The former approach states that participation empowers children to develop critical thinking, dialogue, citizenship, and civic engagement.<sup>31</sup> In other words, it contends that child participation transforms the status of children from passive recipients of adult protection to active participants and agents of social change.<sup>32</sup> There is some consensus that creating opportunities for children to participate in governance has multiple benefits for the government on the one hand and children on the other.<sup>33</sup> The instrumental approach to child participation was expounded by the Inter-Agency Working Group on Child Participation, which underscores participation.

[G]ives [children] responsibilities and opportunities to practice choice, decision-making, and independence. [Through participation] [c]hildren gain experiences and skills they need to make successful transitions to adulthood.<sup>34</sup>

Secker<sup>35</sup> underscores that participation plays an enabling and empowering role while also facilitating the enjoyment of other rights. Children's views have the potential to enhance the quality of decision-making outcomes, solutions, interventions, and programmes.<sup>36</sup> Arguably, engaging children in decision-making processes impacts their future interests and capacities and, to some degree, the rights of the adult that the child will become.<sup>37</sup> Cowden<sup>38</sup> argues that children hold future interests in the

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<sup>30</sup> Williams *Small Hands, Big Voices? Children's Participation in Policy Change in India* 83.

<sup>31</sup> Williams *Small Hands, Big Voices? Children's Participation in Policy Change in India* 83.

<sup>32</sup> Lansdown "Article 12: The Right to Be Heard" 42.

<sup>33</sup> See 3.2 above.

<sup>34</sup> IAWGCP *Children as Active Citizens: A Policy and Programme Guide - Commitments and Obligations for Children's Civic Rights and Civic Engagement in East Asia and the Pacific* 50.

<sup>35</sup> Secker 2009 *International Journal of Human Rights* 698.

<sup>36</sup> See *General Comment No.12 on the Right of the Child to be Heard* para 27.

<sup>37</sup> Cowden *Children's Rights: From Philosophy to Public Policy* 69-70.

<sup>38</sup> Cowden *Children's Rights: From Philosophy to Public Policy* 70.

present and not for their future adult selves. Thus, the interests to be protected are not future interests but present interests in the development of future capacities.

The rights-based approach acknowledges the legal autonomy of children in decision-making processes.<sup>39</sup> It views the participation of children as a legal entitlement without focusing on the benefits that it accrues for the child.<sup>40</sup> Considered together, a hybrid approach to implementing child participation would be beneficial for children. As Williams<sup>41</sup> notes, it is becoming increasingly common to acknowledge the validity of both arguments from participation as a means of better addressing children's interests to encourage their growth as active citizens. With this in mind, this section critically examines international children's rights law and policy that provides for the right of children to express views and have their views given due weight in all matters concerning them – commonly known as 'child participation.'<sup>42</sup> Participation is a legal right that guarantees the inclusion of children in decision-making processes in matters that affect them.<sup>43</sup>

While the primary focus of the chapter is children's rights law, it is essential to note that a plethora of other international and African regional human rights instruments and policies also recognise children as critical players in the decision-making processes.<sup>44</sup> For instance, international policies such as Agenda 21 recognise the participation of children and their perspectives in environmental decision-making at all levels, including local governance.<sup>45</sup> Agenda 2030 acknowledges children as critical agents of change for sustainable development,<sup>46</sup> whereas Agenda 2040

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<sup>39</sup> Williams *Small Hands, Big Voices? Children's Participation in Policy Change in India* 83.

<sup>40</sup> See Lundy 2018 *Childhood* 340-354.

<sup>41</sup> Williams *Small Hands, Big Voices? Children's Participation in Policy Change in India* 83-84.

<sup>42</sup> The term is commonly used to refer to the right of children to express their views, be heard and taken seriously. See *General Comment No.12 on the Right of the Child to be Heard* para 3.

<sup>43</sup> Importantly, participation fosters the respect of children as a key social group in decision-making processes. Woodhouse 2003 *Arizona Law Review* 754.

<sup>44</sup> A range of international and regional human rights instruments and policies support the inclusion of children in decision-making through the exercise of participation rights.

<sup>45</sup> See *UN Conference on Environment and Development: Agenda 21*, Chapter 25(2) and 25(13)(b). See also Istanbul Declaration and Habitat Agenda, *Report of the UN Conference on Human Settlements* para 13.

<sup>46</sup> *Transforming our World: the 2030 Agenda for Sustainable Development* para 51.

emphasises the value of child participation.<sup>47</sup> In addition, human rights instruments such as the *International Covenant on Civil and Political Rights*, 1966 (ICCPR)<sup>48</sup> and the *African Charter on Human and Peoples' Rights*, 1981 (Banjul Charter or ACHPR),<sup>49</sup> as Couzens<sup>50</sup> aptly observes, do not grant children the right to participate in the governance of public affairs, because these instruments are framed with (adult) political participation in mind.<sup>51</sup> She argues that the UNCRC, as discussed below, introduced a legally accepted innovative approach in which children have the right to non-electoral participation in governance and issues that affect their lives.<sup>52</sup> Even after the adoption of the UNCRC, the critical role of participation in public affairs is emphasised in soft law instruments as a fundamental right for everyone, including children.<sup>53</sup>

The adoption of the UNCRC affirms that children are right-bearers who should contribute to the decision-making processes.<sup>54</sup> Subsequently, the adoption of the African Children's Charter fortifies the understanding that children have the right to influence decision-making processes on matters concerning their rights, welfare, and

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<sup>47</sup> See Aspiration 10 of *Africa's Agenda for Children 2040: Fostering an Africa Fit for Children*.

<sup>48</sup> See article 25 of the *International Covenant on Civil and Political Rights* (1966) (ICCPR).

<sup>49</sup> See article 13 of the *African Charter on Human and Peoples' Rights* (1981).

<sup>50</sup> Couzens 2012 *International Journal of Children's Rights* 683-684.

<sup>51</sup> For a general discussion on participation in public affairs under international law, see Secker 2009 *International Journal of Human Rights* 699-702.

<sup>52</sup> See Couzens 2012 *International Journal of Children's Rights* 683-686.

<sup>53</sup> See article 8(1)-(2) of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (1999), which declares that "[e]veryone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs... This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organi[s]ations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and reali[s]ation of human rights and fundamental freedoms."

<sup>54</sup> On shared consensus around this argument, see Peleg "Reconceptualising the Child's Right to Development: Children and the Capability Approach" 388-390; Josefsson *et al* "Representing Children" 4-5; Twum-Danso Imoh "Adults in Charge: The Limits of Formal Child Participatory Processes for Societal Transformation" 59. See also Archard who contends that the UNCRC resembles the codification of children's rights and defines a "recognisable canon of thought about the rights of children" – thus noting children as rights holders and social actors. See Archard *Children: Rights and Childhood* 108-109.

interests.<sup>55</sup> The UNCRC<sup>56</sup> and African Children's Charter<sup>57</sup> are authoritative sources of children's rights globally and regionally, respectively. Scholars argue that the two represent an extraordinary consensus on children's rights and provide implementation benchmarks for measuring state practice and compliance.<sup>58</sup> All rights in the UNCRC and the African Children's Charter apply to and protect all children.<sup>59</sup> These two instruments complement each other.<sup>60</sup> Notably, the two instruments are legally binding, implying that they impose obligations on State Parties and other non-state actors, such as the business sector, to undertake all appropriate legislative, administrative, and other measures to respect, protect, promote, and fulfil the human rights of children.

Child participation is significant because it recognises the child as a human person with the "integrity, personality, and ability to participate in society freely."<sup>61</sup> The right to participate identifies and recognises children individually and collectively as having a voice that must be heard.<sup>62</sup> This acknowledgement suggests that children can independently exercise democratic choices<sup>63</sup> in line with their evolving capacities.<sup>64</sup> As Skelton<sup>65</sup> notes, the right of children to be consulted and to express their views on decisions that affect them recognises the evolving nature of their autonomy. This aligns with the global acceptance that children are social beings and actors with the ability and competency to contribute to all matters related to their

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<sup>55</sup> See Olowu 2002 *International Journal of Children's Rights* 126-128.

<sup>56</sup> Kilkelly "The Convention on the Rights of the Child after Twenty-five Years: Challenges of Content and Implementation" 80-82; Kilkelly 2019 *International Journal of Human Rights* 323-324. See also Van Bueren *International Law on the Rights of the Child* 16; Doek "The Human Rights of Children: An Introduction" 13; Reynaert *et al* "Introduction: A Critical Approach to Children's Rights" 5.

<sup>57</sup> See Sloth-Nielsen "The African Charter on the Rights and Welfare of the Child" 424; Chirwa 2002 *International Journal of Children's Rights* 157.

<sup>58</sup> See O'Mahony 2019 *Human Rights Law Review* 402; Liefwaard and Sloth-Nielsen "25 Years CRC: Reflecting on Successes, Failures and the Future" 1-13.

<sup>59</sup> This includes addressing specific issues peculiar to certain groups such as children with disabilities and children in conflict settings, among others.

<sup>60</sup> See Olowu 2002 *International Journal of Children's Rights* 128.

<sup>61</sup> Freeman "Children's Education: A Test Case for Best Interests and Autonomy" 37.

<sup>62</sup> Archard *Children: Rights and Childhood* 117.

<sup>63</sup> *General Comment No.12 on the Right of the Child to be Heard* para 1.

<sup>64</sup> See article 5 of the UNCRC; Lansdown *The Evolving Capacities of the Child* 3-8.

<sup>65</sup> Skelton "Children" 602.

lives and welfare.<sup>66</sup> Urban governance is one such issue affecting children.<sup>67</sup> The CRC Committee notes that child participation opens and sustains a direct relationship between children and their government.<sup>68</sup>

Legally, the inclusion of children's views is a good governance practice and a binding obligation of states towards children.<sup>69</sup> Some scholars argue that child participation is a notable transformative innovation in international law that has no trace in any UN or AU human rights treaties.<sup>70</sup> The following sections critically explore the normative content of children's right to participate in the decision-making processes.

### *3.2.1 The right to respect the views of the child*

The right to respect the views of the child is entrenched in the UNCRC, which is the prime instrument at the global level that exclusively provides for children's rights. Article 12 of the UNCRC declares that:

- (1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

Regionally, article 4(2) of the African Children's Charter echoes the same message and states that

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<sup>66</sup> Roche 1999 *Childhood* 487.

<sup>67</sup> See the UN Resolution, *A World Fit for Children* (2002) on 3.2.1 below.

<sup>68</sup> The CRC Committee urged governments to "develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions... it is in the interests of both [g]overnments and children to have appropriate direct contact." See *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 12.

<sup>69</sup> Lundy 2007 *British Educational Research Journal* 930-931. Also, Lundy argues that the practice of actively involving children in decision-making should not be seen as charity but a legal imperative which is a fundamental right for children, individually or collectively.

<sup>70</sup> See Peleg "International Children's Rights Law: General Principles" 148; Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 144; Assim "Civil Rights and Freedoms of the Child" 397; Lücker-Babel 1995 *International Journal of Children's Rights* 391-392.

In all judicial or administrative proceedings affecting a child who is capable of communicating his [or] her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Also, article 7 of the African Children's Charter provides that –

Every child who is capable of communicating his or her own views shall be assured the right to express his opinions freely in all matters.

The provisions of the UNCRC and African Children's Charter are drafted, *albeit* in different ways, yet they share a similar objective of creating opportunities for children to express their views and for those views to be taken seriously. The content, exercise, and conditions of the right are discussed below.

### *3.2.1.1 The content of the right to express views*

The right imposes a positive obligation on duty-bearers to provide them with opportunities for participation.<sup>71</sup> This is expressed in peremptory terms. The UNCRC notes that states 'shall assure' to children the right to participate. The drafters of the African Children's Charter, benefitting from the wisdom and precedent of the UNCRC, also used peremptory phrases such as 'shall be provided' and 'shall be assured' to eliminate any discretionary powers that states or any relevant authority could use to limit the exercise and implementation of the right.<sup>72</sup> The duty-bearers and relevant authorities in this context include city authorities.

There are two important aspects of the right to participate: substantive and procedural elements. In the first instance, the substantive element guarantees respect for children and their views as independent and autonomous actors in matters that affect their lives.<sup>73</sup> It recognises the autonomy and agency of children, whose right to be heard is emphasised.<sup>74</sup> In the latter, the procedural element declares the need to provide children with mechanisms to enable or facilitate the

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<sup>71</sup> See Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 144.

<sup>72</sup> Ang *et al* "Participation Rights in the UN Convention on the Rights of the Child" 20.

<sup>73</sup> Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 143.

<sup>74</sup> Archard *Children: Rights and Childhood* 117.

implementation of other rights<sup>75</sup> and acts as a pathway to achieve and fulfil those rights.<sup>76</sup>

The content of the right to express views reinforces the recognition of the legal and social status of children as partners in decision-making in matters affecting their lives.<sup>77</sup> In other words, the right to participate envisages children as active participants with a seat at the table of decision-making and not merely passive recipients of protection from adults.<sup>78</sup>

### *3.2.1.2 Who is the beneficiary of the right?*

In general, every child is a beneficiary of the right to express views and have those views respected and taken seriously. In principle, the right is intended for enjoyment by all children who are capable of forming their own views,<sup>79</sup> including those with disabilities. Article 12 of the UNCRC does not impose any lower age limits on who should exercise the right to participate.<sup>80</sup> However, there are qualifiers in place to guide their participation in both public and private spheres.<sup>81</sup>

The right is enjoyed by any child who is "capable of forming his or her own views"<sup>82</sup> on a matter of concern to them. Article 7 of the African Children's Charter dictates

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<sup>75</sup> Parkes *Children and International Human Rights Law: The Right of the Child to be Heard* 31. See Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 143; Bonvin and Stoecklin "Introduction: Children's Rights and the Capability Approach" 6.

<sup>76</sup> Baraldi and Iervese "Observing Children's Capabilities as Agency" 44.

<sup>77</sup> *General Comment No.12 on the Right of the Child to be Heard* para 1.

<sup>78</sup> Reynaert, Bouverne-De Bie and Vandeveld 2012 *International Journal of Children's Rights* 159. See also Lücker-Babel 1995 *International Journal of Children's Rights* 398; Peleg "International Children's Rights Law: General Principles" 147-149.

<sup>79</sup> The exercise of the right is subject to the principle of evolving capacities as noted earlier.

<sup>80</sup> There is a danger in prescribing an age limit for children to participate in decision-making processes. While there are legal provisions and literature that prescribe ages, such as in the context medical decision-making processes, access to reproductive health and rights or adoption – it is a different case in the context of decision making in governance. For instance, section 129 (2)-(3) of the Children's Act prescribe 12 years as the minimum age to consent to a medical operation or surgery; section 134 of the Act declares that no child over 12 years can be deprived of access to sexual health and reproductive services; and section 233 of the Act prescribes that a child above 10 years can consent to his or her adoption.

<sup>81</sup> In the public sphere, there is a legitimate expectation that participation can constructively be done by children aged 10-17 years (adolescents). The age group of adolescents is considered to possess evolved capacities to engage in public affairs and share their views constructively on matters affecting them in local governance.

<sup>82</sup> Article 12(1) of the UNCRC.

that the right is enjoyed by any child who is "capable of communicating his or her views." This requirement limits the participation of children who are incapable of communicating a view, even if they have formulated a view. Arguably, a condition that requires the ability to communicate views is more restrictive and unnecessary because a child may not be able to verbally express or communicate a view but could have formed one.<sup>83</sup> It goes without saying that for a child to communicate a view as stipulated in the African Children's Charter, the child would have formulated a view in the first place, as provided in article 12 of the UNCRC. However, authorities should guard against a restrictive interpretation and implementation of the right to express views based on an adult's perception that children lack the capability to communicate a view<sup>84</sup> because doing so would deprive them of the opportunity to engage in governance.

One of the key challenges for authorities is understanding who should participate in the context of the provisions in the UNCRC and African Children's Charter. However, the guidance on the determination of the children that should participate and in what matter(s) is found in the concept of "evolving capacities."<sup>85</sup> It should be noted that qualification regarding age and maturity applies only to the weight given to the views already expressed and does not relate to the actual expression of views.<sup>86</sup>

Regarding the ability of children to form a view, the CRC Committee underlines that it is not necessary for children to have comprehensive and extensive knowledge of

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<sup>83</sup> See Assim "Civil Rights and Freedoms of the Child" 398. See also Gose *The African Charter on the Rights and Welfare of the Child* 125.

<sup>84</sup> To that, the CRC Committee underscores that the phrase that requires capability to form views should not be seen as a limitation but rather as an obligation for states parties "to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that [S]tate [P]arties cannot begin with the assumption that a child is incapable of expressing her or his own views ... State [P]arties should presume that a child has the capacity to form her or his own views and recognise that she or he has the right to express them." See *General Comment No.12 on the Right of the Child to be Heard* para 20.

<sup>85</sup> Article 5 of the UNCRC. See Lansdown *The Evolving Capacities of the Child* 1-62. See also UNICEF *Child Participation in Local Governance* 19; Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 23. The concept of evolving capacities must always inform the decision-maker on whether a child is capable of communicating or expressing views.

<sup>86</sup> Lansdown "Article 12: The Right to Be Heard" 42.



all aspects of matters affecting them. What is crucial is an assessment to determine whether children have a sufficient understanding of the issue at hand to form views on how the matter affects them.<sup>87</sup> Several factors in a child's life, such as everyday experiences, the environment, social and cultural expectations, and levels of family or communal support for their upbringing, contribute to the development of children's capacities to form a view and meaningfully participate in matters affecting them.<sup>88</sup>

As indicated above, children with disabilities have the right to express their views and have them taken seriously. For instance, article 23 of the UNCRC instructs states to provide special measures, mechanisms, and assistance to children with disabilities and promote and facilitate their active participation in the community.<sup>89</sup> Active community participation includes participation in decision-making and governance. For children with disabilities, article 13(1) of the African Children's Charter declares that states must promote their "active participation in the community" in line with their special participatory needs.

The *Convention on the Rights of Persons with Disabilities*, 2006 (CRPD)<sup>90</sup> sets the general principles that concern the implementation of the rights of persons with disabilities, to which full and effective "participation and inclusion"<sup>91</sup> are integral. Article 7 of the CRPD, which is specifically devoted to children with disabilities, declares that states should ensure that children with disabilities have the right to

[E]xpress their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with

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<sup>87</sup> *General Comment No.12 on the Right of the Child to be Heard* para 21. The CRC Committee further notes that age alone cannot determine the significance of a child's views, for children's levels of understanding are not uniformly linked to their biological age.

<sup>88</sup> *General Comment No.12* para 29.

<sup>89</sup> See Lansdown "Article 23: The Rights of Children with Disabilities" 193-204.

<sup>90</sup> In its preamble, the CRPD recognises that persons with disabilities, including children with disabilities, experience attitudinal and environmental barriers that hinder their full and active participation in the community on an equal basis with others. See para e in the preamble of the *Convention on the Rights of Persons with Disabilities* A/RES/61/106 (2006).

<sup>91</sup> Article 3(c) of the CRPD.

other children, and to be provided with disability and age-appropriate assistance to reali[s]e that right.<sup>92</sup>

The CRPD removes all references to capacity. It is clear that every child has the right to participate and express views, as shown in the above instruments. The right is exercised subject to the child's evolving capacity, as echoed in article 5 of the UNCRC. This right is exercised in all contexts, especially in the decision-making processes of city authorities in urban governance.

### *3.2.1.3 When is the right exercised?*

The right to express views should be enjoyed on all matters that affect the child. The phrase "all matters affecting the child"<sup>93</sup> in article 12 of the UNCRC was designed for flexibility and as a dynamic approach to ensure the application of the right in context-specific situations, which includes but is not limited to urban governance. Similarly, the African Children's Charter uses the phrase "in all administrative proceedings"<sup>94</sup> taken by relevant authorities, which should include local government decision-making mandates.

While the CRC Committee supports a broad definition of "all matters" to cover issues not explicitly mentioned in the UNCRC, it recognises that the clause "affecting the child" was added to clarify that no general political mandate was intended.<sup>95</sup> The right is exercised in matters that affect or concern children. Most urban governance issues that municipalities grapple with have a bearing on children. However, there is also a qualifier that the matter(s) must be of concern to and affect the child. This is relevant when a child's view is necessary to enhance the quality of decisions and

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<sup>92</sup> Article 7 of the CRPD. See also *General Comment No.9 on the Rights of Children with Disabilities* paras 32-33.

<sup>93</sup> See OHCHR and Save the Children *The Legislative History of the Convention on the Rights of the Child: Volume I* 437-443. The CRC Committee noted that "the Open-ended Working Group which drafted the text of the [UNCRC], rejected a proposal to define these matters by a list limiting the consideration of a child's or children's views. Instead, it was decided that the right of the child to be heard should refer to 'all matters affecting the child'..."

<sup>94</sup> Article 4(2) of the African Children's Charter.

<sup>95</sup> See *General Comment No.12 on the Right of the Child to be Heard* para 27.

outcomes. Thus, there is no legal requirement for children's views to be considered in governance issues that do not directly affect them.<sup>96</sup>

Generally, the right is exercised both in the private sphere<sup>97</sup> (micro-level, such as in family matters)<sup>98</sup> and in the public sphere<sup>99</sup> (meso-level, such as in school institutional policies and programmes and at the macro level, for instance, in subnational/city government policy-making).<sup>100</sup> Authoritatively, the CRC Committee has clarified and provided important insights into when this right is exercisable. For instance, it notes that the views of the child should be considered in all processes of decision-making, policy-making, and preparation of laws and other measures key to children's lives<sup>101</sup> because the "views expressed by children add relevant perspectives and experience."<sup>102</sup> This is relevant because it challenges notions and perceptions that view children as incompetent in participating in decision-making processes, especially at the local government level.

Importantly, the CRC Committee declares that the right must be exercised in all spheres of government, including the local government. It underscores that:

[M]uch of the opportunity for children's participation takes place at the community level. The [CRC] Committee welcomes the growing number of local youth parliaments, municipal children's councils and *ad hoc* consultations where children can voice their views in decision-making processes. However, these structures for formal representative participation in local government should be just one of many approaches to the implementation of article 12 [of the UNCRC] at the local level, as they only

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<sup>96</sup> See Couzens 2012 *International Journal of Children's Rights* 678.

<sup>97</sup> This study is not concerned with the participation that takes place in the private sphere such as homes, spaces which support what studies in sociology of childhood claims that even infancy and toddlers have a way to express their views and influence family decision making processes through verbal and non-verbal communication. The focus, herein, is on public affairs and urban governance which often involves children with evolved capacities, adolescents for example.

<sup>98</sup> See Lansdown "The Realisation of Children's Participation Rights" 11-23; Lansdown *Taking Part: Children's Participation in Decision Making* 17-30.

<sup>99</sup> As noted above, this study focuses on the public sphere, specifically at the local government level.

<sup>100</sup> See Herbots and Put 2015 *International Journal of Children's Rights* 159; Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 149; Austin "Children's Participation in Citizenship and Governance" 245-253; Bray "Effective Children's Participation in Social Dialogue" 30-35; Fitzgerald *et al* "Children's Participation as a Struggle Over Recognition" 293-305.

<sup>101</sup> *General Comment No.12 on the Right of the Child to be Heard* para 12.

<sup>102</sup> *General Comment No.12 on the Right of the Child to be Heard* para 12.

allow for a relatively small number of children to engage in their local communities.<sup>103</sup>

Furthermore, the CRC Committee notes that in community development plans that require public participation,<sup>104</sup> the views of children should be explicitly included.<sup>105</sup> This inclusion, which should occur in all matters that affect the child, should occur in all stages of planning and decision-making.

#### *3.2.1.4 Conditions for participation*

The right to participate is subject to certain conditions. First, the participation of children must be free and voluntary. However, the right to express one's views is not absolute. Thus, children should be allowed to express their views freely without coercion, duress, or undue influence. This means that expressing views is a choice for the child and should not be viewed as a compulsory undertaking on the part of the child.<sup>106</sup> By implication, children should be provided with information regarding the participation opportunities available to them and given the freedom of choice to determine their options without external influence and pressure. This observation is critical for ensuring that children are not forced to participate in any matter(s) that affects them against their will.<sup>107</sup> However, measures should be taken to ensure that children are not deprived of the opportunity to choose to participate.

Children can participate either directly or indirectly through a representative or both. In either approach, children are given the option to choose and decide whether to participate directly (in person or virtually)<sup>108</sup> or through a representative.<sup>109</sup> In cases that affect children as a group, there may be a fusion of direct and representative

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<sup>103</sup> *General Comment No.12 on the Right of the Child to be Heard* para 127.

<sup>104</sup> See 5.3 below.

<sup>105</sup> See *General Comment No.12 on the Right of the Child to be Heard* para 128.

<sup>106</sup> *General Comment No.12 on the Right of the Child to be Heard* para 16. See also Lundy 2007 *British Educational Research Journal* 931; Lansdown *Promoting Child Participation in Democratic Decision Making* 2.

<sup>107</sup> See *General Comment No.12 on the Right of the Child to be Heard* paras 22-25.

<sup>108</sup> See 4.4 below.

<sup>109</sup> There is a distinction between the child's right to legal representation such as litigation proceedings before judicial bodies or courts and (political) representation in the case of public affairs and governance issues. On representation in public affairs, see Josefsson *et al* "Representing Children" 1-22. Legal presentation falls outside the scope of the current study.

participation. This means that one or two children can directly participate in local council meetings that represent their own interests and those of the entire group of affected children.<sup>110</sup>

After the children have expressed views, article 12(1) of the UNCRC demands that those views must be accorded "due weight."<sup>111</sup> There is consensus among children's rights scholars that "giving due weight to the views" of children does not mean that their views are conclusive or determinative.<sup>112</sup> Instead, giving due weight to the views of children requires authorities to allow those views to inform and impact decision-making outcomes and actions undertaken by authorities.<sup>113</sup> Giving due weight to the views of children fosters dialogue based on mutual respect between adults and children, thereby making children active participants in the decision-making processes.<sup>114</sup> In addition, giving due weight and taking the views seriously demands that decision-makers provide children with child-sensitive, accessible, and transparent feedback.<sup>115</sup> This requirement enables mutual understanding between children and adults, thereby facilitating the effective implementation of the right to participate.

In all processes where children are heard and participate, the CRC Committee declares that the processes must be transparent and informative, voluntary,

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<sup>110</sup> See 4.4.1 below.

<sup>111</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 22; Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 143; Lundy 2007 *British Educational Research Journal* 937.

<sup>112</sup> Parkes *Children and International Human Rights Law: The Right of the Child to be Heard* 35; Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 151.

<sup>113</sup> Lansdown "Article 12: The Right to Be Heard" 43.

<sup>114</sup> Tobin "Justifying Children's Rights" 279-280. See *General Comment No.12 on the Right of the Child to be Heard* paras 71-74.

<sup>115</sup> *General Comment No.12 on the Right of the Child to be Heard* para 134. See Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 23; Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 150-151. See also the UN General Assembly report on *Child Participation as a Key Element in Preventing and Combating the Sale and Sexual Exploitation of Children* (2012) para 21 noting that "children must be provided with child-friendly and accessible feedback on their participation through immediate and clear statements on the impact and value of their contributions, the decisions that they have taken and the next steps. This enables children to understand the outcome and use of their contributions."

respectful, relevant, child-friendly, inclusive, safe, sensitive to risk, and accountable.<sup>116</sup>

### *3.2.1.5 Obligations of states and other duty-bearers*

As observed above, the UNCRC and the African Children's Charter are binding legal instruments that impose legal obligations on signatory member states. According to article 12 of the UNCRC, states are obligated to undertake appropriate measures and provide children with the "opportunity to be heard."<sup>117</sup> The provision of opportunities to be heard implies putting in place mechanisms for children to participate in all matters of concern, including in the governance of public affairs.<sup>118</sup> In peremptory terms, the provision codifies and entrenches the right of children to participate in matters that affect their lives. The drafters of the UNCRC used the phrase "shall assure" - which imposes strong and positive obligations upon states, leaving no room for discretion.<sup>119</sup> To this end, Lansdown<sup>120</sup> argues that the phrase is a powerful formulation imposing a strong and unequivocal obligation to undertake all necessary measures for the realisation of the right of children to participate.

Through several engagements, the UN General Assembly reaffirmed its global commitment to ensuring the inclusion of children in decision-making processes. For instance, a 2002 resolution titled 'A World Fit for Children'<sup>121</sup> calls upon UN member states to commit to the principles of listening to children and ensuring their participation.<sup>122</sup> Unequivocally, it declares that "children are resourceful citizens capable of helping to build a better future for all."<sup>123</sup> In line with the spirit of article

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<sup>116</sup> See *General Comment No.12 on the Right of the Child to be Heard* para 134. Similarly, the African Children's Committee has underscored that child participation processes should comply with these principles. See *General Comment No.5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* para 4.4, 13-14.

<sup>117</sup> See article 12 of the UNCRC.

<sup>118</sup> See 5.4 below.

<sup>119</sup> See Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 144. See also *General Comment No.12 on the Right of the Child to be Heard* para 19.

<sup>120</sup> Lansdown "Article 12: The Right to Be Heard" 42.

<sup>121</sup> *A World Fit for Children* paras 4-5.

<sup>122</sup> *A World Fit for Children* para 7(9).

<sup>123</sup> *A World Fit for Children* para 7(9).

12 of the UNCRC, the resolution underscores the importance of respecting children's rights to express their views and participate in all matters affecting them.<sup>124</sup> In addition, its Plan of Action proclaims a commitment to take all measures to ensure the fulfilment of all fundamental rights and freedoms of children, including promoting their self-reliance and facilitating their active participation in the community.<sup>125</sup> Noting the gendered disadvantages that girls often encounter, it urges states to empower girls to facilitate their full and equal participation in all spheres of society.<sup>126</sup> Moreover, it emphasises that access to a full range of information and services is crucial for enabling informed child participation.<sup>127</sup> Acknowledging the role of local governments and local authorities in placing children at the centre of development agendas,<sup>128</sup> it urges states to enable children to express their views in decision-making processes in the local government sphere.<sup>129</sup>

On the occasion of the 2006 Day of General Discussion (DGD)<sup>130</sup> under article 12 of the UNCRC,<sup>131</sup> the CRC Committee noted that the deeper meaning of child participation is that it establishes a "new social contract" with children.<sup>132</sup> It then reinforced that states should move from an events-based approach to the right to participation towards a "systematic inclusion in policy matters in order to ensure that children can express their views and effectively participate in all matters affecting them."<sup>133</sup> Noting that children are core stakeholders in the process of planning, designing, implementing, and evaluating children's rights at all levels,<sup>134</sup> the CRC Committee encourages states to establish mechanisms that facilitate the

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<sup>124</sup> *A World Fit for Children* para 7(9).

<sup>125</sup> *A World Fit for Children* para 21.

<sup>126</sup> See *A World Fit for Children* para 23.

<sup>127</sup> *A World Fit for Children* para 17. On access to information, see 3.4.1 below.

<sup>128</sup> *A World Fit for Children* para 32(3).

<sup>129</sup> See *A World Fit for Children* para 32(1).

<sup>130</sup> The DGD is an opportunity for the CRC Committee to consult and engage with governments, UN bodies, NGOs, national human rights institutions (NHRI), and children on a thematic issue under consideration.

<sup>131</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* (2006) para 56

<sup>132</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* para 5.

<sup>133</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* para 25.

<sup>134</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* para 28.

participation of children as an institutionalised tool for participation.<sup>135</sup> It also urges states to establish a designated authority responsible for children's rights, which will facilitate child participation.<sup>136</sup>

The CRC Committee urges states to establish "guidelines"<sup>137</sup> on how children's views are taken in democratic processes and forums of decision-making at the national and local levels.<sup>138</sup> One of the DGD outcome documents concluded that the right of children to participate in governance is transformative because it has the potential to change "political, social, and institutional structures."<sup>139</sup>

Affirming African regional commitments to the obligations enshrined in the African Children's Charter in relation to the rights and welfare of all children,<sup>140</sup> the AU adopted a continental Common Position on Children, Declaration and Plan of Action Towards an Africa Fit for Children (Children's Declaration).<sup>141</sup> The Children's Declaration boldly declares that the right of children to participate and to have their civil rights respected must be protected and enforced without delay.<sup>142</sup> This urges governments to enact legal and other measures that facilitate and ensure that children's views are considered in all matters concerning them.<sup>143</sup> In addition, the Children's Declaration urges governments to facilitate the freedom of association

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<sup>135</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* para 25.

<sup>136</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* para 25.

<sup>137</sup> See 3.2.2.1, 3.3.2.1 below.

<sup>138</sup> CRC Committee *Day of General Discussion on the Right of the Child to be Heard* para 30.

<sup>139</sup> *Outcome of the Day of General Discussion on The Right of the Child to be Heard* (2006) 2.

<sup>140</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* (2001) para 3. It also acknowledges the slow progress in implementing the right of children to participation in setting goals and policies, declaring that it has been insufficient. See para 16.

<sup>141</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children*.

<sup>142</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* para 29.

<sup>143</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* para 30(a).



and the expression of children in governance.<sup>144</sup> Importantly, this underscores the value of informed participation at all levels.<sup>145</sup>

There are two points worth highlighting. First, the Children's Declaration notes the evolving challenges of rapid urbanisation and its impact on children. In response, it urges states to create environments that would enable children's positive participation in governance.<sup>146</sup> Second, it recognises community participation as a genuine platform for the involvement of people, especially children, in policies and programme design and implementation.<sup>147</sup> In 2012, the AU renewed the call for action towards implementing the Children's Declaration and Plan of Action, further emphasising state commitments to enhance the participation of children in decisions affecting their lives by creating adequate opportunities at all levels, including the local government.<sup>148</sup>

The CRC Committee underscores that states must establish mechanisms to enable children to participate,<sup>149</sup> including at a local level.<sup>150</sup> In the case of children with

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<sup>144</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* para 30(e).

<sup>145</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* para 31.

<sup>146</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* paras 81-82.

<sup>147</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* para 35.

<sup>148</sup> *AU Renewed Call for Action on the Implementation of the Plan of Action Towards Africa Fit For Children (2013-2017)* (2012) para 9.

<sup>149</sup> See 5.4 below.

<sup>150</sup> The UN recommendations on *Child Participation as a Key Element in Preventing and Combating the Sale and Sexual Exploitation of Children* para 20 notes that "[c]hild participation mechanisms must operate in compliance with international human rights principles and standards and ensure: (a) institutionalisation of permanent and sustainable mechanisms for the participation of children in decision-making processes relating to all matters of their concern; (b) allocation of adequate budgets and resources to support meaningful and sustainable child participation; (d) establishment of, and adherence to, ethical standards and child rights principles that include transparency and accountability; (e) availability of, and access to, well-publicised, gender-sensitive and appropriate information that is suitable for all children [for instance, children with disabilities]; (f) establishment and maintenance of a safe and child-friendly environment ... ; (g) equality of opportunity and guaranteed participation of children from vulnerable, marginalised and at-risk groups ... making sure to avoid the participation and representation of children from only privileged backgrounds; (h) voluntary and informed participation of child representatives; (i) empowerment of child-led organisations and peer initiatives ... [and] (k) systematisation of children's participation in all monitoring and evaluation activities."

disabilities, the UNCRC, African Children's Charter, and CRPD impose obligations on states to adopt all appropriate legislative, administrative, and other measures to implement the rights of children with disabilities, particularly the right to participate. Among other things, this includes the duty to modify or abolish existing regulations, customs, and practices that deprive them of opportunities to participate in matters that affect their lives.<sup>151</sup> It also entails providing communicative and assistive technologies to enhance participation in public affairs.<sup>152</sup>

In its General Comment No. 5 on State Party obligations towards children, the African Children's Committee reiterated that child participation should be "institutionalised at all levels, including local government and community level."<sup>153</sup> It recommends the institutionalisation of child participation at all levels of government, specifically in the local government, and in compliance with the principles of participation.<sup>154</sup> This includes urging states to establish permanent and dedicated forums, such as child parliaments or learners' councils in schools, and forums aimed at bringing children's voices into governance.<sup>155</sup>

In addition, the obligation emanating from the right to express views applies to and binds non-state actors such as civil society organisations (CSOs) and the business sector. In its General Comment, the CRC Committee acknowledges and commends child-led organisations and NGOs as critical players in promoting awareness-raising on the right to be heard and supporting child participation in all matters affecting children at the local level.<sup>156</sup> For instance, CSOs often work on a multiplicity of issues, specifically governance and children's rights. Civil society often formalises NGOs and

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<sup>151</sup> Article 4(b) of the CRPD.

<sup>152</sup> Article 4(g)-(h) of the CRPD.

<sup>153</sup> *General Comment No.5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* para 4.4, 14.

<sup>154</sup> ACERWC General Comment No.5 para 4.4.

<sup>155</sup> *General Comment No.5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* para 6.8.

<sup>156</sup> *General Comment No.12 on the Right of the Child to be Heard* para 130.

community-based organisations (CBOs).<sup>157</sup> Added to this group are human rights-focused international non-governmental organisations (INGOs) and intergovernmental agencies that operate at the national level, support local initiatives, and provide technical and financial support to the government.<sup>158</sup>

Civil society plays a crucial role in urban governance, as it helps bridge the gap between governments and populations by providing a platform for the transmission of local views.<sup>159</sup> In practice, CSOs deliver various functions, including the provision of information, exerting pressure on municipalities to deliver their mandates and commitments, and providing technical assistance to support municipalities as advisers.<sup>160</sup> In addition, CSOs help drive and initiate action; establish and maintain networks; disseminate information at the local level; and monitor progress and challenges in implementing laws, policies, and commitments.<sup>161</sup> In addition, CSOs provide technical support in awareness-raising campaigns, advocacy, and capacity-building of stakeholders, communities, and government officials on the fundamental aspects of human rights, participation, governance, accountability, and transparency.<sup>162</sup>

It has been observed that INGOs and local NGOs are often at the forefront of human rights implementation and on the frontline of governance and development projects that benefit children.<sup>163</sup> In addition, NGOs working on child-focused governance, rights, and development issues are accredited for mobilising government organs to

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<sup>157</sup> These are also characterised as not-for-profit organisations (NPOs), which in terms of the *Companies Act* 71 of 2008, are set for a public benefit or relating to one or more cultural or social activities or communal or group interests. See schedule 1, section 1 of the *Companies Act* 71 of 2008.

<sup>158</sup> See *National Plan of Action for Children in South Africa (2019-2024)* 33. This is also acknowledged by child rights treaty monitoring bodies, see *CRC Committee Concluding Observations to the Second Periodic Report of the Republic of South Africa* para 52.

<sup>159</sup> UN-Habitat *Multi-level Governance for Effective Urban Climate Action in the Global South* 21.

<sup>160</sup> See Nel, Du Plessis and Retief "Key Elements for Municipal Action" 28.

<sup>161</sup> Evans *et al* *Governing Sustainable Cities* 16. See also article 14(2)(i) of the African Children's Charter which recognise the role of NGOs in the planning and management of basic service programmes for children, which may include educational programmes relevant to local governance issues.

<sup>162</sup> See *CRC Committee Concluding Observations to the Second Periodic Report of the Republic of South Africa* paras 56-60.

<sup>163</sup> Niewohner, Pierson and Meyers 2020 *Disability & Society* 1172-1173.

engage with children as active agencies in their communities, as well as empowering children to participate in governance.<sup>164</sup> These roles are essential for advancing the participation of children in the local government sphere. In South Africa, CSOs are influential in supporting the government in a wide range of governance and child rights issues, including participation in governance structures such as coordination forums and committees related to child rights.<sup>165</sup>

The private sector plays a critical and indispensable role in facilitating and enabling local governance and promoting children's rights, such as participation. This governance and human rights duty emanates from constitutional and legislative commands<sup>166</sup> as well as international law and policy. The recognition of the role of non-state actors underscores the need for states to engage all sectors of society, including the private and business sectors, to ensure the implementation of children's rights.<sup>167</sup> In addition, the UN High Commissioner for Human Rights notes that the private sector plays an important role to

[P]romote the strengthening and advancement of the realisation of children's rights [through the stimulation of] inclusive growth and ... enhance access to essential services; develop innovations to address human and sustainable development challenges; apply expertise and resources to improve the lives of those most in need; and reduce environmental footprint.<sup>168</sup>

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<sup>164</sup> WVI *Making Sense of the City: Developing Evidence Through Action Research and Learning* 16.

<sup>165</sup> *South Africa's Second Country Report to the African Committee of Experts on the Rights and Welfare of the Child on the African Charter on the Rights and Welfare of the Child* (2016) paras 16-21. The *Non-profit Organisations Act* 71 of 1997 recognises the diverse contributions of CSOs and their shared responsibility to work with the government in the spirit of cooperation to address and advance the needs of the population. See section 2 of the *Nonprofit Organisations Act* 71 of 1997.

<sup>166</sup> For instance, section 8(2) of the Constitution stipulates that the provisions of the Bill of Rights bind juristic persons and, in this case, business entities registered and operating in South Africa. Section 7 of the *Companies Act* stresses the need for the business sector to comply with the Bill of Rights and encourage transparency and high standards of cooperative governance in South Africa. Section 7(a)-(b) of the *Companies Act*.

<sup>167</sup> See *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* paras 1 and 56.

<sup>168</sup> *Towards Better Investment in the Rights of the Child: Report of the United Nations High Commissioner for Human Rights* (2014) para 52.

In addition, the business sector plays a critical role in ensuring that the principles of good governance and child rights are observed and respected in the digital environment,<sup>169</sup> technological advances, and responsible investment.<sup>170</sup>

Importantly, the business sector provides services that promote the participation of children in governance, especially during the COVID-19 pandemic, when digital technology accelerated virtual consultations and meetings.<sup>171</sup> Thus, the business sector has a dual duty to promote the participation of children through the provision of online services and putting safeguards to protect children from online exploitation. Acknowledging that the business sector operating at both the national and local levels has an impact on children's lives, the CRC Committee underscores that states have obligations to ensure that

The business sector meets its responsibilities for children's rights in relation to the digital environment by taking all necessary measures, including [the] adoption of legislation and regulations and the development, monitoring, and enforcement of policy.<sup>172</sup>

Accordingly, the private sector plays an indispensable role in urban governance and human rights and, in some cases, in service delivery (when working with

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<sup>169</sup> The digital environment is a space that includes "the internet and mobile technologies; digital networks, content, services and applications; old and new systems of media, communication and information; connected devices and environments; virtual and augmented reality; artificial intelligence." See *General Comment No.25 on Children's Rights in Relation to the Digital Environment* para 2.

<sup>170</sup> As illustrated by the CRC Committee, the business sector has a great impact on the implementation of children's rights due to factors such as "the globalised nature of economies and of business operations and the ongoing trends of decentrali[s]ation, and outsourcing and privatising of State functions that affect the enjoyment of human rights." See the *General Comment No.16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights* (2013) para 1.

<sup>171</sup> Venter argues that municipalities are required to use e-governance to promote participatory governance, through the use of information and communication technology (ICT). See Venter "Local Government and Its External Environment" 96.

<sup>172</sup> See *General Comment No.25 on Children's Rights in Relation to the Digital Environment* para 36. Additionally, it expresses that states should require businesses that impact on children's rights in relation to the digital environment to establish and implement regulatory frameworks, industry codes and terms of services that adhere to the highest standards of ethics, privacy and safety into the design, ...development, operation, distribution and marketing of their technological products and services. See para 39.

municipalities), which implies that businesses must comply with local government laws, policies, and regulations to advance the inclusion of children in governance.

### *3.2.2 Recent developments in Africa*

The above discussion has set a normative framework for the right of children to participate in matters concerning their lives, including urban governance. Noting the challenges in relation to child participation in Africa, such as the lack of domestication of the right,<sup>173</sup> the ACERWC has made and continues to make efforts to mainstream child participation in law and policy, as well as decision-making processes at the AU level, and providing guidance to member states. This section highlights recent developments that complement global calls and efforts with the potential to influence the trajectory of child participation in Africa and AU member states. The most recent developments are the adoption of the *Guidelines on Child Participation*, 2022 (Child Participation Guidelines),<sup>174</sup> by the African Children's Committee and the Agenda 2040.

#### *3.2.2.1 Guidelines on Child Participation*

The Child Participation Guidelines articulate the obligations of AU member states to ensure and support the involvement of children in local governance.<sup>175</sup> The adoption of the Child Participation Guidelines was necessitated by the realisation that AU member states are experiencing numerous challenges in translating child participation from theory to practice, including governance.<sup>176</sup>

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<sup>173</sup> See *General Comment No.5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* para 4.4.

<sup>174</sup> This is in line with the mandate of the African Children's Committee. Article 42(a) and (c) of the African Children's Charter declares that the functions of the African Children's Committee shall be, among other things, to promote and protect the rights enshrined in the instrument particularly to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa and to interpret the provisions of the present Charter at the request of a member state or any person or institution recognised by the AU.

<sup>175</sup> In the African context, the idea of the participation of youth (in this case, children) in local governance is entrenched in legal instruments. For instance, article 11(2) of the African Youth Charter provides for participation in parliament and other decision-making bodies, and the need to facilitate and strengthen platforms of participation in local levels of governance.

<sup>176</sup> See *General Comment No.5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* para 4.4.

Importantly, the Child Participation Guidelines align with and fulfil the mandate of the Special Rapporteur on Child Participation<sup>177</sup> – a special mechanism of the ACERWC in the performance of its mandate. The Special Rapporteur is an appointment among committee members, wherein the appointed expert will have a mandate with respect to the assigned thematic focus.<sup>178</sup> The appointment of a Special Rapporteur on Child Participation is a sign of a regional commitment to foster the participation of children on the continent, including in AU processes and governance. Specifically, the Special Rapporteur mandate includes the following:

- i. Participate in developing guidelines and standards on child participation in various sectors of society and government in accordance with the [African Children's Charter];
- ii. Disseminate, seek, receive, examine and act upon information on areas related to child participation;
- iii. Submit reports on national practices, emerging trends and challenges in the area of child participation in Africa;
- iv. Bring to the attention of the Committee challenges affecting child participation;
- v. Initiate and take the lead in missions that aim to promote and advocate for child participation in development issues and reali[s]ation of human rights.

In principle, the Child Participation Guidelines are based and anchored in articles 4(2) and 7 of the African Children's Charter.<sup>179</sup> On the strength of these provisions, the Child Participation Guidelines reiterate the obligation of states to ensure that all spheres of governance, particularly the local government,<sup>180</sup> take appropriate measures to promote and protect the rights of children to participate. The Guidelines urge states to establish the following:

[C]hild participation structures at the sub-national level that link children at community and national level structures to ensure that there is free and

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<sup>177</sup> See *Resolution on the Appointment of a Special Rapporteur on Child Participation* <https://www.acerwc.africa/wp-content/uploads/2018/08/Child-Participation.docx>.

<sup>178</sup> The appointment of Special Rapporteurs is one of the approaches used by the African Children's Committee in the execution of its mandate. There are 10 Special Rapporteurs appointed across various thematic issues, such as health, welfare and development; children and armed conflicts; violence against children; education; child marriage and other harmful practices; children in vulnerable situations; children on the move; children in conflict with the law; parental responsibilities and child responsibilities. See <https://www.acerwc.africa/special-rapporeurs/>.

<sup>179</sup> *Guidelines on Child Participation* (2022) para 6.

<sup>180</sup> *Guidelines on Child Participation* paras 102-103.

continuous flow of information by children and for children, and children are able to influence policies and decision making at all levels of governance. A well-coordinated structure at the sub-national level, will ensure effective child participation processes during the build-up process at the national level.<sup>181</sup>

Interestingly, the Child Participation Guidelines recognise the role of local leadership in fostering the participation of children in governance.<sup>182</sup> It acknowledges that the meaningful involvement of local communities in the planning and management of basic service programmes for children is critical for their inclusion and participation.<sup>183</sup> The Guidelines also support the need for all spheres of governance, including at the city level, to take all appropriate measures to promote and protect the rights of children to participate in the build-up process from the local level to the national level.<sup>184</sup>

However, the Child Participation Guidelines are not legally binding. They are persuasive and are implemented according to the state's will, discretion, and commitment. While it is premature to comment on the success of the Child Participation Guidelines, it is important to note that they have great potential to positively impact child participation practices in general and in urban governance specifically. It should be noted that the Child Participation Guidelines are a useful tool for providing guidance on how states should approach child participation, specifically noting that it is a bottom-up strategy for governance on issues concerning children.

### *3.2.2.2 Africa's Agenda for Children: Agenda 2040*

The African Children's Committee adopted Agenda 2040 in 2016 with the vision of fostering an Africa that is fit for children.<sup>185</sup> Agenda 2040 is an outcome document of a high-level event celebrating the 25 years since the adoption of the African Children's Charter. Agenda 2040 is not legally binding but has persuasive value in guiding member states in implementing their commitments under AU legal and

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<sup>181</sup> *Guidelines on Child Participation* para 103.

<sup>182</sup> *Guidelines on Child Participation* para 104.

<sup>183</sup> Article 14(i) of the *African Charter on the Rights and Welfare of the Child* (1990).

<sup>184</sup> *Guidelines on Child Participation* para 106.

<sup>185</sup> See the preamble of Agenda 2040.



policy frameworks.<sup>186</sup> Importantly, it was founded on the rights and principles set out in the African Children's Charter.

Setting ten aspirations for children on the continent, Agenda 2040 aligns with Aspiration 6 of Agenda 2063, which explicitly references children, highlighting their vulnerability and the need to prioritise their care and protection.<sup>187</sup> As a regional developmental policy, Agenda 2040 is implemented based on national implementation plans, giving states the latitude and responsibility to ensure that it materialises in the lives of children. For effective implementation and monitoring, Agenda 2040 is divided into five implementation phases: 2020, 2025, 2030, 2035, and 2040, with an overall Action Plan guiding each phase.<sup>188</sup> It is anticipated that progress towards its implementation will progressively improve in each phase.<sup>189</sup>

Aspiration 10 of Agenda 2040 is titled "African children's views matter". By providing for this right and/or principle, Agenda 2040 elevates child participation on the AU political agenda. The true meaning and scope of Aspiration 10 must be understood in terms of Agenda 2063's aspirations for a continent in which everyone is actively involved in decision-making processes.<sup>190</sup> Aspiration 10 aims to ensure that by 2040:

Child participation, based on the principles of representation, inclusion and accountability, is cultivated at all levels.

Children participate meaningfully in law making and policy adoption in matters affecting their interests, and are involved in the oversight of their implementation.

Dedicated processes for children's participation are in place, such as a permanent and dedicated forum in the form of a child parliament, or ad hoc forum in the form of a child caucus aimed at bringing forward the voices of children in these processes.

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<sup>186</sup> Fambasayi 2023 *International Journal of Human Rights* (forthcoming).

<sup>187</sup> Aspiration 6 of Agenda 2063.

<sup>188</sup> Agenda 2040.

<sup>189</sup> For a report on the first phase 2016-2020, see ACERWC *Agenda 2040: Fostering an African Fit for Children - Assessment of the First Phase of Implementation (2016-2020)* 1-230.

<sup>190</sup> *Agenda 2063: The Africa We Want* para 47.

At school level, child participation and leadership are cultivated by involving children in school management, for example in advisory student/learner councils.

Legal protection is in place affirming children's rights to assemble, organise and access information and to express themselves freely.

Children have the right to be consulted and heard in proceedings involving or affecting them.

Importantly, Agenda 2040 emphasises the inclusion of children in all processes at all levels, including in the monitoring and accountability process for law and development policies such as the SDGs and Agenda 2040 itself.<sup>191</sup> Aspiration 10 is critical in that it has the potential to galvanise political will, foster commitment to inclusion, and drive the participation agenda while enhancing the implementation of the fundamental rights and freedoms of children enshrined in the African Children's Charter.

The above discussion surveyed the scope and some of the conditions for the participation of children in matters concerning them, as envisaged under international children's rights law.<sup>192</sup> The following section explores whether and how South African law and policies promote child participation.

### **3.3 Child participation under South African law and policy**

As noted earlier, section 39(1)(b) of the Constitution requires that international law be considered in the interpretation of provisions in the Bill of Rights. With this understanding in mind, this section deliberates on the constitutional, legislative, and policy provisions that support the participation of children in matters concerning them, including the governance of their cities.

While the legal framework relied upon in this study is post-1994, it is important to highlight the role that children played in South Africa's history during apartheid.<sup>193</sup>

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<sup>191</sup> Agenda 2040 para 6.

<sup>192</sup> A discussion of details of the mechanisms for participation in South Africa ensues in 5.4 below.

<sup>193</sup> See Abrahams and Matthews *Promoting Children's Rights in South Africa: A Handbook for Members of Parliament* 10-14; UNICEF *Children on the Frontline: The Impact of Apartheid, Destabilisation and Warfare on Children in Southern and South Africa* 1-67.

It is not disputed that children played a critical role in apartheid political and public affairs through their involvement in student uprisings, school boycotts, and armed struggles,<sup>194</sup> specifically in urban areas such as Soweto.<sup>195</sup> Some scholars argue that children's political credibility and importance were recognised and acknowledged during the anti-apartheid struggle.<sup>196</sup> This demonstrates that the participation of children in public affairs and governance in South Africa has a long history, and has been more solidified through enabling legislative and policy frameworks.

The subsequent sections discuss South African national law and policy to ascertain how it provides for child participation in general and at city-level governance, thereby laying a solid foundation for the participation of children in governance as a legal right in the domestic sphere.

### *3.3.1 Constitutional and statutory law*

#### *3.3.1.1 A 'constitutional image' of the child*

If a child is to be constitutionally imagined as an individual with a distinctive personality and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them.<sup>197</sup>

The above extract from the Constitutional Court of South Africa confirms that every child has his/her own dignity. This builds on the backdrop of the South African

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<sup>194</sup> Bray and Moses 2011 *Perspectives in Education* 8-9.

<sup>195</sup> Casseim, Ewing and Kgwete, contend that students, dominated by children between 11 and 18 years, organised a peaceful march to protest against the apartheid regime, what came to be known as the Soweto uprising of 16 June 1976 (now the AU Day of the African Child). The activism of students shaped the governance of the day in pre-independence South Africa. For instance, it is believed that approximately 100 000 children boycotted schools between 1980 and 1981, with a mass boycotts repeating in 1985 across South Africa with a broadened focus on several community issues affecting children and the youth. See Casseim, Ewing and Kgwete "Everywhere We Go, Our Presence is Felt': Reflections on a Governance and Budget-monitoring Project in South Africa" 219-221.

<sup>196</sup> See Moses 2008 *International Journal of Children's Rights* 329. See also *CRC Committee Concluding Observations to the Initial Report of the Republic of South Africa* (22 May 1998) paras 477-483.

<sup>197</sup> *S v M (Centre for Child Law as Amicus Curiae)* 2008 3 SA 232 (CC) para 18. Sloth-Nielsen notes that the Constitutional Court constructs an image of the "constitutional child", as envisaged in section 28 of the Constitution. See Sloth-Nielsen 2019 *De Jure Law Journal* 504.

Constitution, which entrenches a provision dedicated to children's rights. In particular, section 28 of the Constitution provides for the rights and interests of children. This distinct provision explicitly affirms that children bear fundamental human rights and freedoms. Notably, section 28 has its origins in international children's rights law and "must be seen as responding in an expansive way to [South Africa's] international obligations."<sup>198</sup> In addition, section 28 has its origins in South African history, in which the position of children and their activism was prominent.

According to Sloth-Nielsen, section 28 of the Constitution constitutionalises children's rights, elevating the status of the right of children to the highest point in a legal system.<sup>199</sup> She further argues that constitutionalising children's rights has the twin advantages of 'entrenchment' (making them harder to erode) and 'supremacy' (making it possible to enforce children's rights in the face of conflicting lower laws and policies).<sup>200</sup> The Constitutional Court confirms the elevated status of the constitutionalisation of children's rights, noting that children are autonomous and competent beings with independent rights, freedoms, and interests.

Despite the constitutional rights of children in the supreme law, the Constitution does not refer to "child participation" and/or the "right to be heard" in matters or decision-making processes affecting their lives.<sup>201</sup> This implies that section 28 of the Constitution is protection-oriented. It portrays children as vulnerable rights-bearers in need of protection without expressing recognition of their agency.<sup>202</sup> However, it could be argued that South Africa's ratification of international children's rights law

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<sup>198</sup> Sachs J, in *S v M (Centre for Child Law as Amicus Curiae)* 2008 3 SA 232 (CC) para 16.

<sup>199</sup> Sloth-Nielsen 2019 *De Jure Law Journal* 520. See also Skelton "Constitutional Protection of Children's Rights" 327-358; O'Mahony "The Promises and Pitfalls of Constitutionalising Children's Rights" 869-864; Tobin 2005 *South African Journal on Human Rights* 86-126; Sloth-Nielsen and Kruuse 2013 *International Journal of Children's Rights* 646-678; O'Mahony 2019 *Human Rights Law Review* 401-434.

<sup>200</sup> See Sloth-Nielsen 2019 *De Jure Law Journal* 520.

<sup>201</sup> This is different when compared with the *Constitution of Zimbabwe Amendment (No. 20) Act, 2013* (Zimbabwean Constitution), specifically section 81(1)(a) which notes that "every child has the right to equal treatment before the law, including the right to be heard."

<sup>202</sup> For a discussion on the agency of children in a constitutional scheme, see O'Mahony 2019 *Human Rights Law Review* 418-424.

is a sign of a commitment to respect and protect all the rights of children,<sup>203</sup> including the right to participate and be heard.<sup>204</sup>

Section 28(2) of the Constitution underscores that the best interests of a child are of paramount importance in every matter concerning the child. The best interests of the child principle have been elevated to a constitutional right,<sup>205</sup> serving as a "multifunctional tool"<sup>206</sup> to advance the rights and well-being of children. There is an indivisible link between child participation and the best interests of the child principle,<sup>207</sup> as decision-makers often need to hear children's views to understand what is in their best interests.<sup>208</sup>

Constitutionally speaking, everyone is entitled to equality before the law and the right to equal the benefit of the law,<sup>209</sup> especially the provisions in the Bill of Rights.<sup>210</sup> This means that children, as a 'category of persons,'<sup>211</sup> are entitled to enjoy all the rights protected in the Constitution, except for the right to vote. By implication, children have the constitutional right to freedom of expression (which includes the freedom to receive or impart information),<sup>212</sup> the right to peaceful assembly, and freedom of association.<sup>213</sup> In the local government sphere, section 152 of the Constitution encourages the involvement of communities in local governance.<sup>214</sup> However, this provision could be subject to restrictive interpretation, thus limiting the inclusion of children and their participation in urban governance.<sup>215</sup>

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<sup>203</sup> On the transformative implication of international children's rights, see for instance, Kilkelly and Liefwaard 2019 *De Jure Law Journal* 523-539.

<sup>204</sup> The right is protected in the *Children's Act*. See 3.3.1.2 below.

<sup>205</sup> *General Comment No.12 on the Right of the Child to be Heard* paras 22, 26 and 32. See Bonthuys 2006 *International Journal of Law, Policy and the Family* 23-43.

<sup>206</sup> Couzens "The South African Constitutional Court and the Best interests of the Child" 545.

<sup>207</sup> See 4.6.2 below.

<sup>208</sup> See 4.6.2.2 below.

<sup>209</sup> Section 9(1) of the *Constitution*.

<sup>210</sup> Section 7(1) of the *Constitution*.

<sup>211</sup> Section 9(2) of the *Constitution*.

<sup>212</sup> Section 16(1)(b) of the *Constitution*.

<sup>213</sup> Sections 17-18 of the *Constitution*.

<sup>214</sup> See 5.3.2 below.

<sup>215</sup> For a further discussion, see 4.4 below.

### 3.3.1.2 *The right to 'appropriate' participation*

The Children's Act, which complements the rights of children in the Bill of Rights,<sup>216</sup> provides for children's rights and general principles to guide the implementation of all legislation and rights applicable to children,<sup>217</sup> specifically the right of every child to "participate in an appropriate way."<sup>218</sup> Section 10 of the Act underscores:

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

Section 10 is central to the inclusion of children's views on urban governance in South Africa, as read with provisions related to municipal law and policies.<sup>219</sup>

Davel opines that section 10 of the Act incorporates article 12 of the UNCRC into its domestic legal system.<sup>220</sup> However, what Davel fails to note is that the provision in section 10 of the Act is a dilution of article 12 of the UNCRC in that it declares that participation should be in "an appropriate way."<sup>221</sup> It could be argued that participation in an appropriate way imports the requirement to put safeguards to protect children from any potential harm that may arise during the process of contributing to decision-making.<sup>222</sup> Ensuring that child participation is implemented in an appropriate way warrants that all children, including those with disabilities, have the right to actively participate in their communities and are provided with the necessary and suitable tools to enable, facilitate, and enhance their participation.<sup>223</sup>

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<sup>216</sup> Section 8(1) of the *Children's Act*.

<sup>217</sup> Section 6(1) of the *Children's Act*.

<sup>218</sup> Section 10 of the *Children's Act*.

<sup>219</sup> For a detailed discussion, see 5.3-5.4 below.

<sup>220</sup> Davel "General Principles" 2. See also Moyo 2015 *South African Journal on Human Rights* 174.

<sup>221</sup> Section 10 of the *Children's Act*. One of the criticisms is how to determine what is appropriate in any process that requires the participation of children.

<sup>222</sup> There is literature that supports the need to put safeguards for children to participate in judicial proceedings. See Zaal "Hearing the Voices of Children in Court: A Field Study and Evaluation" 158-185; Fambasayi and Koraan 2018 *Potchefstroom Electronic Law Journal* 1-30; Fambasayi 2019 *South African Journal of Criminal Justice* 52-75. Similar arguments could be made in relation to safeguards for child participation in local governance structures.

<sup>223</sup> See section 11(1)(e) of the *Children's Act*.

However, scholars such as Couzens<sup>224</sup> criticise section 10 for being couched in an individualistic manner. She claims that the Act focuses on "the right of children to be heard in matters concerning [children] individually," thereby overlooking collective participation.<sup>225</sup> On the other hand, Moyo<sup>226</sup> laments the failure of the Children's Act to link the right to participate with freedom of expression. He further argues that "an express statement [in the Children's Act] that the child should participate 'freely' would have ensured that state agencies"<sup>227</sup> do not influence or coerce children to participate. In their arguments, Couzens and Moyo portray the image that section 10 of the Act is weak and vulnerable to restrictive participation, which, in the context of this study, rigidly restricts the participation of children in urban governance.

The Children's Act authoritatively guides proceedings, actions, and decisions of any organ of the state on any matter concerning children.<sup>228</sup> The Act imposes a duty on all organs of the state in any sphere of government, including the local government, to respect, protect, and promote children's rights.<sup>229</sup> In addition, the general principles set out in the Act, such as the best interests principle and child participation, guide the implementation of all legislation applicable to children,<sup>230</sup> including those pertaining to local governance, and how they intersect with children's rights. The Children's Act is a prime legislative instrument that entrenches child participation under South African law. Thus, it eliminates any doubt about whether the government has a legal responsibility for the participation of children in matters concerning them.

In addition to the Children's Act, other legislative instruments reinforce the participation of children in context-specific governance issues. For instance, the

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<sup>224</sup> Couzens 2012 *International Journal of Children's Rights* 687.

<sup>225</sup> There is undeniable evidence that child participation applies to children, as individuals and in the collective. See *General Comment No.12 on the Right of the Child to be Heard* paras 9-14.

<sup>226</sup> Moyo 2015 *South African Journal on Human Rights* 175.

<sup>227</sup> Moyo 2015 *South African Journal on Human Rights* 175.

<sup>228</sup> Section 6(1) of the *Children's Act*.

<sup>229</sup> Section 8(2) of the *Children's Act*.

<sup>230</sup> Section 6(1) of the *Children's Act*.

*National Youth Development Agency Act* 54 of 2008 (NYDA) is a complementary legal instrument to advance the rights of children to participate in governance and promote the right to participate in governance and decision-making processes. In terms of the NYDA, a youth is any person between the ages of 14 and 35.<sup>231</sup> A purposive reading of the age group shows that youths between the ages of 14-18 years are still children. Thus, children within this age group are entitled to enjoy the rights and freedoms articulated for youth in terms of the NYDA. Any reference to youths in this study refers to those aged 14–18 years.

Section 4 of the NYDA establishes principles for regulating youth development, including promoting youth participation in democratic processes, civic decision-making processes, and development at all levels.<sup>232</sup> It further notes that the challenges of youth must be addressed and responded to in a realistic and participatory manner<sup>233</sup> while upholding the value of sustainability to ensure that the needs of current youth are met without compromising the ability of future generations to meet their own needs,<sup>234</sup> thereby promoting transparency, accountability, and accessibility of governance institutions.<sup>235</sup> It goes without saying that the NYDA provides a solid legal foundation for youth participation, in this case, children, in the governance of their cities.

Moreover, the *South African Schools Act* 84 of 1996 (SASA) gives every child the right to participate in educational settings.<sup>236</sup> In particular, it provides for learners' participation in the governance of their schools and school governing bodies.<sup>237</sup> The central aim of SASA is to ensure the inclusion of children's views in the governance

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<sup>231</sup> Section 1 of the *National Youth Development Agency Act* 54 of 2008.

<sup>232</sup> See section 4(d) of the *National Youth Development Agency Act*.

<sup>233</sup> Section 4(f) of the *National Youth Development Agency Act*.

<sup>234</sup> Section 4(h) of the *National Youth Development Agency Act*. See also 2.4.4 above.

<sup>235</sup> Section 4(j) of the *National Youth Development Agency Act*.

<sup>236</sup> Section 11(1)-(2) of the *South African Schools Act* 84 of 1996 declares in peremptory and unequivocal terms the requirement for schools to establish a representative council of learners in every public school in the eighth grade or higher.

<sup>237</sup> The Department of Basic Education (DBE) has expanded this provision by ensuring the participation of children in the development of various education policies and programmes, and climate change policy and programming dialogues. See the *CRC Committee Concluding Observations to the Second Periodic Report of the Republic of South Africa* 94, para d(i).



and administration of their schools.<sup>238</sup> The preamble of SASA declares that its aim, among other things, is to "advance the democratic transformation of society." While the provision is specifically related to the school context and not urban governance, it demonstrates the legislative shift towards viewing children as co-decision-makers.<sup>239</sup> For instance, section 8(1) of SASA emphasises the importance of deliberative consultations with children, together with other stakeholders, in all decision-making processes that concern the governance of schools.<sup>240</sup> Consultation with learners is an integral part of understanding the perspectives of children. It represents the collective wisdom of all who participate in promoting and deepening democracy.<sup>241</sup>

However, SASA limits participation to educational settings and thereby excludes children who are outside the school system or school leavers. This argument does not hold water in that every school-going child is a community member who is constitutionally required to be in school with the opportunity to (progressively) learn about participation in governance within the school setting. The underlying assumption is that every child must be in school, although there are exceptional individual difficulties that may result in them not attending school. In such unfortunate circumstances, the Children's Act and NYDA collectively provide a benchmark for their participation in the governance of their communities.

In addition, other sectoral legislations can be used to provide guidance on child participation in urban governance. For instance, in the context of local environmental governance, children can arguably claim the right to participate through some of the principles set out in the *National Environmental Management Act* 107 of 1998 (NEMA). NEMA declares that the full participation of youth must be explicitly

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<sup>238</sup> See Moses 2008 *International Journal of Children's Rights* 329.

<sup>239</sup> Adams and Waghid 2005 *South African Journal of Education* 25-32. See also the *CRC Committee Concluding Observations to the Initial Report of the Republic of South Africa* para 399(e).

<sup>240</sup> See Carr and Williams 2009 *South African Journal of Education* 69-70.

<sup>241</sup> *MEC for Education, KwaZulu-Natal v Pillay* para 82. Langa CJ (as he then was) pointed out that "[t]here is no doubt that consultation and public participation in local decision-making are good and deserve to be applauded. They promote and deepen democracy. In the context of the Code [of Conduct], it means that the [s]chool community is involved in the running of the [s]chool and acquires a sense of ownership over the Code [of Conduct]."

recognised. In addition, the Act provides a liberal approach to participation for both interested and affected parties. For example, section 2(4)(q) of the NEMA provides that

[t]he vital role of ... youth in environmental management and development must be recognised, and their full participation therein must be promoted.<sup>242</sup>

In addition, section 2(4)(f) underscores that -

[t]he participation of all 'interested and affected parties' in environmental governance must be promoted, and 'all people' must have the opportunity to develop the understanding, skills, and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.<sup>243</sup>

It has been argued that the reference to "all interested and affected parties", "all people, and "vulnerable and disadvantaged persons" is not defined in the Act. Nevertheless, it goes without saying that children can also be classified as affected members of a community, constitute an interested group, and are a vulnerable group in the context of environmental harm.<sup>244</sup> As observed earlier, the NYDA's reference to youths includes children, which means that the reference to or use of "youth" in NEMA applies to and protects children. A purposive reading of NEMA principles and provisions enables and facilitates the participation of children in environmental and climate governance at the city level.

Furthermore, the Climate Change Bill, which incorporates the principles set out in NEMA, declares the need for decision-making processes to consider the special needs and local circumstances of vulnerable groups, such as children, regarding the adverse effects of climate change<sup>245</sup> while also promoting public participation and action at all levels of governance.<sup>246</sup> Section 9 of the Bill proposes the establishment of Municipal Forums on Climate Change, which could be an institutional mechanism

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<sup>242</sup> Section 2(4)(q) of the *National Environmental Management Act* 107 of 1998.

<sup>243</sup> Section 2(4)(f) of NEMA.

<sup>244</sup> Fambasayi 2021 *Stellenbosch Law Review* 405-407.

<sup>245</sup> See proposed section 3(f) of the Climate Change Bill in Government Gazette No. 45299 (B9-2022) of 2022.

<sup>246</sup> See proposed section 3(k) of the Climate Change Bill in Government Gazette No. 45299 (B9-2022) of 2022.

to embed the participation of children in local climate governance. However, the Bill is silent on the participation of children, which is arguably a missed opportunity to reinforce the value and importance of child participation in local governance decision-making processes.

The *Promotion of Administrative Justice Act* 3 of 2000 (PAJA) provides for public participation in administrative decision-making and ensures procedural fairness and the necessity for a participatory process.<sup>247</sup> In other words, PAJA states that processes for public participation are imperative for ensuring more informed and defensible decisions.<sup>248</sup>

In the local government sphere, the *Local Government: Municipal Systems Act*, 32 of 2000 (Municipal Systems Act), provides that:

[a] fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning.<sup>249</sup>

However, the Municipal Systems Act does not explicitly mention or refer to "child or children." While the Act progressively provides for public participation in governance, there are challenges to the inclusion of children in urban governance because local government law prescribes political structures as a means to facilitate public participation.<sup>250</sup>

The above legislative instruments demonstrate that the South African legislature foresaw a democratic space for the inclusion of the public in decision-making processes, a legal basis for pursuing the participation of children in urban

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<sup>247</sup> The preamble notes that the Act also aims to promote good governance, efficient administration, a culture of accountability, openness and transparency in public administration and decision-making.

<sup>248</sup> See section 4 of the *Promotion of Administrative Justice Act* 3 of 2000.

<sup>249</sup> See the preamble of the *Municipal Systems Act*.

<sup>250</sup> For a comprehensive discussion on the inclusion of children in decision-making in urban governance in South Africa, see chapter 5 below.

governance. The following discussion shows that the policy landscape for the inclusion of children is based on principles of child participation.

### *3.3.2 Advancing child participation through national policies*

Building on the constitutional and legislative framework above, this section discusses national policies relevant to advancing the participation of children in the governance of their cities. These include the *National Child Participation Framework* (2019), *National Plan of Action for Children* (2019), NDP, and *Integrated Urban Development Framework*, 2016). Essentially, policies inform and guide the public on the vision and intention of the government while providing strategic direction for role players, clarifying the roles and responsibilities of different stakeholders, facilitating consistency in decision-making, and the implementation and monitoring of policy interventions.<sup>251</sup> While the policies are discussed separately, they have collective application and mutually reinforce a common agenda to ensure the inclusion of children in decision-making.

#### *3.3.2.1 National Child Participation Framework*

South Africa adopted the *National Child Participation Framework* 2019 (Child Participation Framework or NCPF)<sup>252</sup> to strengthen the implementation of child participation in the country. The NCPF is a remarkable step in giving effect to section 10 of the Children's Act on Child Participation. The drafting of the NCPF is informed by the fact that the practice of child participation is generally misunderstood at various levels—more specifically, governance. It recognises that there is a plethora of legislative and implementation gaps and persistent barriers to child participation,<sup>253</sup> thereby highlighting the need to have a sound guiding policy instrument.<sup>254</sup> For instance, it notes that there are no formal systematised

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<sup>251</sup> *National Policy Development Framework* (2020) 10.

<sup>252</sup> *National Child Participation Framework* (2019).

<sup>253</sup> *National Child Participation Framework* 12-14, 18-20.

<sup>254</sup> *National Child Participation Framework* 4, 8.

participatory processes that allow children to participate in legal and policy reform processes.<sup>255</sup>

In addition, the NCPF is envisaged to contribute to efforts aimed at achieving the vision and principles set out in the NDP for participatory governance. Accordingly, the NCPF provides a common framework to guide all spheres of government and other stakeholders who bear a duty to implement child participation effectively.<sup>256</sup>

In advancing the involvement of children in decisions, processes, programmes, and policies that affect their lives, the NCPF recognises the local government sphere as a platform for participation, particularly through municipal children's councils.<sup>257</sup> In addition to highlighting the guiding principles that shape child participation, such as transparency, voluntary and free involvement, and accountability, the NCPF provides guidelines for participation in different settings. In the case of children's involvement in public decision-making, the government needs to establish mechanisms for engaging with children in all governance spheres to ensure that legislation, policy, planning, and service development and implementation reflect the concerns, experiences, and suggestions of the children.<sup>258</sup> A case in point regarding the participation of children at the national level is their involvement in the development of NDP and the subsequent Children's NDP initiative organised by the National Planning Commission (NPC).<sup>259</sup>

Building towards the systematic inclusion of child participation in decision-making, the NCPF underscores the need to institutionalise participation at the local level of decision-making. It notes links to the constitutional precept in one of the objectives of local governance to ensure the involvement of communities in matters of the local government.<sup>260</sup> Finally, the NCPF proposes national-local institutional arrangements

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<sup>255</sup> *National Child Participation Framework* 18-19.

<sup>256</sup> *National Child Participation Framework* 4, 8.

<sup>257</sup> *National Child Participation Framework* 4-5.

<sup>258</sup> *National Child Participation Framework* 41.

<sup>259</sup> NPC *Children's Participation in Governance: Lessons from the Children's NDP Initiative* 1-24. See also Nomdo, Dilata and Adhikari *Children's NDP: Final Process Report* 1-6.

<sup>260</sup> See 5.3–5.4 below.

for child participation, such as national children's forums, provincial children's forums, junior district councils, junior municipal councils, and children's ward committees (see Figure 1). These must be implemented with the support of a checklist that guides authorities. For example, the NCPF provides templates of how the checklists should look like, as shown in Annexure A.<sup>261</sup>

Forums require systemic and consistent funding and should be adopted and implemented as proposed above. From a child rights perspective, the proposed institutional arrangements could provide coordinated and structured inclusion of children's views in public affairs and urban governance. In addition, this complies with the recommendations of the CRC Committee and the African Children's Committee, which state that governments should adopt guidelines for child participation at the local level.<sup>262</sup>

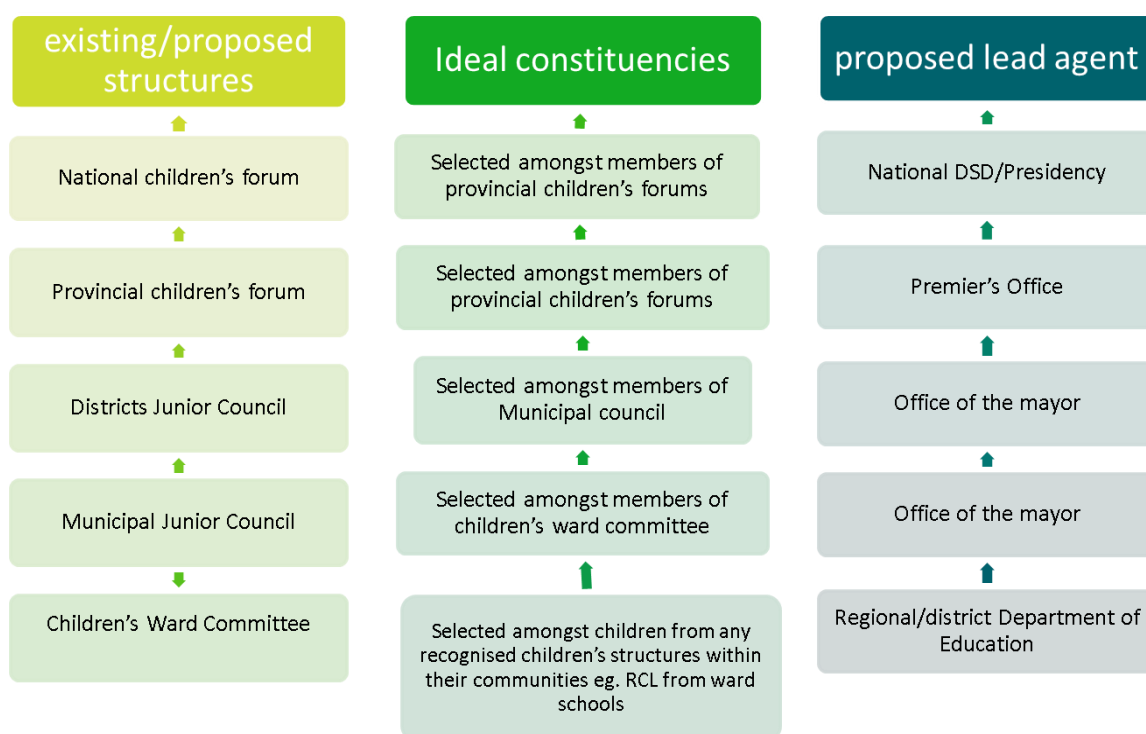
The following extract reflects the NCPF's proposed institutional arrangements for child participation in South Africa.

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<sup>261</sup> Extract from the *National Child Participation Framework* on the child participation checklist that could be used to guide local authorities in involving children in decision-making processes. These guiding templates can be adopted by city authorities to ensure that their child participation practices are compliant with the framework requirements.

<sup>262</sup> See 3.2.2.1 above.

**Figure 1. Proposed institutional arrangements for child participation**



Source: National Child Participation Framework. <sup>263</sup>

It should be noted that the proposed structures were presented and discussed by the Department of Social Development (DSD) and Save the Children South Africa with children and adult stakeholders at the national consultation workshops carried out in 2018, where the views, inputs, and comments are part of the proposition. <sup>264</sup>

However, there is no evidence of the involvement of governments or whether they were consulted in the development of the NCPF. <sup>265</sup> A section in the NCPF highlighting how the framework was developed shows that consultations were conducted and attended by "national and provincial government officials" and representatives from CSOs. <sup>266</sup> In addition, discussions with children were conducted at a "national-level workshop" without any engagement at the local level.

<sup>263</sup> *National Child Participation Framework* 42.

<sup>264</sup> *National Child Participation Framework* 8-9, 42.

<sup>265</sup> *National Child Participation Framework* 8-9.

<sup>266</sup> *National Child Participation Framework* 9.

### 3.3.2.2 *National Plan of Action for Children*

The National Plan of Action for Children, 2019 (2019-2024) (the 2019 NPAC)<sup>267</sup> is South Africa's overarching comprehensive plan that brings together the obligations for the realisation of children's rights across all ministries, departments, and sectors in all spheres of government.<sup>268</sup> For a five-year period, the NPAC serves as the national framework to ensure coherent coordination, planning, implementation, and monitoring of children's rights in South Africa. Situated within a matrix of laws and policies, the guiding principles and goals of the NPAC are aligned with the vision of the NDP,<sup>269</sup> as well as constitutional rights, values, and principles.<sup>270</sup> The 2019 NPAC aims to support the implementation of laws and policies pertaining to children, including international children's rights law.<sup>271</sup> Although the NPAC has no binding legal force, it expresses expected standards for the protection and inclusion of children in governance.

Premised on constitutional imperatives, principles, and the children's rights clause, the NPAC instructs all spheres of the government and other key institutions to establish dedicated and competent children's rights desks or focal points that drive the implementation of the NPAC,<sup>272</sup> including child participation. To ensure the effective coordination of its implementation, the 2019 NPAC proposes the establishment of oversight mechanisms. For instance, it proposes the creation of a National Children's Rights Inter-sectoral Coordinating Committee and the reinvigoration of the Office on the Rights of the Child (ORC) situated in the DSD to ensure national coordination. Established in 1994, the ORC was in the office of the Presidency of South Africa to ensure the protection and promotion of children's

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<sup>267</sup> Formerly referred to as the National Programme of Action for Children, see the 1996 NPAC and 2012 NPAC.

<sup>268</sup> *National Plan of Action for Children in South Africa (2019-2024)* (2019) 301. See also previous NPACs that expresses that all levels of government have responsibility towards children, specifically providing that all departments and offices of government at all levels are to actively ensure its implementation. See *National Programme of Action for Children in South Africa* (1996).

<sup>269</sup> See 3.3.2.3 below.

<sup>270</sup> *National Plan of Action for Children in South Africa (2019-2024)* 14-15.

<sup>271</sup> *National Plan of Action for Children in South Africa (2019-2024)* 18.

<sup>272</sup> *National Plan of Action for Children in South Africa (2019-2024)* 23.



rights. This gave children's rights and issues maximum political and financial prominence and political commitment, as well as putting children at the centre of law, policies, plans, programmes, and government action.<sup>273</sup> However, the relocation of the ORC from the office of the Presidency to DSD robbed it of the authority or capacity it deserved. In addition, in its current location, it lacks the prominence, priority, and visibility desired by the office.<sup>274</sup>

The 2019 NPAC proposes the establishment of departmental children's rights focal points in government, provincial and municipal ORCs, mayoral councils, CSOs, and children themselves.<sup>275</sup> Specific to municipalities, the NPAC provides that child rights focal points, similar to the ORC, shall:

- (1) Provide children's rights leadership and align understanding, interpretation and implementation in the municipality.
- (2) Mainstream child rights and child participation in IDP processes and mandate-implementation-systems of the [municipality].  
\*N.B. Ensure application of child participation in IDP processes in compliance with child participation norms, standards and procedures.
- (3) Familiarise all in the [municipality] with departmental NPAC targets and related structural obligations, as well as drive implementation accordingly.
- (4) Establish strategic public private partnerships to advance child rights implementation in the municipality.
- (5) Co-operate and collaborate with civil society in the best interest[s] of the child.
- (6) Track [child rights] performance in the [municipality], conduct requisite analysis and identify emerging issues for attention.
- (7) Co-ordinate sector-specific child rights implementation across the [municipality] for comprehensive reporting to the Provincial ORC.
- (8) Invoke relevant technical support and interventions as and when the need arises.
- (9) Represent the municipality at provincial and national forums and provide technical support accordingly.

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<sup>273</sup> *National Plan of Action for Children in South Africa (2019-2024)* 26.

<sup>274</sup> It has been noted that operating within DSD, the ORC has experienced challenges relating to its visibility and coordination capacity with other line departments and at provincial and sub-provincial levels. For example, it is noted that there is no harmony at how the office operates at the provincial level, as in some provinces such as Western Cape it is located within the offices of the Premier, and in others it is coordinated from within provincial DSD. See *National Plan of Action for Children in South Africa (2019-2024)* 26.

<sup>275</sup> *National Plan of Action for Children in South Africa (2019-2024)* 21-22.

- (10) Ensure continuous child rights implementation improvements in the [municipality].<sup>276</sup>

Child participation is an important goal and principle of the NPAC. To this end, the 2019 NPAC defines child participation as the active involvement of children in all matters that affect their lives, such as decision-making processes, programmes, and policy interventions.<sup>277</sup> Consequently, it emphasises the importance of child participation in matters affecting children as a continuous process rather than an event.<sup>278</sup> For example, the NPAC underlines that the institutionalised annual provincial and national children's parliament avails an opportunity for children to be heard in decision-making processes.<sup>279</sup> However, the NPAC's reference to the annualised nature of provincial and national children's parliament could imply that the participation of children is ceremonial and at risk of being "professionalised."<sup>280</sup>

Importantly, the NPAC recognises the role of other stakeholders, such as CSOs,<sup>281</sup> in facilitating child participation at all governance levels.<sup>282</sup> Entrenching child participation as a fundamental principle of the NPAC, the drafting of the 2019 NPAC was preceded by consultations and participatory sessions with children across the country, including migrant children.<sup>283</sup>

It is important to note that child participation has always been a guiding principle of NPAC, including previous studies. For instance, the first 1996 NPAC expressed the importance of the involvement of children and the consideration of their views throughout provincial and local government developmental processes.<sup>284</sup> In addition, the 2012 NPAC set child participation as a key element of its mission,

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<sup>276</sup> *National Plan of Action for Children in South Africa (2019-2024)* 24-25.

<sup>277</sup> *National Plan of Action for Children in South Africa (2019-2024)* viii.

<sup>278</sup> *National Plan of Action for Children in South Africa (2019-2024)* 38-39.

<sup>279</sup> *National Plan of Action for Children in South Africa (2019-2024)* 39.

<sup>280</sup> On the risk of professionalised child speakers, see *National Child Participation Framework* 13.

<sup>281</sup> See 6.5.2 below.

<sup>282</sup> *National Plan of Action for Children in South Africa (2019-2024)* 39.

<sup>283</sup> *National Plan of Action for Children in South Africa (2019-2024)* 76.

<sup>284</sup> *National Programme of Action for Children in South Africa* 24.

objectives, and guiding principles for its implementation, together with other child rights principles.<sup>285</sup> It declared the following:<sup>286</sup>

[Participation] affirms that children are entitled to express their views in all matters affecting them and requires that those views be given due weight in accordance with the child's age and maturity. [Child participation] recognises the potential of children to enrich decision-making processes and to participate as citizens and actors of change.<sup>287</sup>

This observation is consistent with section 10 of the Children's Act. It is thus clear that the NPAC aligns with the spirit of laws related to child rights. In addition, the 2012 NPAC encouraged all levels of government to facilitate the inclusion and participation of children with disabilities in the design of all programmes, policy interventions, and other governance processes.<sup>288</sup> A reading of its strategic recommendations shows that municipalities are urged to facilitate equal participation of children in issues of local interest and to take practical measures to support and promote the participation of children in local governance.<sup>289</sup>

In addition, the NPAC emphasises the interrelatedness between participation and access to information regarding laws, policies, programmes, budgets, annual reports, and other reports concerning children.<sup>290</sup> Furthermore, it encourages all levels of government to be innovative. In the digital age, the government must have a website link to provide children with child-friendly information on policies, legislation, and programmes.<sup>291</sup>

The NPAC has set out indicators and targets that should be mainstream in government ministries and departments. For instance, it proposes mainstreaming children's issues at the provincial level in the premier's office and at the local level in the mayor's office as political offices responsible for ensuring the implementation

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<sup>285</sup> *National Programme of Action for Children in South Africa (2012-2017)* (2012) 15-16.

<sup>286</sup> For a discussion of the four principles, see 4.6.2 below.

<sup>287</sup> *National Programme of Action for Children in South Africa (2012-2017)* 16.

<sup>288</sup> *National Programme of Action for Children in South Africa (2012-2017)* 45.

<sup>289</sup> *National Programme of Action for Children in South Africa (2012-2017)* 95-96.

<sup>290</sup> *National Plan of Action for Children in South Africa (2019-2024)* 44. See also *National Programme of Action for Children in South Africa (2012-2017)* 95.

<sup>291</sup> *National Programme of Action for Children in South Africa (2012-2017)* 95.

of the NPAC.<sup>292</sup> The DSD requires the interdepartmental committees of representatives from all government departments to monitor and report on the implementation of the NPAC in the three spheres of government. For instance, at the provincial level, Provincial Steering Committees are responsible for developing the Provincial Plans of Action for Children (PPAC).<sup>293</sup> Similarly, at the local government level, municipalities are expected to develop Local Plans of Action for Children (LPAC) under the leadership and coordination of municipal managers.<sup>294</sup> Given the current multiple challenges faced by municipalities in South Africa, there is little evidence that municipal managers provide leadership and coordination for the LPAC. However, it goes without saying that the NPAC expects and demands the institutionalisation of the participation of children in governance in all spheres of government.

### *3.3.2.3 National Development Plan 2030*

The NDP is a blueprint for informing and guiding South Africa's development and urban governance until 2030, in line with the spirit and ethos of the SDGs. This lays down the principle of active participatory citizenship in governance practices as a fundamental policy and priority for promoting equality, inclusivity, and sustainability in towns and cities.<sup>295</sup> In particular, the NDP underscores that "children should be given special attention in urban development"<sup>296</sup> and in the creation of spaces for child participation in governance. Given the recognition that children do not get opportunities for full participation in society, it recommends the "development of plans or components of plans that address the concerns of children and reflect their voice."<sup>297</sup>

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<sup>292</sup> *National Plan of Action for Children in South Africa (2019-2024)* 28-30. See also *CRC Committee Concluding Observations to the Second Periodic Report of the Republic of South Africa* paras 43-44.

<sup>293</sup> See *National Programme of Action for Children in South Africa (2012-2017)* 95.

<sup>294</sup> See *National Programme of Action for Children in South Africa (2012-2017)* 95.

<sup>295</sup> Chapter 8 of the *National Development Plan 2030: Our Future - Make it Work*.

<sup>296</sup> See *National Development Plan 2030: Our Future - Make it Work* 285.

<sup>297</sup> *National Development Plan 2030: Our Future - Make it Work* 286, 299.

While the focus of the NDP is broad and encompasses the economic, social, and environmental dimensions of development, its provisions are devoted specifically to vulnerable groups and children. Accordingly, it lays down the expected standards for municipalities in relation to the participation of vulnerable groups, particularly children, in the governance of their cities.

#### 3.3.2.4 *Integrated Urban Development Framework*

In addition to the NDP, South Africa adopted the IUDF in 2016. This framework establishes South Africa's urban transformation and restructuring of its vision.<sup>298</sup> The IUDF has four strategic goals, nine policy levers, and three crosscutting issues that are central to the participation of children in cities.<sup>299</sup> The interplay between strategic goals such as "inclusion and access, and effective governance,"<sup>300</sup> on the one hand, and the nexus between policy levers such as "empowered communities and urban governance,"<sup>301</sup> on the other hand, could potentially contribute to the inclusion and participation of children in local governance.

The IUDF emphasises active citizen participation in governance as a key component within a transformed urban context. Regarding inclusivity, the IUDF<sup>302</sup> envisages inclusive cities as:

[S]table, just and tolerant, and respect and embrace diversity, equality of opportunity and *participation of all people*, including disadvantaged and vulnerable groups and persons... [Also they are] cities and towns that have the necessary institutional, fiscal and planning capabilities to manage multiple urban stakeholders and intergovernmental relations, in order to build *inclusive*, resilient and liveable urban spaces.<sup>303</sup>

While the above policy instruments provide for the inclusion of children's views in governance, there are no formal systemic participatory spaces and processes to

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<sup>298</sup> Van der Berg underscores that the development of the IUDF was informed by international urban policy, particularly SDG 11. See Van der Berg 2017 *Obiter* 559-561.

<sup>299</sup> See CoGTA *Localising the New Urban Agenda: South Africa Discussion Document* 11-16.

<sup>300</sup> See *Integrated Urban Development Framework* 39.

<sup>301</sup> See Policy Levers 2, 7 and 8 of the *Integrated Urban Development Framework*.

<sup>302</sup> See Policy Levers 7-8 of the *Integrated Urban Development Framework* 9-10, 41.

<sup>303</sup> Emphasis provided.

include children and their perspectives in decision making.<sup>304</sup> This creates an intricate challenge to the promotion and protection of the participation of children in urban governance.

### *3.3.2.5 White Paper on Local Government*

The White Paper on Local Government, 1998 (WPLG) is the most important policy for local governments and local governance after South Africa's independence. It is arguably the frontrunner and prime policy that laid the foundation for the participatory municipal governance that South Africa enjoys today. Unequivocally, the WPLG declared that municipalities must seek and promote the participation of marginalised and excluded groups in community processes through the adoption of inclusive approaches that foster community participation and encourage the participation of marginalised groups in the local community.<sup>305</sup> However, there are potential challenges associated with the WPLG. First, it does not define what community or marginalised groups should mean, leaving it open to interpretation that could be linked to the South African history of colonial segregation. Second, despite the well-meaning intentions of the drafters, there is no mention of the children. The latter material exclusion of children and young people also manifest itself in current local government legislation such as the Municipal Systems Act.<sup>306</sup>

As demonstrated below, the mechanisms and structures for participation laid down in terms of the WPLG and later the Municipal Systems Act are political- and adult-centred systems, thereby constraining the promotion and advancement of meaningful and effective participation of children in local governance and in their cities.<sup>307</sup> While the WPLG is applauded for setting a strong foundation for participatory governance in South Africa's local government sphere, it could be argued that its aim of explicitly addressing the political segregation of blacks and

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<sup>304</sup> Couzens made a similar observation regarding the lack of details and specificities on child participation in governance, in particular, at the local level. See Couzens 2012 *International Journal of Children's Rights* 687.

<sup>305</sup> *White Paper on Local Government* (1998), section B, para 1.3.

<sup>306</sup> See 5.3 below.

<sup>307</sup> See 5.4 below.

women on racial grounds unintentionally mutes the rights and interests of children in local governance.

### 3.3.3 *The jurisprudence on child participation in public affairs*

South Africa has remarkable children's rights jurisprudence<sup>308</sup> in terms of child participation. This section discusses a few cases that relate to the right of children to express their views in public affairs. This analysis is intended to ascertain how South African courts have interpreted the right of children to participate and contribute to decision-making in governance and/or matters that concern them. An understanding of how courts have interpreted the right of children to participate in public affairs is valuable in demonstrating the normative requirements for such involvement and the obligations of authorities. The case law review exercise is explained in section 39 of the Constitution, which declares that courts have the mandate to interpret the Bill of Rights and any other law. This part of the study considers decisions from the Constitutional Court<sup>309</sup> and the Supreme Court of Appeals (SCA),<sup>310</sup> the two highest courts in South Africa, to delimit the scope of the review.<sup>311</sup>

The Constitutional Court is celebrated for its progressive judgements regarding the participation of children in both private and public affairs. In the case of *S v M*, the court underscored that "all children" – without distinction – "have the right to express themselves as independent social beings" individually, and collectively.<sup>312</sup>

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<sup>308</sup> Several scholars share similar sentiments on how the South African courts have developed incredible children's rights jurisprudence. See, for instance, Sloth-Nielsen and Kruuse 2013 *International Journal of Children's Rights* 646-678; Skelton 2019 *De Jure Law Journal* 557-579; Sloth-Nielsen 2019 *De Jure Law Journal* 501-520.

<sup>309</sup> Section 167(3)(a)-(c) of the Constitution declares that the "Constitutional Court is the highest court in all constitutional matters; may decide only constitutional matters, and issues connected with decisions on constitutional matters; and makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter."

<sup>310</sup> Section 168(3)(a)-(b) of the Constitution declares that the "Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters, and may decide only appeals; and issues connected with appeals ..."

<sup>311</sup> While reference is made to the CC and SCA, it's important to highlight and acknowledge that the High Court has a plethora of decisions that contribute to the jurisprudence on child participation in public affairs.

<sup>312</sup> *S v M (Centre for Child Law as Amicus Curiae)* para 19.

The court further noted that children have the right to imagine and explore in their own ways, learn how to conduct themselves and make choices in the wide social world of adulthood.<sup>313</sup>

Judicial recognition that children have the right to be heard is evident in numerous cases. For instance, in *Centre for Child Law v The Governing Body of Hoërskool Fochville*,<sup>314</sup> the Supreme Court endorsed the High Court's position that permitted views of children to be taken through a list of questionnaires that were, in turn, used to consolidate the views of children.<sup>315</sup> The court's acceptance of the approach adopted by the Centre for Child Law to use questionnaires and conduct interviews with the children crystallised the relationship between the best interests of the child in section 28(2) of the Constitution and the right to have their views heard in matters concerning them.<sup>316</sup> Commenting on this case, Sloth-Nielsen observed that the right of children to express their views was accepted in the face claims that -

their [children's] interests could be perfectly [and] adequately put forward by their parents, since these had been cited as respondents in the case, and that the children's privacy and anonymity would be preserved [by] denying the applicants direct access to the individual questionnaires.<sup>317</sup>

In essence, this case demonstrates that it is not enough to claim that adults, particularly parents and guardians, would speak on behalf of children in local governance matters concerning children. The court's decision challenges the belief that adults are always the best to represent the interests of children. It also reinforces that children need to speak for themselves about overall governance issues that affect them.

In *MEC for Education, KwaZulu-Natal v Pillay*,<sup>318</sup> the Constitutional Court expressed a concern that legal matters involving children often exclude them, and often, the

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<sup>313</sup> *S v M (Centre for Child Law as Amicus Curiae)* para 19.

<sup>314</sup> 2016 2 SA 121 (SCA).

<sup>315</sup> *Centre for Child Law v The Governing Body of Hoërskool Fochville* 2016 2 SA 121 (SCA) paras 3 and 6. For a critical review see, Skelton "Constitutional Protection of Children's Rights" 334.

<sup>316</sup> For a further discussion on methods of child participation, see 4.4 below.

<sup>317</sup> Sloth-Nielsen 2019 *De Jure Law Journal* 505.

<sup>318</sup> 2008 1 SA 474 (CC).



matter is left to adults to contest, argue, determine, and decide on behalf of the children.<sup>319</sup> To that end, the court underscored that:

The need for [a] child's voice to be heard is perhaps even more acute when it concerns children ... who should increasingly [take] responsibility [for] their own actions and beliefs.<sup>320</sup>

The matter was at the intersection of a learner's freedom of religion and the culture of learners in a public school, in that a teenage learner was permitted to pierce her nose and insert a small gold stud in terms of their Indian tradition.<sup>321</sup> This practice allegedly opposed the school's Code of Conduct and violated school regulations. This resulted in disciplinary proceedings that escalated the issue to the Equality Court,<sup>322</sup> High Court,<sup>323</sup> and ultimately to the Constitutional Court, which declared the need for children to be involved at all levels of governance. While the school argued that the Code of Conduct was adopted in consultation with the learners' representative council, parents, and governing body,<sup>324</sup> it should be noted that in administrative and judicial proceedings over the alleged violation of the Code, the concerned child was not given an opportunity to be heard. This case reinforces the rights of children and learners to participate in the governance of their schools in terms of the SASA.<sup>325</sup> Buttressing this point, O'Regan J opined – in the same case – that the drafting, amendment, and adoption of the School Code of Conduct should follow a thorough consultative process involving all stakeholders and, importantly, the children.<sup>326</sup> It should be observed that the case demonstrates the legal requirement for authorities to deliberately create spaces and opportunities for children to participate in decision-making and governance.

In line with an earlier observation that the views of the children are not decisive, the Constitutional Court expressed the same in *Christian Education South Africa v*

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<sup>319</sup> *MEC for Education, KwaZulu-Natal v Pillay* 2008 1 SA 474 (CC) para 56.

<sup>320</sup> See *MEC for Education, KwaZulu-Natal v Pillay* para 56.

<sup>321</sup> See *MEC for Education, KwaZulu-Natal v Pillay* paras 1-10.

<sup>322</sup> See *MEC for Education, KwaZulu-Natal v Pillay* paras 11-14.

<sup>323</sup> See *MEC for Education, KwaZulu-Natal v Pillay* paras 15-18.

<sup>324</sup> *MEC for Education, KwaZulu-Natal v Pillay* paras 12, 14, and 82.

<sup>325</sup> See 3.3.1.2 above.

<sup>326</sup> *MEC for Education, KwaZulu-Natal v Pillay* para 184.

*Minister of Education*.<sup>327</sup> Lamenting how children's voices were excluded, Sachs noted that the lived experiences and opinions of the children were not necessarily decisive; rather, he noted that, in this case, they could have enriched the dialogue.<sup>328</sup> It also noted that the factual and experiential foundations for balancing exercises in determining difficult matters would have been more secure.<sup>329</sup> The observation by Sachs J is the hallmark of how South African courts have embraced the right of children to participate as central to their inclusion in all matters concerning them.

### **3.4 Conclusion**

This chapter reviewed multi-level law and policy frameworks for the inclusion of children in decision-making processes through the lens of the right to participate. It first explored international children's rights law at the global and African regional levels to demonstrate that child participation is a fundamental human right for children. It is entrenched in legally binding international children's rights law. Thus, the participation of children in decision-making processes in governance is not based on the good heart of authorities but on a legal imperative in terms of the UNCRC and the African Children's Charter. For example, article 12 of the UNCRC, which is the primary child participation provision, imposes a legal obligation on all government levels. A similar position is reinforced by the African Children's Charter and Agenda 2040.

The chapter has shown that the right to participate and be heard is elevated and considered significant by the CRC Committee, which has used it in several of its engagements and in General Comments. Regionally, the African Children's Committee demonstrates its commitment to the participation of children through the appointment of a Special Rapporteur responsible for child participation in Africa and

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<sup>327</sup> *Christian Education South Africa v Minister of Education* 2000 4 SA 757 (CC).

<sup>328</sup> In the same vein, the Court observed that children involved in this case were from a highly conscientised community and the majority of them would have been in their late teens and capable of articulating and expressing their views on the subject matter. See *Christian Education South Africa v Minister of Education* para 53.

<sup>329</sup> See *Christian Education South Africa v Minister of Education* para 53.

the recent adoption of Guidelines for Child Participation. These developments are of persuasive value in prompting and compelling participatory interventions and actions at the national and local levels.

The participation of children occurs at multiple levels of the government, including the local sphere.<sup>330</sup> As such, mirroring the discussion at the international level, this chapter evaluates South Africa's domestic law and policy relating to the participation of children in governance. To that end, the chapter has shown that there has been a concerted effort to incorporate international children's rights law into national law and policy. National law and policy frameworks should inform city-level laws and governance practices. South African law and policy provide a robust framework for promoting the participation of children. The judiciary has enabled an expansive interpretation of child participation and has innovatively promoted the participation of children in the governance of public affairs.

However, there are legislative challenges regarding the participation of children in local governance. For example, the participation of children in local governance is often not explicitly provided in national and local legal and policy frameworks.<sup>331</sup> This lack of explicit reference in national and local legislative instruments and policies has the potential to make child participation in local governance optional<sup>332</sup> rather than mandatory. In light of the foregoing discussion, the following chapter shades light on how child participation work in practice delving into the typologies, forms, and methods of child participation as well as the Lundy model of child participation that helps authorities envisage opportunities that enable meaningful participation. It also demonstrates how other children's rights principles and procedural rights could provide opportunities to expand child participation in urban governance.

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<sup>330</sup> See Schapper 2017 *Human Rights Quarterly* 104-129.

<sup>331</sup> On the governance structures at the local government level in South Africa and how children are either included or excluded from decision-making, see 4.3-4.4 below.

<sup>332</sup> The CRC Committee notes that the implementation of the rights of children must not be seen as a charitable process in which favour is bestowed upon children. See *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 11.

## **CHAPTER 4**

### **ENABLING CHILD PARTICIPATION IN DECISION- MAKING PROCESSES IN URBAN GOVERNANCE: FROM THEORY TO PRACTICE**

#### **4.1 Introduction**

The previous chapter established the legal basis for the inclusion of children in decision-making processes in the governance of their cities in the South African context. This exercise was critical to set the normative basis upon which cities are obliged to involve children in urban governance. Building on the previous chapter, this chapter discusses ways in which city authorities can better understand available opportunities and how to include children in decision-making and governance. While the right to participate is a fundamental right for children, city authorities need to understand how the right can be realised to ensure children's appropriate and meaningful engagement in decision-making processes. As Sloth-Nielsen<sup>1</sup> notes, the journey of assimilation, formulation, adaptation, and implementation of children's rights at the domestic level (including the local level) is an unfinished business and an ongoing project.

The first part of the chapter explores the typologies of child participation,<sup>2</sup> followed by a reflective discussion of the forms of child participation<sup>3</sup> and the identification of some of the methods of child participation.<sup>4</sup> This section seeks to build an understanding of how city authorities can practically engage children. This means that children could be engaged, individually or collectively, in consultative and collaborative forms as well as child-led participation through oral presentations, written submissions, or video conferencing, among others. The fourth part discusses the Lundy model of child participation (anchored in article 12 of the UNCRC, as

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<sup>1</sup> Sloth-Nielsen "Domestication of Children's Rights in National Legal Systems in African Context: Progress and Prospects" 53.

<sup>2</sup> See 4.2 below.

<sup>3</sup> See 4.3 below.

<sup>4</sup> See 4.4 below.

discussed in Chapter 3), which underscores that children must be provided with the "space, voice, audience and influence" in decision-making processes.<sup>5</sup> The Lundy model was incorporated into the National Child Participation Framework of South Africa as a guide.<sup>6</sup> It also provides a clear model of how local authorities can translate child participation theory into practice.

In the fifth part, the chapter explores how child participation can be facilitated, enabled, and expanded through the lens of the indivisibility of children's rights and child rights principles. It argues that procedural rights, such as the right to access information, freedom of expression, and freedom of association and assembly, are enablers of the right of children to participate in decision-making processes.<sup>7</sup> In addition, it argues that child rights principles such as equality and non-discrimination; the best interests of the child; and the right to life, survival, and development are interdependently essential to and provide opportunities for the promotion of the inclusion of children in decision-making processes at the city level. The final section concludes the chapter.

## **4.2 Typologies of child participation**

This section identifies and discusses the typologies of participation that are suitable for advancing the involvement of children in decision-making in city-level governance. These typologies, apply to all children equally and are important for understanding the ways in which authorities can explore opportunities for child participation in urban governance. These typologies include Hart's ladder of participation and Shier's participation rungs.

### *4.2.1 Hart's ladder of participation*

According to Hart,<sup>8</sup> there are eight levels on the ladder of child participation. These are manipulation, decoration, tokenism, assigned but informed, consulted and

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<sup>5</sup> See 4.5 below.

<sup>6</sup> See 3.3.2.1 above.

<sup>7</sup> See 4.6.1 below.

<sup>8</sup> Hart *Children's Participation: From Tokenism To Citizenship* 8.

informed, adult-initiated, shared decisions with children, child-initiated and directed, child-initiated, and shared decisions with adults. He claims that the first three levels are non-participation, in that adults design them for children and then involve children at a later stage of engagement.<sup>9</sup> Children often lack an understanding of what (the object) and why (the rationale) they are involved in. This creates an appearance or impression of children being involved in decision-making, although such processes are not free and do not provide meaningful engagement and feedback on how their views are considered.

The latter levels of participation are often beneficial and significant in that they all underlie the fact that, in cases where they are adult-initiated or assigned, the children are informed. Hart argues that these levels of participation ensure that children are informed of the programme and expected interventions (as the case may be) and, in turn, ensure that the children are consulted and decisions are shared with them.<sup>10</sup> The consultative process meaningfully involves children in urban governance, which was noted earlier as governance with children.<sup>11</sup>

The highest commendable level of participation occurs when children are initiators and lead the process.<sup>12</sup> In other words, children are in control of the process and share their views and decisions with adults.<sup>13</sup> Miljeteig<sup>14</sup> suggests that child-led initiatives are the truest way of child participation, as opposed to being determined by adults. According to Twum-Danso, Imoh's child-led initiatives involve de-centring the adult within the concept and practice of child participation and foregrounding the actions and interventions for self-representation exhibited by placing children at the centre.<sup>15</sup> In the context of climate activism, children have taken the central

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<sup>9</sup> Hart *Children's Participation: From Tokenism To Citizenship* 9-10.

<sup>10</sup> Hart *Children's Participation: From Tokenism To Citizenship* 12.

<sup>11</sup> See 1.2 above.

<sup>12</sup> Hart *Children's Participation: From Tokenism To Citizenship* 14.

<sup>13</sup> On a critique of this view, see Lundy 2018 *Childhood* 340-354.

<sup>14</sup> See Miljeteig *Creating Partnerships with Working Children and Youth* 1-14.

<sup>15</sup> Twum-Danso Imoh "Adults in Charge: The Limits of Formal Child Participatory Processes for Societal Transformation" 76.

stage in shaping the narrative of climate injustice through child-led strikes and young people themselves protests.<sup>16</sup>

Hart's ladder of participation is criticised for portraying an image that ideal participation is at the top of the rung (child-initiated and shared decisions with adults).<sup>17</sup> However, the criticism partly misses the reality that participation varies from the governance issues under consideration to the expected level of involvement by and for children. For example, some governance issues, such as the development of IDPs, require adults to initiate and engage with children because of the institutional structures and policies that make it difficult, if not impossible, for children to act without institutional support.

As noted above, the level at which children can be initiators is determined by their level of information and understanding of the local governance issues under consideration.<sup>18</sup> Without prescribing the typology of participation, children should participate in local governance, and it is critical to note that Hart's ladder of participation is instructive in detailing what is expected of decision-makers in ensuring the participation of children in governance.

#### 4.2.2 *Shier's participation rungs*

Building on Hart's participation ladder, Shier<sup>19</sup> removed the first three rungs and proposed alternative typologies. These are that children are listened to, supported to express their views, their views are considered, they are involved in decision-making processes, and they share power and responsibility for decision-making.<sup>20</sup> It is set out as a cycle and expects decision-makers to ascertain compliance in a chronological fashion in a seamless manner. This implies that local authorities should listen to children when they freely express a desire to share views on decision-making processes in local governance. There is a need to understand the endless

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<sup>16</sup> Buhre "Child Figurations in Youth Climate Justice Activism: The Visual Rhetoric of the Fridays for Future on Instagram" 251-273. See also Trott 2021 *Children's Geographies* 300-308.

<sup>17</sup> Tisdall "Children and Young People's Participation: A Critical Consideration of Article 12" 187.

<sup>18</sup> See 3.3 above.

<sup>19</sup> Shier 2001 *Children & Society* 109-111.

<sup>20</sup> Shier 2001 *Children & Society* 110-111.

reasons why children may not desire to participate and share their views with adults. This can be attributed to

[A] lack of confidence, shyness, low self-esteem, previous experience of not being listened to, or expressing opinions is unproductive, no culture of participation, or inadequate communication skills [both on the part of children and municipal staff].<sup>21</sup>

After listening to the children, the next step is to ensure commitment by authorities to lead positive actions that support children in expressing their views. Supporting children at the municipal level, as observed below,<sup>22</sup> includes ensuring that children have the platforms and spaces in their communities to participate in governance. This was followed by the requirement to take children's views seriously and give them due weight, as declared in article 12(1) of the UNCRC.<sup>23</sup> For Shier, the last two stages mark the transition from consultation to active participation in decision-making processes at all levels<sup>24</sup> and which must be made a reality in local governance. In other words, shared power and responsibility for decision-making open up opportunities for the co-creation of decision outcomes.

One point of criticism against Shier's fifth level of power and responsibility sharing is that it is not a UNCRC requirement. However, based on the lens of article 31 of the African Children's Charter, titled "responsibility of the child", children can have shared power and responsibilities over decision-making processes. Article 31 states that every child has responsibilities towards his family, society, and recognised communities. It notes that in line with the child's age, ability, and subject to any such limitations as may be contained in the Charter, every child shall have the duty to "serve his national community,"<sup>25</sup> "strengthen social and national solidarity,"<sup>26</sup> and "contribute to the best of his abilities, at all times and at all levels"<sup>27</sup> to achieve African unity, including at the national and local levels. Further, article 31 places a

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<sup>21</sup> See Shier 2001 *Children & Society* 112.

<sup>22</sup> See 5.3 below.

<sup>23</sup> See 3.2.1 above.

<sup>24</sup> Shier 2001 *Children & Society* 113-114.

<sup>25</sup> Article 31(b) of the African Children's Charter.

<sup>26</sup> Article 31(c) of the African Children's Charter.

<sup>27</sup> Article 31(f) of the African Children's Charter.



duty on children to "preserve and strengthen African cultural values" in interaction with and collaborating with other members of society. This must be done in the spirit of tolerance, "dialogue and consultation", as that contributes to the moral well-being of the community.<sup>28</sup>

In a notable shift from other regional or international children's rights instruments, the African Children's Charter clarifies that children are responsible for their local communities. Similarly, in the South African context, section 16 of the Children's Act declares that every child has responsibilities towards their community and the state. The Act notes that these responsibilities should be appropriate for the child's age and ability.<sup>29</sup> In this study, these responsibilities apply to the local governance of the cities. Sloth-Nielsen and Mezmur<sup>30</sup> argue that, in view of article 31 of the African Children's Charter, responsibilities are complementary to human rights rather than undermining them, especially when viewed in light of the internal limitations meant to enhance the development of the child. With the understanding that rights are interdependent and indivisible, Shier's participation typology could be used to assist local authorities in having a better grasp of the opportunities for implementing child participation enshrined in international children's rights law, South African law and policy from theory to everyday governance practice.

### **4.3 Forms of child participation**

This section discusses the forms of child participation with a view to building an understanding of opportunities that city authorities can leverage to guarantee the rights of children to participate in decision-making processes. Lansdown<sup>31</sup> argues that there are three forms of participation: consultative, collaborative, and child-led. These offer children varying degrees of influence on their decision-making processes.

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<sup>28</sup> Article 31(d) of the African Children's Charter.

<sup>29</sup> Section 6 of the *Children's Act*.

<sup>30</sup> Sloth-Nielsen and Mezmur 2008 *Journal of African Law* 159-189.

<sup>31</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147-151.

#### 4.3.1 Consultative participation

Consultative participation is a form of child participation in which city authorities recognise the need to engage children in decision-making processes.<sup>32</sup> According to Lansdown,<sup>33</sup> the consultative process is initiated, led, and managed by adults who occupy positions in the local government structures. Thus, city authorities must understand that children possess valuable experiences, opinions, and inputs to contribute to matters that affect them.<sup>34</sup> In other words, there is recognition that children have views and perspectives that should inform adult decision-making processes in matters where children have knowledge and lived experiences.

However, in this form of participation, children do not control the outcomes of their decision-making process. As Tisdall<sup>35</sup> notes, consultative processes are invited spaces of participation in which children have little influence on the agenda, processes, and outcomes.

Lansdown<sup>36</sup> proposes that consultations are suitable for undertaking research, planning processes, and developing legislation, policies, or services, among other things. She further notes that consultative processes are used to ascertain the views of children of all ages, including very young children.<sup>37</sup> Consultations can be conducted through online surveys, peer research, and in-person or virtual focus group discussions on governance issues relevant to children.<sup>38</sup> The participation of children should not be limited to consultations but rather should be taken as a starting point for engaging children. City authorities should create an enabling

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<sup>32</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147-148.

<sup>33</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147.

<sup>34</sup> WVI *Children and Young People's Participation: An Essential Approach* 11.

<sup>35</sup> Tisdall "Addressing the Challenges of Children and Young People's Participation: Considering Time and Space" 117.

<sup>36</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147.

<sup>37</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147.

<sup>38</sup> See 4.4. below.

environment in which children can influence and shape their processes, decisions, and outcomes.<sup>39</sup>

#### 4.3.2 Collaborative participation

Collaborative participation is a form of child participation that provides meaningful engagement for children rather than merely consultation or soliciting their views.<sup>40</sup> This form of participation engages children as active participants in partnerships with adults by involving them in the early stages of the decision-making process.<sup>41</sup> While the process is adult-initiated, it includes children in the conceptual stages of the planning process and empowers them to take up and influence policy decisions.<sup>42</sup>

Practically, collaboration aims to ensure that children are involved in the decision-making process related to the development of city projects, programmes, and interventions, as well as in the implementation, monitoring, and evaluation of the action plans resulting from the decisions. Lansdown<sup>43</sup> underscores that collaborative participation provides an opportunity for shared decision making with adults and allows for increased levels of self-directed action by children over a period of time. In this process, children are empowered to influence both the process and the outcomes. This form of child participation works on different local governance issues. In the South African context, collaboration entails the engagement of children in municipal processes, such as inward communities, IDP representative forums, and other governance processes.<sup>44</sup>

#### 4.3.3 Child-led participation

Child-led participation is a form of child participation that recognises that children should be empowered to take action and manage decision-making processes on

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<sup>39</sup> See 4.5.2 below.

<sup>40</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147.

<sup>41</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 148.

<sup>42</sup> WVI *Children and Young People's Participation: An Essential Approach* 11.

<sup>43</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 147-148.

<sup>44</sup> See 5.4 below.

matters that affect them.<sup>45</sup> According to Lansdown,<sup>46</sup> this form of participation is characterised by the fact that the children themselves identify issues of concern. Therefore, children take control of their decision-making process.

One of the emerging child-led initiatives in the context of the climate crisis is activism among children and young people around climate action.<sup>47</sup> Emerging scholarship on child-led climate activism demonstrates that children have taken centre stage in shaping the narrative of climate justice.<sup>48</sup>

Tisdall and Cuevas-Parra<sup>49</sup> cite examples of best practices in child activism and argue that children invest time and energy in collective participation activities to make changes in their communities. They further note that child activism seeks to move directly and potentially beyond the familiar challenges of the participation of children, inspire, and create change that may shift the narrative of adult mediation and control inherent in traditional child participation.<sup>50</sup> In addition, scholars such as Miljeteig<sup>51</sup> and Twum-Danso Imoh,<sup>52</sup> underscore how child-led initiatives are instrumental, valuable, and significant in driving a shift towards transformative participation.

While it is child-initiated and child-driven, it is important to note that adults still play an important role in facilitating a safe environment, provision of resources, and technical assistance, such as social workers or information and communication technology (ICT) experts, in cases where children might need to use ICT facilities and media platforms. Thus, the designated city authorities and officials play

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<sup>45</sup> WVI *Children and Young People's Participation: An Essential Approach* 11.

<sup>46</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 150.

<sup>47</sup> See UNICEF 2019 <https://www.unicef.org/press-releases/cop-25-young-climate-activists-call-urgent-action-climate-crisis-unicef-ohchr-event>.

<sup>48</sup> Buhre "Child Figurations in Youth Climate Justice Activism: The Visual Rhetoric of the Fridays for Future on Instagram" 251-273. See also Trott 2021 *Children's Geographies* 300-308.

<sup>49</sup> Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 796-799.

<sup>50</sup> Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 796.

<sup>51</sup> See Miljeteig *Creating Partnerships with Working Children and Youth* 1-14.

<sup>52</sup> Twum-Danso Imoh "Adults in Charge: The Limits of Formal Child Participatory Processes for Societal Transformation" 76.

facilitative roles. In fact, adults do not play a directive role but rather a facilitative role in child-led participation at the local level.

As Lansdown<sup>53</sup> notes, child-led initiatives range from setting up a constituency by establishing and managing their own organisation for the purpose of policy analysis, advocacy, and awareness-raising on issues that impact them. Importantly, decision-making is led and directed by children and is later implemented in partnership with city authorities. Child-led initiatives are often found in existing structures, such as school councils, which provide children with platforms to exercise formal democratic practices, including appointing their own representatives.<sup>54</sup> In exercising their procedural rights,<sup>55</sup> children have the right to freedom of association and organise themselves for a cause that affects them at the community level. In the South African municipal context, children could explore how to take advantage of adult-centred municipal mechanisms to ensure that they can engage and participate in the governance of their cities.<sup>56</sup>

Consultative, collaborative, and child-led participation are central to the inclusion of children in decision-making. The obligation to facilitate the involvement of children rests on city authority. The following section builds on the forms of child participation to identify and explore the methods that city authorities can use to ensure that children participate in and are heard.

#### **4.4 Methods of child participation**

In light of the forms of child participation discussed above,<sup>57</sup> this section highlights the methods that could be used by city authorities to ensure that children's views are considered as per the requirements in laws and policies in Chapter 3. Various methods can be adopted to encourage the participation of children, including but

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<sup>53</sup> Lansdown *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* 150.

<sup>54</sup> Tisdall "Addressing the Challenges of Children and Young People's Participation: Considering Time and Space" 181.

<sup>55</sup> See 4.6.1 below.

<sup>56</sup> See 5.4 below.

<sup>57</sup> See 4.3 above.

not limited to oral presentations, written submissions or drawings, and digital technology media.<sup>58</sup>

#### *4.4.1 Oral presentations during meetings*

One of the main ways to engage children is to enable them to attend municipal meetings and to make oral presentations on how the issues under consideration affect them. This method of hearing the views of children is also recognised even at the global level because the CRC Committee says that in its working procedures, children are permitted to attend committee sessions or meetings (along with other non-governmental stakeholders) and to make oral presentations through child representatives.<sup>59</sup> The engagement of children to participate in South African municipal council meetings, such as ward committees or IDP forums,<sup>60</sup> calls for preparatory work on educating children or providing information about the importance of such engagements. This preparatory work does not imply coaching children about what they should present before the city authorities but rather raises awareness of what is expected in the meetings, including the agenda and council processes, if they are participating in a council meeting.

Some may argue that the municipal council in South Africa is too political and dangerous for children to participate. Such arguments are against the rights-based approach discussed in Chapter 3 above, specifically, the right of children to participate in all matters concerning them. As observed earlier, the duty to put safeguards rests on city authorities to ensure that children present their views and concerns in a safe environment while upholding the right to participate in decision-making processes at the city level.

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<sup>58</sup> See Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 146.

<sup>59</sup> See *Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child* (2014) para 18.

<sup>60</sup> See 5.4 below.

#### 4.4.2 *Written submissions and art drawings*

The participation of children in decision-making is not confined to oral presentations, which depend on the vocalisation of the message. In fact, children can make written submissions or use art drawings and pictures that communicate how they feel about their cities and the change that they need to see. For example, children could participate in decision-making in a city design project by sharing drawings and photographs<sup>61</sup> or in safety campaigns affecting girls and boys by sharing anonymised diaries or written concerns to ensure that the issues in their cities are addressed. For example, a community child rights workshop in the Prince Albert Municipality, conducted in 2022 by the Office of the Western Cape Commissioner for Children highlights how children can illustratively share their views through on issues around safety concerns and other challenges within the municipality such as alcohol and drug abuse.<sup>62</sup> Also, as noted by UNICEF, in Nepal children participating in city-level governance identify their priorities and needs through the use of different types of drawing tools, including 'like and dislike' drawings as well as drawings of how they see and envision the future of their communities.<sup>63</sup>

According to Parnell and Patsarika,<sup>64</sup> there is a culture of communication and participation that contends that children often clearly articulate their views about the issues affecting them in the methods and approaches that they enjoy or that they find the most appropriate. Such flexibility reinforces the requirement that child participation be free and voluntary.<sup>65</sup> They further note that hands-on and creative activities enable children to develop new ideas in playful ways, thereby supporting a sense of active engagement and inclusion built on what they are familiar with.<sup>66</sup> This implies that there is no prescription in terms of how children should participate, as it is based on the subject matter at hand. Hence, city authorities should employ

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<sup>61</sup> See Todd 2012 *Children's Geographies* 193.

<sup>62</sup> See Commissioner for Children *Community Child Rights Workshops: Prince Albert Municipality 2022* 6-7, 9.

<sup>63</sup> UNICEF *Child Participation in Local Governance* 17.

<sup>64</sup> Parnell and Patsarika 2011 *Children's Geographies* 469.

<sup>65</sup> See 3.2.1.4 above.

<sup>66</sup> Parnell and Patsarika 2011 *Children's Geographies* 469.

creative and innovative methods to ensure that children express their views in decision-making processes.

#### *4.4.3 Virtual participation and video conferencing*

The participation of children is not limited to physical in-person participation, and they can innovatively engage virtually. Recently, technology has been demonstrated to provide a platform that enables authorities to engage children while mitigating the barriers created by distance or the economic status of some children.<sup>67</sup> Virtual participation enables the engagement of children from marginalised groups and remote areas that could have challenges or resource limitations in getting to the offices of city authorities. For instance, through video conferencing, city authorities working with other local partners and stakeholders may be able to include children in distant locations in the decision-making process and enable their views to be incorporated before a final decision is made.<sup>68</sup>

In addition, through the use of technology platforms, children can record and share videos about their concerns with city authorities. Some of these issues include climate change, environmental degradation, and governance issues that affect children in their communities. This means that children do not necessarily need to engage in live virtual participation, but their recorded videos can be played, articulating the views and concerns of children in their cities and communities to reach the decision-making processes. For instance, UNICEF noted that in Belize children participate in local governance using a wide range of communication platforms and tools such as WhatsApp, local talk shows (television and radio), and focus group discussions (in-person and virtual).<sup>69</sup> In addition, UNICEF notes that

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<sup>67</sup> See *Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child* para 29.

<sup>68</sup> This approach requires the political commitment of city authorities to facilitate the engagements of children, working in partnership with local communities and civil society or child-led organisations.

<sup>69</sup> UNICEF *Child Participation in Local Governance* 17.



social media platforms such as Facebook, Instagram, Tiktok and X (formerly Twitter)<sup>70</sup> are especially effective at attracting children to engage in public affairs.<sup>71</sup>

However, the use of video conferences or any internet connected platforms is premised on the hope that the children concerned have access to the technological infrastructure and devices required to connect to meetings or engagements with city authorities. Nevertheless, most children may lack accessibility for a plethora of reasons.<sup>72</sup>

#### **4.5 The Lundy model of child participation**

To demystify and provide guidance on how authorities must interpret and implement child participation, Lundy proposed a model that helps understand how decision-makers should conceptually envisage and implement child participation. Based on article 12 of the UNCRC, the Lundy model has four distinct, *albeit* interrelated, elements, namely "space, voice, audience, and influence." These are aimed at making child participation both practical and effective. As highlighted earlier, the Lundy model was used in this study because it is incorporated into South Africa's National Child Participation Framework.<sup>73</sup> The following extract is a modified version of the original model,<sup>74</sup> which illustrates the cycle for meaningful inclusion of children in local governance.

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<sup>70</sup> See 4.6.1.1 below.

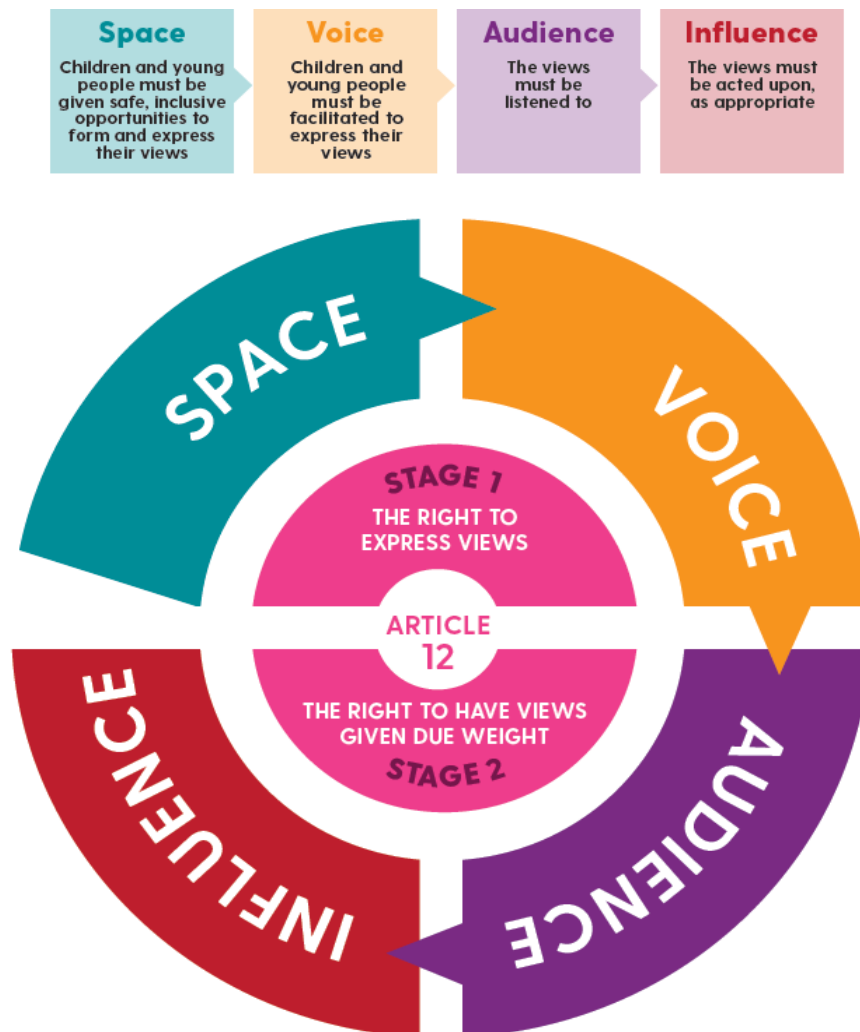
<sup>71</sup> UNICEF *Child Participation in Local Governance* 17.

<sup>72</sup> Citing the COVID-19 pandemic period, Tisdall and Cuevas-Parra share a concern that technologies and internet do not reach everyone globally, noting that about 41% of the world's population (in 2020) lacked internet access, exacerbating existing inequalities amongst children. See Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 798.

<sup>73</sup> See 3.3.2.1 above.

<sup>74</sup> The original Lundy model explicitly connects article 12 of the UNCRC to articles 3, 5, and 18 – which later articles fall outside the scope of the present discussion. The model used herein is illustrative of the interconnectedness of the different elements: space, voice, audience and influence.

**Figure 2. Lundy model of child participation**



Used at the South African municipal level, the Lundy model has the potential to help decision-makers evaluate whether the platforms, mechanisms, and structures in place are adequate and suitable for the inclusion of children in decision-making and local governance.

#### *4.5.1 Space and voice*

The creation of an opportunity for children's involvement – the "space" to express views – is the first step in realising child participation. The creation of space is a prerequisite for the inclusion of children in the decision-making processes.<sup>75</sup> As

<sup>75</sup> Lundy 2007 *British Educational Research Journal* 933.

highlighted above, the phrase "shall assure"<sup>76</sup> in article 12 of the UNCRC entails that decision-makers, and in this case, the city authorities, have a positive obligation to proactively take practical measures, actions and steps to create opportunities, invite children, and encourage them to share their views. Efforts should be made to ensure that the space or environment is suitable, safe, and conducive to children sharing honest, free, and authentic views.

As previously observed, municipalities are legally required to establish institutional mechanisms for community participation in local governance.<sup>77</sup> While concerns are raised regarding the failure of local government legislation to provide child-specific and child-responsive mechanisms in favour of political structures,<sup>78</sup> it is argued that these adult-focused mechanisms could be innovatively designed and framed to provide children with the "space" to participate. Viewed through the lens of the Lundy model, the institutional mechanisms provided in terms of law and local policies are the platforms required in South African cities to ensure that children have the space to express themselves. For example, the City of Cape Town has programmes and initiatives that provide children with the "space" they need at the city level.<sup>79</sup> A key requirement in the context of this study is that space should be provided in terms of law and policy, including by-laws. This will ensure that municipalities are accountable for the creation of space on the one hand and for children to demand and enforce their right to the space on the other.

Municipalities assume a duty to create a safe and responsive space for children to participate. This environment removes barriers, threats (physical, physical, or mental), and other potential risks. For instance, this may include ensuring that, where necessary, children can speak in their local languages or that there is a provision of translation services where collective views are sought from children of

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<sup>76</sup> Article 12(1) of the UNCRC.

<sup>77</sup> See 5.3 below.

<sup>78</sup> See 5.4 below.

<sup>79</sup> See City of Cape Town *Youth leadership and development: Junior City Council* available at <https://www.capetown.gov.za/Local%20and%20communities/Community-building-and-upliftment/Youth-leadership-and-development/Join-the-junior-City-Council> accessed on 1 March 2024.

different backgrounds, including (technical and communicative) support for children with disabilities. Ideally, these should be embedded in city-level laws, policies, strategies, and programmes that explicitly establish the space or mechanisms for children to express their views in governance.

Once a safe and conducive space or environment is created, the next step is for city authorities to facilitate children to express their views, giving them a "voice." As observed earlier, the right to participate is enjoyed by children who are capable of forming a view of any governance issues affecting them.<sup>80</sup> Lundy<sup>81</sup> notes that the right to express a view is not dependent on the capability to express a mature view; rather, it is grounded only on the ability to form a view. Children should be granted access to appropriate information on the subject matter in which their views are sought.<sup>82</sup> This is consistent with the fundamental freedom to seek, receive, and impart information,<sup>83</sup> which is an integral part of formulating views and opinions. As the CRC Committee underscores, information sharing and dialogue between children and adults shape the outcome and contribute to children's constructive and meaningful engagement in governance.<sup>84</sup>

Giving children a voice creates a duty on the part of the municipality to play a facilitative role that goes beyond putting mechanisms (spaces) entrenched in law and policy. This requires practical measures and interventions to be put in place, as well as resources to be allocated to facilitate children's rights to express themselves. A good example noted earlier is Cape Town's commitment to appointing elected councillors as custodians of the Junior City Councils (JCC), a funded initiative in the city.<sup>85</sup> This facilitative role gives children a voice in the governance of their city.

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<sup>80</sup> See 3.2 above.

<sup>81</sup> See Lundy 2007 *British Educational Research Journal* 935.

<sup>82</sup> See Lundy and McEvoy "Childhood, the United Nations Convention on the Rights of the Child, and Research: What Constitutes a 'Rights-Based' Approach?" 75-91.

<sup>83</sup> See 4.6.1 below.

<sup>84</sup> *General Comment No.12 on the Right of the Child to be Heard* para 3.

<sup>85</sup> See 5.4.4 below.

#### 4.5.2 Audience and influence

In addition to creating space and giving children a voice, it is important to guarantee a platform – the "audience" – for children to communicate their views to an individual, designated office, body or responsible authority. Lundy argues for the need to ensure that:

[C]hildren at least have a "right of audience" – a guaranteed opportunity to communicate views to an identifiable individual or body with the responsibility to listen.<sup>86</sup>

Essentially, there must be a designated office or department in South African municipalities that is specifically assigned to children's issues.<sup>87</sup> These designated officers must be known to the children before they can express their views to the municipal authorities. This means that city authorities have a duty to make the office known to children and raise awareness of the community at large with respect to the office. As envisaged in the 2019 NPAC, municipalities should establish ORCs or children's rights focal points for mainstream child participation in IDP processes in compliance with normative standards and procedures.<sup>88</sup>

The designated office or responsible authority is required to listen to the views of children and take them seriously in the decision-making processes. This may include setting up mechanisms for children to participate and providing them with feedback on how their views inform the outcome of the decision-making process. In practice, the involvement and inclusion of children require effort and resources (time and finances).<sup>89</sup> For instance, there is a cost factor in ensuring access to information and creating mechanisms and platforms for the participation of children. However, municipalities should not use this lack of resources as an excuse for failing to provide children with an audience to express their views on local governance.

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<sup>86</sup> Lundy 2007 *British Educational Research Journal* 937.

<sup>87</sup> See 3.3.2.2 above.

<sup>88</sup> See 3.3.2.2 above.

<sup>89</sup> Lundy 2018 *Childhood* 343.

As a matter of good governance practice, children should be provided with basic information on how the government works and, more importantly, how they can interact with the government, office(s), or mechanism(s) at their disposal.<sup>90</sup> In reference to access to basic information, Lansdown<sup>91</sup> argues that children who participate in any programme or engagement are entitled, from the onset, to be informed about what their role will be and, if possible, any expectations or outcomes.

Finally, children's views "influence" the decision-making processes in urban governance.<sup>92</sup> Influence refers to taking the views of children seriously regarding their age, maturity, and capacity. This means that local authorities are required to act based on the views of children. Because influence is explicitly linked to a child's evolving capabilities (age and maturity), it could potentially undermine the value and weight attached to the views expressed.

One of the challenges identified by Lundy<sup>93</sup> is that maturity depends on how adults perceive children's capacity to understand and comprehend the matter under consideration. For instance, it is plausible that adults may reach the conclusion that children are not sufficiently mature to express a view; if children express a view, it could potentially be disregarded based on the evaluation of the child's maturity. Despite these potential pitfalls, research has shown that children are capable of meaningfully and constructively participating.<sup>94</sup> Hence, local authorities should provide the "space, voice and audience" for children to express their views and "influence" influences the outcomes of the process.<sup>95</sup>

The influence demands that decision-makers inform or advise children of what decision was made, how their views were considered, their impact on the process, and the reasons behind the cause of action adopted.<sup>96</sup> By implication, this requires

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<sup>90</sup> See 4.6.1 below.

<sup>91</sup> Lansdown *Promoting Child Participation in Democratic Decision Making* 12.

<sup>92</sup> Lundy 2007 *British Educational Research Journal* 937-938.

<sup>93</sup> Lundy 2007 *British Educational Research Journal* 937-938.

<sup>94</sup> See article 5 of the UNCRC on evolving capacities of children which require adults to provide guidance to children.

<sup>95</sup> Lundy 2007 *British Educational Research Journal* 937-938.

<sup>96</sup> See Lundy 2007 *British Educational Research Journal* 939.

that in the event that children's views fail to influence decision-makers, an attempt to explain why and rationale should be made.<sup>97</sup> The influence requirement assures children of the transparency and accountability of decision-makers at the local level.<sup>98</sup> Lundy<sup>99</sup> argues that -

The feedback given by adults to children at the end of a [participatory] process is a pivotal point in [the] dialogue. From a children's rights perspective, this is when duty-bearers and decision-makers get an opportunity to demonstrate to the rights-holders [in this case, children] how they have put the 'due' in the 'due weight.' [Feedback opens an opportunity] for further informed interaction and the possibility of continuing the dialogue. It is, therefore, core to accountability, which in turn [is] core to human rights.

Influence is an assurance that the views of children have contributed to decision-making in governance and defies "tokenistic participation"<sup>100</sup> which is a breach of international children's rights law.<sup>101</sup>

It is imperative to guard against approaches that limit children's expression of views or allow them to be heard and fail to give due weight to those views.<sup>102</sup> The Lundy model is an illustrative approach to guide municipalities in the local government sphere on the opportunities available to foster the inclusion of children in the decision-making processes.

#### **4.6 Enabling child participation through indivisibility of rights**

The participation of children can also be facilitated through the realisation of other children's rights and is interlinked to child rights principles. This section demonstrates the indivisibility and interconnectedness of children's rights and child

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<sup>97</sup> This has the benefit to of building transparency, while also inculcating children's trust and confidence in the local governance decision-making processes.

<sup>98</sup> See Lundy 2018 *Childhood* 349.

<sup>99</sup> Lundy 2018 *Childhood* 349.

<sup>100</sup> Tokenism is "attributed to the experiences of children whose views have been sought by adults but not taken seriously." See Lundy 2018 *Childhood* 342. According to Hart, tokenism refers to instances in which "children are given a voice, but in fact have little or no choice about the subject or the style of communicating it, and little or no opportunity to formulate their own opinions." See Hart *Children's Participation: From Tokenism To Citizenship* 9.

<sup>101</sup> See Lundy 2007 *British Educational Research Journal* 939; Lundy 2018 *Childhood* 350.

<sup>102</sup> *General Comment No.12 on the Right of the Child to be Heard* para 132.

rights principles, thereby creating opportunities and an enabling environment for their inclusion in decision-making processes in city-level governance.

#### *4.6.1 Procedural rights as enabling rights*

Procedural rights, often categorised as participatory rights,<sup>103</sup> such as access to information, freedom of expression, and freedom of association/assembly, act as enablers and pathways towards the implementation of child participation.<sup>104</sup> In line with the view of the CRC Committee that child participation should be considered in the interpretation and implementation of all other rights,<sup>105</sup> this section demonstrates that procedural rights are enablers that facilitate the realisation of child participation and ensure substantive inclusion of children in governance.

##### *4.6.1.1 Access to information*

Children need information to participate. In South Africa, everyone has a constitutional right to access public information. First, section 32(1) of the Constitution provides a self-standing right of access to information held by the state or any other person when such information is required for the exercise or protection of any right(s). This means that the right is binding and enforceable against public and private institutions.<sup>106</sup> and all spheres of government, including the local government. Second, section 195(1)(g) of the Constitution underscores the value of providing the public with timely, accessible, and accurate information as a path to foster accountability and transparency.

Subsidiary legislation affects section 32(2) of the Constitution. This includes the *Promotion of Access to Information Act* 2 of 2000 (PAIA), which lays down principles relating to access to information and the manner and parameters within which the right is to be exercised.<sup>107</sup> Additionally, the *Municipal Systems Act* instructs

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<sup>103</sup> See Mitchell, Lundy and Hill 2023 *Child Abuse Review* 3.

<sup>104</sup> See Fambasayi 2021 *Stellenbosch Law Review* 396-397, arguing in the context of environmental rights of children.

<sup>105</sup> *General Comment No.12 on the Right of the Child to be Heard* para 2.

<sup>106</sup> Rautenbach and Venter *Rautenbach-Malherbe Constitutional Law* 461. See also Robinson *Access to Information* 6-67.

<sup>107</sup> See *Promotion of Access to Information Act* 2 of 2000.



municipalities to provide communities with information on municipal governance<sup>108</sup> and the mechanisms available to and for them to keep people aware, informed, and engaged in governance.<sup>109</sup> Furthermore, some framework legislations, such as NEMA, reinforce access to environmental information as a key component of good governance,<sup>110</sup> which should extend to children.<sup>111</sup> Currie and de Waal<sup>112</sup> underscore that access to public information is fundamental to encouraging transparency in how the government and public authorities work, as well as enhancing accountability.

The above provisions comply with international children's rights law related to children's access to information. For example, article 17 of the UNCRC provides the right to access information and materials from diverse sources to promote children's rights. In the digital age, children have the right to access online information and protect them from harmful online material.<sup>113</sup> Access to information contributes to personal development and empowers children with skills while building their self-esteem and confidence to participate actively in governance.<sup>114</sup> Article 13 of the UNCRC entails the freedom to seek, receive, and impart information and ideas of all kinds relevant to the realisation of the rights of children. Linked to the right to access information is the reality that children can only take up opportunities at the level of their exposure and knowledge of participation opportunities and the benefits of such participation. In the case of children with disabilities, article 21 of the CRPD provides

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<sup>108</sup> Section 6(2)(e)-(f) of the *Municipal Systems Act* highlights that the administration of a municipality must "give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and inform the local community how the municipality is managed, of the costs involved and the persons in charge."

<sup>109</sup> Section 18(1) of the *Municipal Systems Act*.

<sup>110</sup> Section 31(1)(a) of NEMA declares that "every person is entitled to have access to information held by the [s]tate and organs of state which relates to the implementation of this Act and any other law affecting the environment. and to the state of the environment and actual and future threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste and substances."

<sup>111</sup> See Fambasayi 2021 *Stellenbosch Law Review* 402-403.

<sup>112</sup> Currie and De Waal "Access to Information" 692.

<sup>113</sup> See *General Comment No.25 on Children's Rights in Relation to the Digital Environment* (2021). See also Lansdown and Vaghri "Article 13: The Right to Freedom of Expression" 69.

<sup>114</sup> Lansdown "Article 17: The Right to Access to Diverse Sources of Information" 105-107. Other scholars link empowered and informed participation to future responsible participatory practices. See Lundy 2018 *Childhood* 346; McCafferty 2017 *Child Care in Practice* 329.

the rights of persons with disabilities to seek, receive, and impart information on an equal basis. Therefore, it imposes a duty on the state to provide information in accessible formats and technologies appropriate to different types of disabilities.<sup>115</sup>

Access to information relates to informing children about relevant government actors (departments or councils) to engage with, and the scope of participation permitted by local laws and policies.<sup>116</sup> As illustrated earlier, children can only participate to the extent of the available information regarding governance processes and governance issues within the constituency. In fact, children can only express views and opinions when the freedom to receive and impart the information necessary to form the view and opinion is assured and provided. Access to information imposes a duty on the state to collect and disseminate governance information in age-appropriate language and make it accessible and user-friendly, considering the special needs of children,<sup>117</sup> including children with disabilities.<sup>118</sup>

However, there is a need to rethink how children can access information in the context of digitalisation. There is evidence that more children use social media platforms such as Facebook, X (formerly Twitter), TikTok, and Instagram<sup>119</sup> to engage in public affairs.<sup>120</sup> Thus, in line with the above obligations to make information accessible, governments are expected to ensure that accessibility is context-driven and motivated by the target audience. Tisdall and Cuevas-Parra<sup>121</sup> expand the argument that social media and the internet provide effective avenues for children to access information.

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<sup>115</sup> See article 21(a) of the *Convention on the Rights of Persons with Disabilities* A/RES/61/106 (2006). See also Sandland "Lessons for Children's Rights from Disability Rights" 121.

<sup>116</sup> UNICEF *Child Participation in Local Governance* 9.

<sup>117</sup> On local environmental governance, see Fambasayi 2021 *Stellenbosch Law Review* 403.

<sup>118</sup> See *General Comment No.12 on the Right of the Child to be Heard* para 82.

<sup>119</sup> See also 4.4.3 above.

<sup>120</sup> See Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 798-799.

<sup>121</sup> Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 798.

#### 4.6.1.2 Freedom of expression

Every person, including children, has the freedom of expression. In South Africa, section 16(1) of the Constitution provides for the right of everyone, without exception, to freedom of expression, which includes the freedom to receive or impart information or ideas. In addition, the right includes the freedom of the press and other media.<sup>122</sup> A generous interpretation of "other media" undoubtedly includes social media. Social media is a platform on which children can express themselves. This provides a great opportunity for them to engage with the city authorities.<sup>123</sup>

Global social media platforms provide opportunities for individuals and groups to demand, advocate, and enact changes they consider relevant. Social media are particularly useful when it is not always possible to drive change through traditional media.<sup>124</sup> Social media is positioned as a platform for access to information, mobilisation, and freedom of expression.<sup>125</sup> However, others criticise digital activism done using social media, noting that "it is more about the individual and less about collective positive action" and also noting that literature uses "terms like 'clickism' and 'slacktivism' indicating little commitment or engagement."<sup>126</sup> Another challenge is that social media or the internet is a volatile space for online child rights violations.<sup>127</sup>

Currie and de Waal<sup>128</sup> argue that the conception of freedom of expression in section 16(1) of the Constitution is wide, almost unlimited, and yet "constitutional protection is accorded to many problematic forms of speech [or expressive action]." Section 16(2) places legitimate and reasonable restrictions on the right to freedom of expression. These measures could potentially be more restrictive for children. In

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<sup>122</sup> Currie and De Waal "Expression" 342.

<sup>123</sup> See Baig *How Social Media is Changing the face of Human Rights Activism* 1.

<sup>124</sup> See Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 798.

<sup>125</sup> See Tisdall and Cuevas-Parra 2022 *International Journal of Human Rights* 798.

<sup>126</sup> Allaste and Cairns "Digital Participation and Digital Divides in a Former Socialist Country" 17-51.

<sup>127</sup> See, for example, a recent study in Namibia on the dangers of children's online presence, ECPAT International, INTERPOL and UNICEF *Disrupting Harm in Namibia: Evidence on Online Child Sexual Exploitation and Abuse* 1-93.

<sup>128</sup> Currie and De Waal "Expression" 343.

some sense, the provision resembles the freedom of expression for children under international children's rights law. For instance, article 13(1) of the UNCRC provides for freedom of expression.<sup>129</sup>

According to Lansdown and Vaghri,<sup>130</sup> the right to freedom of expression recognises the central dimension of autonomy in children's lives. Freedom of expression relates to the right to hold and express opinions and is tied to the freedom to seek, receive, and impart information.<sup>131</sup> The right imposes a negative duty on states to refrain from interfering with children's views on governance issues.<sup>132</sup> However, the freedom of expression may be subject to certain restrictions.<sup>133</sup> Such restrictions should not interfere with fundamental rights and freedoms. In the case of children with special needs, such as children with disabilities, article 7(3) of the CRPD provides that they have the "right to express their views freely on all matters affecting them." In addition, the CRPD states that State Parties have a duty to provide disability and age-appropriate assistance for the exercise and realisation of the right to freedom of expression.

The right to freedom of expression is linked to child participation under article 12 of the UNCRC; however, there are notable differences.<sup>134</sup> Article 13 of the UNCRC has a wide scope and is not limited to all matters affecting the child. This is not limited to children capable of forming a view, as required in article 12.<sup>135</sup> Article 13 does not have a requirement for adults to establish mechanisms through which to hear the views of children, a central requirement of article 12 of the UNCRC.<sup>136</sup> These two provisions mutually reinforce one another. Freedom of expression provides

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<sup>129</sup> Some argue that the African Children's Charter does not explicitly guarantee the right freedom to seek, receive and impart information – essential for the exercise of freedom for expression. Arguably, the Charter neglects or fails to clarify on this fundamental aspect. See Gose *The African Charter on the Rights and Welfare of the Child* 129-130.

<sup>130</sup> Lansdown and Vaghri "Article 13: The Right to Freedom of Expression" 65.

<sup>131</sup> See 4.6.1.1 above.

<sup>132</sup> See *General Comment No.12 on the Right of the Child to be Heard* para 81.

<sup>133</sup> Article 13(2) of the UNCRC.

<sup>134</sup> The African Children's Charter place child participation and expression under one provision, providing for the right to be heard in the context of freedom of expression.

<sup>135</sup> Lansdown and Vaghri "Article 13: The Right to Freedom of Expression" 67.

<sup>136</sup> Lansdown and Vaghri "Article 13: The Right to Freedom of Expression" 67-68.

children with the assurance to express their views. Article 12 on child participation strengthens recognition of the agency and autonomy of children involved in decision-making processes. The CRC Committee notes that freedom of expression is a prerequisite for enhancing the participation of children in governance, as it strengthens democratic ideals that should extend to children's expression of governance views using online platforms.<sup>137</sup>

Cumulatively, it must be noted that freedom of expression, whether in person or online, presents children with an opportunity to expand and exercise their participation rights.

#### *4.6.1.3 Freedom of association and assembly*

Every child has the freedom to associate and assemble freely. Sections 17-18 of the Constitution provide freedom of assembly and association, respectively. Rights are applicable to and enjoyed by everyone and subject to legitimate restrictions.<sup>138</sup> First, section 17 provides a right to peacefully assemble, demonstrate, picket and petition while unarmed. As observed earlier, the fabric of South Africa's liberation struggle had children on the frontlines of peaceful assemblies, protests, and demonstrations.<sup>139</sup> Woolman<sup>140</sup> underscores that freedom of assembly creates space and an environment for both speaking and being heard and spearheads collective action. Children have the right to enjoy this right, as they individually "develop their personality and unique talents" and also in the context of groups.<sup>141</sup>

Second, section 18 provides everyone the right to freedom of association. According to Woolman,<sup>142</sup> association applies to various contexts, including political, cultural, religious, empowering, and voluntary ones. The latter implies that there is no legal

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<sup>137</sup> *General Comment No.25 on Children's Rights in Relation to the Digital Environment* paras 60-61. Zlotnik Raz and Almog point out the need to understand children's online political engagement and expression – linking to the voting as children's expression of political views. See Zlotnik Raz and Almog 2023 *International Journal of Children's Rights* 508.

<sup>138</sup> Rautenbach and Venter *Rautenbach-Malherbe Constitutional Law* 402.

<sup>139</sup> See 3.3 above.

<sup>140</sup> Woolman "Assembly, Demonstration and Petition" 379.

<sup>141</sup> Woolman "Assembly, Demonstration and Petition" 380-381.

<sup>142</sup> Woolman "Association" 406-417.

rule, requirement, or impediment that prohibits children from forming, leading, and engaging with and/or in child-led associations to pursue matters that affect them.

Article 15(1) of the UNCRC underscores that states should recognise the rights of children to freedom of association on the one hand and peaceful assembly on the other.<sup>143</sup> These rights are closely related and mutually reinforced.<sup>144</sup> Freedom of association and assembly represents the core of civil and political rights for children. Lansdown<sup>145</sup> notes that article 15 of the UNCRC applies to the context of

[E]ngagement in political and social activities with others, including political demonstrations, and associations such as youth groups, ... child-led groups, ... and working children's organisations and movements, as well as informal association and assembly through social networks on[line] and offline.<sup>146</sup>

The right to freedom of association and assembly is not absolute. There are limitations in that the right is exercised in conformity with national law or is necessary in a democratic society in the interests of national security, public safety, maintaining public order, protecting public health (such as COVID-19 restrictions), and human rights protection.<sup>147</sup> While the limitations are noble, some argue in the context of children's rights that the broad limitation could subject the provision to restrictions and abuse by repressive governments or states, contrary to the spirit and letter of the UNCRC and the African Children's Charter.<sup>148</sup>

Freedom of association and assembly provides opportunities for children to be heard and express their views, including creating an enabling environment for children to gather in person, organise themselves, assemble peacefully, interact, and express themselves on public affairs<sup>149</sup> or associate using the digital environment.<sup>150</sup> In the

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<sup>143</sup> See article 8 of the African Children's Charter provides that "every child shall have the right to free association and freedom of peaceful assembly in conformity with the law."

<sup>144</sup> See Lansdown "Article 15: The Right to Freedom of Association and Assembly" 86.

<sup>145</sup> Lansdown "Article 15: The Right to Freedom of Association and Assembly" 86.

<sup>146</sup> See Daly *A Commentary on the United Nations Convention on the Rights of the Child, Article 15: The Right to Freedom of Association and to Freedom of Peaceful Assembly* 36.

<sup>147</sup> See article 15(2) of the UNCRC. On the need to guard against blanket bans and restrictions, see Lansdown "Article 15: The Right to Freedom of Association and Assembly" 90-91.

<sup>148</sup> See Gose *The African Charter on the Rights and Welfare of the Child* 131.

<sup>149</sup> Lansdown "Article 15: The Right to Freedom of Association and Assembly" 87.

<sup>150</sup> *General Comment No.25 on Children's Rights in Relation to the Digital Environment* para 128.

urban context, children can assemble in community halls, clubs, cultural centres, and other appropriate institutions that provide opportunities for them to self-organise and participate in civic action. Lansdown.<sup>151</sup> says that these rights "enhance [children's] understanding of democratic processes and develops the capacity for future engagement." Freedom of association and assembly is exercised collectively with peers, expressing a common goal in local governance, with practical benefits for both children and local government institutions.<sup>152</sup> For instance, when children associate and assemble, they exercise collective participation and self-governance, thereby creating platforms to hold city authorities accountable for child rights commitments.<sup>153</sup>

#### *4.6.2 Child rights principles and child participation*

Participation is a fundamental right of every child. At the same time, this is a general principle of children's rights. Given the interdependence, indivisibility, and interrelatedness of child rights principles, this section discusses the interplay between child participation in decision-making and other child rights principles in local governance to demonstrate how they collectively provide opportunities for and enhance the realisation of inclusive governance for children at the city level in South Africa.

In addition to child participation, other child rights principles include equality and non-discrimination, the best interests of the child, and survival and development.<sup>154</sup> Child rights principles were first introduced and adopted by the CRC Committee in 1991.<sup>155</sup> These principles are not extra-conventional, but the "idea that they are

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<sup>151</sup> Lansdown "Article 15: The Right to Freedom of Association and Assembly" 87-88.

<sup>152</sup> UNICEF *Child Participation in Local Governance* 9.

<sup>153</sup> See Kimiagar and Hart "Children's Free Association and the Collective Exercise of Their Rights" 500-508.

<sup>154</sup> See *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 12.

<sup>155</sup> See *General Guidelines Regarding the Form and Content of Initial Reports to be submitted by States Parties under Article 44, paragraph 1 (a), of the Convention* para 13.

general principles is."<sup>156</sup> These are crosscutting in scope, use, and value.<sup>157</sup> The meaning and scope of the four general principles of children's rights scholarship have been settled.<sup>158</sup> Their significance in shaping children's rights discourse and practice is beyond doubt, as they are embraced by the UN and AU human rights treaty bodies,<sup>159</sup> as well as State Parties to international children's rights law.<sup>160</sup> Hanson and Lundy<sup>161</sup> argue that general principles occupy a special, additional status over and above other substantive children's rights in the UNCRC.<sup>162</sup>

Notwithstanding the criticism of the relevance of their elevated status,<sup>163</sup> these principles provide a useful framework to guide how to think about and conceptualise children's rights and guide duty-bearers, such as municipalities, on the interpretation and implementation of the rights of children at all times.<sup>164</sup>

#### 4.6.2.1 *Equality and non-discrimination*

The Constitution is the Supreme Law of South Africa. It lays the foundation for a democratic and open society in which every person is equally protected by law.<sup>165</sup> Section 9(1) of the Constitution provides that everyone has the right to equality before the law, as well as equal protection and benefits.<sup>166</sup> This entails the full and

<sup>156</sup> See Hanson and Lundy 2017 *International Journal of Children's Rights* 285-306.

<sup>157</sup> Lundy and Byrne "The Four General Principles of the United Nations Convention on the Rights of the Child: The Potential Value of the Approach in other Areas of Human Rights Law" 54.

<sup>158</sup> Kaime *The African Charter on the Rights and Welfare of the Child: A Socio-legal Perspective* 94.

<sup>159</sup> The four core principles guide the CRC Committee and the African Children's Committee in the performance and execution of their protective and promotional mandates.

<sup>160</sup> More so, the general principles guide state parties in the preparation of the initial and periodic reports, as they provide information relevant to implementation measures and challenges.

<sup>161</sup> Hanson and Lundy 2017 *International Journal of Children's Rights* 285-306.

<sup>162</sup> Lundy and Byrne "The Four General Principles of the United Nations Convention on the Rights of the Child: The Potential Value of the Approach in other Areas of Human Rights Law" 54.

<sup>163</sup> Some scholars argue that the CRC Committee overstepped its mandate by effectively adding to the content of the UNCRC and expanding the scope of the provisions of the Convention. See Lundy and Byrne "The Four General Principles of the United Nations Convention on the Rights of the Child: The Potential Value of the Approach in other Areas of Human Rights Law" 54-55.

<sup>164</sup> Mezmur "The United Nations Convention on the Rights of the Child" 410.

<sup>165</sup> See the preamble of the Constitution.

<sup>166</sup> For the prohibited grounds of discrimination, see section 9(3)-(4) of the Constitution which notes that the "state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. No



equal enjoyment of all rights and freedoms provided for in the Bill of Rights and any other law.<sup>167</sup> Based on the above provision, all spheres of government have a duty and obligation to take appropriate and necessary measures to ensure the protection of children from all forms of discrimination,<sup>168</sup> such as in law and policy reform.<sup>169</sup>

Borrowing from international children's rights law, article 2(1) of the UNCRC declares that states shall respect and ensure the rights contained in the Convention for each child within their jurisdiction without discrimination of any kind or ground.<sup>170</sup> It imposes a duty on states to refrain from actions that violate their rights.<sup>171</sup> It obligates them to take appropriate legislative, administrative, and other measures to ensure the protection of children from all forms of discrimination.<sup>172</sup> This should be read as including measures to address governance practices and processes that may exclude children because of their age (and status).<sup>173</sup> Plainly, the reference to the right applies to all children "within their jurisdiction" incorporates children living in cities, including migrant children.<sup>174</sup> By implication, the obligation applies equally to all levels of government under the authority and responsibility of the state,<sup>175</sup> including the subnational spheres.

The right to non-discrimination is an absolute right subject to no qualification or conditionality.<sup>176</sup> It is an inherent right and a general principle of children's rights.

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person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection. National legislation must be enacted to prevent or prohibit unfair discrimination."

<sup>167</sup> Section 9(2) of the Constitution.

<sup>168</sup> See article 2(2) of the UNCRC.

<sup>169</sup> *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 12.

<sup>170</sup> Some of the listed grounds, yet non-exhaustive, include child's or his / her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. For a similar provision, see article 3 of the African Children's Charter.

<sup>171</sup> Lansdown "Article 2: The Rights to Non-discrimination" 15.

<sup>172</sup> Article 2(2) of the UNCRC. See Alston 1992 *Bulletin of Human Rights* 5.

<sup>173</sup> *General Comment No.20 on the Implementation of the Rights of the Child during Adolescence* (2016) para 21.

<sup>174</sup> *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 18.

<sup>175</sup> See Abramson *A Commentary on the United Nations Convention on the Rights of the Child, Article 2: The Right of Non-Discrimination* 127-128.

<sup>176</sup> Lansdown "Article 2: The Rights to Non-discrimination" 12.

In addition, non-discrimination is considered a non-autonomous provision without independent existence.<sup>177</sup> In other words, non-discrimination and its positive corollary equality are applicable with reference to and only to be invoked concerning the implementation of all or other children's rights.<sup>178</sup> The recognition that every child shall enjoy "the rights set forth in the present Convention"<sup>179</sup> without any prejudicial distinction indicates that the entire catalogue of rights applies to all children. Apart from being a principle of children's rights law, the Human Rights Council views non-discrimination as a basic and general principle of human rights protection.<sup>180</sup>

Childhood participation and non-discrimination are interdependent. This implies that when the government creates opportunities for children to participate in decision-making processes, it arguably eliminates the possibility of discrimination. Essentially, the principle of equality and non-discrimination aims to foster inclusive approaches that must be integrated into all levels of governance and decision-making processes, including at the city level. The principles demand that local authorities ensure that the rights and interests of children form an integral part of the legal and policy framework, decision-making processes, strategies, IDPs,<sup>181</sup> and other interventions, ensuring that children are not excluded.

#### *4.6.2.2 The best interests of the child*

In many modern democracies, the best interests of the child principle is in cooperation with the national constitutions and legislation.<sup>182</sup> Section 28(2) of the Constitution declares that "a child's best interests are of paramount importance in

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<sup>177</sup> See Vandenhoe *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* 32.

<sup>178</sup> For Achilihu, non-discrimination is a right that qualifies all the other substantive and procedural rights as if it were a part of each one. See Achilihu *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of the Child* 32.

<sup>179</sup> See article 2(1) of the UNCRC.

<sup>180</sup> See *CCPR General Comment No.18: Non-discrimination* (1989) 1.

<sup>181</sup> On IDPs in South African municipalities, see 5.3 below.

<sup>182</sup> See Sloth-Nielsen "Domestication of Children's Rights in National Legal Systems in African Context: Progress and Prospects" 62-63.

every matter concerning the child."<sup>183</sup> The paramount of best interests means that the interests of the child are more important than anything else, although this does not imply that everything else is unimportant.<sup>184</sup> The Constitutional Court pronounced the best interests as a constitutional value, constitutional principle, and a self-standing constitutional right.<sup>185</sup> The Constitutional Court declared in *Minister for Welfare and Population Development v Fitzpatrick* that:

Section 28(2) requires that a child's best interests have paramount importance in every matter concerning the child. The plain meaning of the words clearly indicates that the reach of section 28(2) cannot be limited to the rights enumerated in section 28(1) and section 28(2) must be interpreted to extend beyond those provisions. It creates a right that is independent of those specified in section 28(1).<sup>186</sup>

Understood in the spirit of the constitutional text, the best interests provision bound all three spheres of government in South Africa.<sup>187</sup>

Legislatively, section 9 of the Children's Act provides that in all matters concerning the protection and well-being of a child, the standard to be applied is that of the best interests as paramount. Reference to protection in the Act should not be construed to limit the scope of child participation in the context of the best interests principle.<sup>188</sup> The Children's Act provides a list of relevant factors to be considered in order to guide the interpretation and application of the best interest standard.<sup>189</sup> Although framed in the context of family law,<sup>190</sup> some guidelines are relevant to local governance.<sup>191</sup> For example, considerations such as age, maturity and stage of development, gender, background, disability, and any emotional, social, and

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<sup>183</sup> See Zimbabwe (section 81(2) of the Constitution), and Kenya (section 54(2) of the Constitution).

<sup>184</sup> See *Centre for Child Law v Minister of Justice and Constitutional Development* 2009 6 SA 632 (CC) para 29.

<sup>185</sup> See Skelton "Children" 619-621; Bonthuys 2006 *International Journal of Law, Policy and the Family* 23-43.

<sup>186</sup> *Minister for Welfare and Population Development v Fitzpatrick* 2000 3 SA 422 (CC) para 17.

<sup>187</sup> Section 8(1) of the Constitution declares that "the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state."

<sup>188</sup> Section 6 of the *Children's Act*.

<sup>189</sup> Section 7(1) of the *Children's Act*.

<sup>190</sup> Section 7 of the *Children's Act*.

<sup>191</sup> Section 7(1)(g)-(h) of the *Children's Act*.

cultural factors.<sup>192</sup> could be useful in determining the best interests of children and their participation in decision-making in local urban governance.<sup>193</sup> These considerations should be read and interpreted in tandem with section 10 of the Children's Act on 'child participation' to fully ascertain what would be in the best interests of the concerned children.

International children's rights law provides some insights into the use of the best interests principle. In particular, article 3(1) of the UNCRC provides that in all actions concerning the child, "the best interests of the child shall be a primary consideration."<sup>194</sup> The best interests of a child is regarded as a principle that expresses the fundamental values of children's rights and child law.<sup>195</sup> According to Stalford,<sup>196</sup> the best interests principle is "the normative axis around which decisions relating to children revolve." In addition, the best interests is unanimously acknowledged as a core principle of children's rights, without adherence to which the implementation of children's rights laws would be severely compromised.<sup>197</sup>

The best interests apply to and in "all actions" concerning children undertaken by any person (natural or juristic) or authority (public institutions, administrative authorities, and legislative bodies).<sup>198</sup> The use of "all actions" is expansive and sufficiently broad to encompass both actions (governance decisions, programmes,

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<sup>192</sup> Also, for a non-exhaustive and non-hierarchical list of elements to consider in assessing and determining the best interests principle, see *General Comment No.14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, para. 1)* (2013) paras 48-84.

<sup>193</sup> On the need to consider social and cultural contexts of children as a group, see Ruggiero "Article 3: The Best Interest of the Child" 25.

<sup>194</sup> See article 4(1) of the African Children's Charter.

<sup>195</sup> *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 12; *General Comment No.14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, para. 1)* para 1. See Vandenhoe "Children's Rights from a Legal Perspective: Children's Rights Law" 27.

<sup>196</sup> Stalford "The Broader Relevance of Features of Children's Rights Law: 'The Best Interests of the Child'" 37.

<sup>197</sup> See Cantwell "The Concept of the Best Interests of the Child: What Does it Add to Children's Rights?" 20. See also Ruggiero "Article 3: The Best Interest of the Child" 22-23.

<sup>198</sup> It demands a systematic consideration of how the interests and rights of children will be affected by the actions of authorities. See *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* para 12. See also Vandenhoe, Türkelli and Lembrechts "Article 12: The Views of the Child" 60-61; *General Comment No.11 on Indigenous Children and their Rights under the Convention* (2009) para 33.

services, and procedures) and inactions (omissions).<sup>199</sup> It obligates states to take all necessary, intentional, and robust measures to fully consider the child's best interests when adopting or reviewing laws, policies, strategies, programmes, plans, and budget allocation.<sup>200</sup> For instance, in cases in which there is a legal provision open to more than one interpretation, states are obligated to choose the interpretation that most effectively serves the child's best interests.<sup>201</sup>

Considering its esteemed status in international children's rights law,<sup>202</sup> the CRC Committee has declared that the best interests comprise a three-tiered concept: a substantive right, a fundamental interpretative legal principle, and a rule of procedure.<sup>203</sup> In the first instance, authorities have an intrinsic obligation to substantively consider that children have the right to have their interests assessed, integrated, and consistently applied,<sup>204</sup> specifically at the city level of governance. Contrary to the views of Van Bueren,<sup>205</sup> who argues that "the best interests [do] not create rights or duties," the CRC Committee proclaims that the best interests is

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<sup>199</sup> See Van Bueren *International Law on the Rights of the Child* 46; *General Comment No.14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, para. 1)* paras 17-18; Freeman *Article 3: The Best Interests of the Child* 45-46; Alston 1994 *International Journal of Law, Policy and the Family* 13-14.

<sup>200</sup> See Vandenhoe, Türkelli and Lembrechts "Article 3: Best Interests of the Child" 60-61.

<sup>201</sup> Van Bueren *International Law on the Rights of the Child* 47-48. See also Vandenhoe, Türkelli and Lembrechts "Article 3: Best Interests of the Child" 62.

<sup>202</sup> See Cantwell "The Concept of the Best Interests of the Child: What Does it Add to Children's Rights?" 21; Mezmur "The United Nations Convention on the Rights of the Child" 403-407; Freeman *Article 3: The Best Interests of the Child* 60; Vandenhoe "Children's Rights from a Legal Perspective: Children's Rights Law" 32.

<sup>203</sup> The CRC Committee conceptualised the best interests, as "a substantive right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child ...; a fundamental interpretative legal principle ensuring that the interpretation which most effectively serves the child's best interests should be chosen whenever a legal provision is open to more than one interpretation ...; and a rule of procedure in that the decision process in any matter concerning a child must include an evaluation of the possibility of any negative or positive impact of the decision on the child." See *General Comment No.14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, para. 1)* para 6.

<sup>204</sup> Stalford "The Broader Relevance of Features of Children's Rights Law: 'The Best Interests of the Child'" 37. See also Peleg "International Children's Rights Law: General Principles" 142.

<sup>205</sup> Van Bueren *International Law on the Rights of the Child* 46.

a self-standing (collective and individual) right.<sup>206</sup> This means that the best interests of the child is self-executing, directly applicable, and can be invoked before any international and regional human rights adjudicating bodies and national courts,<sup>207</sup> as well as being invoked and applied in local governance processes.

The best interests principle is a tool for rendering the interests of children visible in decision-making processes that are often adult-dominated.<sup>208</sup> In practical terms, child participation and the best interests of a child play complementary roles. Simply put, child participation provides an avenue for children to express their views on what is best for them in any given context, specifically governance.<sup>209</sup> In fact, considering the views of children and creating opportunities for their participation is in their best interests. In other words, the requirements of the best interests cannot be correctly applied if the demands to hear the views of children are not met.<sup>210</sup>

The best interests of a child are paramount in the implementation of child participation to ensure that it is ethical, safe, and meaningful.<sup>211</sup> Essentially, this demonstrates the interrelatedness between child participation and the best interests principle and how city authorities ought to balance the views of children to ensure that all decisions are in the best interests of children within their jurisdictions.

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<sup>206</sup> *General Comment No.14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, para. 1)* para 6(a). See also *General Comment No.11 on Indigenous Children and their Rights under the Convention* para 32.

<sup>207</sup> It has been widely used by international and regional human rights adjudicating bodies. See, for example, Liefwaard and Doek "Litigating the Rights of the Child: Taking Stock After 25 Years of the CRC" 1-11; Sloth-Nielsen "Children's Rights Litigation in the African Region: Lessons from the Communications Procedure Under the ACRWC" 249-265.

<sup>208</sup> Stalford "The Broader Relevance of Features of Children's Rights Law: 'The Best Interests of the Child'" 39.

<sup>209</sup> See Ruggiero "Article 3: The Best Interest of the Child" 23.

<sup>210</sup> Ruggiero "Article 3: The Best Interest of the Child" 26. See also *General Comment No.14 on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, para. 1)* paras 43-45.

<sup>211</sup> See Vandenhoe, Türkelli and Lembrechts "Article 3: Best Interests of the Child" 71-72. Also, see *National Child Participation Framework* 4.

#### 4.6.2.3 *The right to life, survival and development*

The Constitution provides for the right of every child to life<sup>212</sup> and a plethora of rights for the survival and development of the child.<sup>213</sup> From the perspective of international children's rights law, article 6 of the UNCRC provides that "every child has an inherent right to life."<sup>214</sup> It also provides that State Parties "shall ensure to the maximum extent possible the survival and development of the child."<sup>215</sup> This means that states have an obligation to take all appropriate measures (both positive and negative) to ensure and promote the survival and (physical, mental, social, and psychological) development of children,<sup>216</sup> which is critical for developing the competencies and autonomy of children to participate in local governance.<sup>217</sup> In addition, the right to development obliges states to offer support to children and ensure that they grow and develop to reach their full potential and capabilities.<sup>218</sup> The implementation of this principle is integrally linked to the entire catalogue of rights,<sup>219</sup> particularly child participation.

According to Van Bueren,<sup>220</sup> the principle of survival and development reinforces the *raison d'être* of each of the rights enshrined in international children's rights law. While the term "survival" is ambiguous without a precise definition, it broadly

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<sup>212</sup> Section 11 of the Constitution.

<sup>213</sup> Sections 24 and 27, as read with section 28 of the Constitution.

<sup>214</sup> Article 6(1) of the UNCRC. The inherence of the right to life is an imperative norm of international (human rights) law. See *CCPR General Comment No.6: Article 6 (Right to Life)* (1982) para 1; and *Report of the Human Rights Committee to the Thirty-Seventh Session of the General Assembly* (1982) paras 1 and 13(1). See also *General Comment No.36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life* (2018).

<sup>215</sup> Article 6(2) of the UNCRC. See also article 5 of the African Children's Charter.

<sup>216</sup> Vaghri "Article 6: The Rights to Life, Survival and Development" 32. See also Lundy and Byrne "The Four General Principles of the United Nations Convention on the Rights of the Child: The Potential Value of the Approach in other Areas of Human Rights Law" 56; *World Declaration on the Survival, Protection and Development of Children* (1990) paras 7-12, 22-24, 26-32.

<sup>217</sup> While an extensive discussion of environmental degradation and climate change at the city level in the context to survival and development is beyond the scope of this study, it is imperative to note that a safe and healthy environment is central to survival and development of every child. More importantly, the views of children are critical to shape local level climate decision making.

<sup>218</sup> Nowak *Article 6: The Right to Life, Survival and Development* 2; *General Comment No.1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on Children of Incarcerated and Imprisoned Parents and Primary Caregivers* (2013) para 25. See also Peleg "International Children's Rights Law: General Principles" 147; Sutherland 2015 *Stellenbosch Law Review* 173.

<sup>219</sup> Vaghri "Article 6: The Rights to Life, Survival and Development" 32-33.

<sup>220</sup> Van Bueren *International Law on the Rights of the Child* 451.

relates to the adoption of positive measures to ensure the maximum development of children in matters of health and well-being of children,<sup>221</sup> which factors are linked to the ability of children to fully participate and contribute to civic engagements. In other words, the child's right to participate is interlinked with the right to survive and develop. For instance, the child's development and support precede the child's ability to participate in urban governance. This is linked to the empowerment of children through their access to information.<sup>222</sup>

There is an undeniable link between child participation on the one hand and survival and development on the other hand, specifically viewed in the context of local governance. Thus, the development of the capacities and competencies of the child through training and education has indispensable value and contributes to participation.

#### **4.7 Conclusion**

This chapter explored the typologies, forms, methods, and models of child participation to ascertain approaches to facilitate and enable the inclusion of children in decision-making processes in the South African local government context. Without prescribing any typology, form, or method of child participation for municipalities, the chapter allows local authorities to have the flexibility and latitude to determine the best and appropriate typology, form, method, and model to use at any given moment of participation and enhance the participation of children in decision-making processes. The chapter also demonstrates that the implementation of child participation requires practical models that help decision-makers understand how to implement child participation in practice.

In addition, the chapter adopted the Lundy model, which underscores the need for local authorities to provide children with the "space, audience, voice, and influence." The Lundy model helps local authorities and decision-makers navigate from the

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<sup>221</sup> See Vandenhoe, Türkelli and Lembrechts "Article 6: The Right to Life, Survival and Development" 92-93.

<sup>222</sup> See 4.6.1.1 above.



theoretical focus of international children's rights law and South African national law to the practical steps and opportunities that effectively enhance children's involvement in decision-making. The last part of the chapter argued that child participation can be facilitated and enabled through the realisation of procedural rights (access to information and freedom of expression and association) and the lens of child rights principles (the best interests of the child, equality and non-discrimination, and survival and development).

This chapter also demonstrates that it is vital to adopt and utilise the various typologies, forms, and methods of child participation, as well as the Lundy model, to create and optimise opportunities in South African law and policy to ensure the inclusion of children in decision-making processes in municipalities. In light of the foregoing discussion, the following chapter critically examines South African local government law from a children's rights perspective and further evaluates some of the legal tools and institutional mechanisms for the inclusion of children in urban governance. As explained below, the objective is to identify legal tools and opportunities for the inclusion of children in the decision-making processes in the South African local government sphere.

## **CHAPTER 5**

### **LOCAL GOVERNMENT LAW AND INCLUSIVE CITIES FOR CHILDREN IN SOUTH AFRICA**

#### **5.1 Introduction**

The Constitution of South Africa establishes three distinct, interdependent and interrelated spheres of government. These are the national, provincial, and local governments.<sup>1</sup> Local government is a distinctive sphere with constitutional and legislative functional mandates and powers.<sup>2</sup> The local government sphere constitutes wall-to-wall municipalities, which are clearly demarcated in terms of law.<sup>3</sup> Within the local sphere of government, municipalities – city authorities – govern and render a wide range of services that materially impact and affect the lives of children. In relation to governance, residents, including children, are expected to participate in the governance of public affairs.<sup>4</sup>

This chapter examines South African local government law<sup>5</sup> and explores the legal tools and opportunities for children to participate in decision-making processes in local governance to ascertain the inclusion of children in municipal decision-making processes. In the first part, the chapter provides a contextual overview of municipal powers, functions and competencies in general (as provided in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution) and specifically in relation to children. It also demonstrates how municipalities are expected to cooperate with other spheres of government in their designated functional matters, which relate directly and indirectly to children. The second part examines municipal governance instruments at the disposal of municipalities, such as the promulgation of by-laws, the adoption of policies and plans that regulate affairs in their demarcated areas,

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<sup>1</sup> Section 40(1) of the *Constitution*.

<sup>2</sup> On the historical development of local government in South Africa, see, for example, Mathenjwa 2018 *Southern African Public Law* 1-14.

<sup>3</sup> See the *Local Government: Municipal Demarcation Act* 27 of 1998.

<sup>4</sup> Local government sphere encompasses the structures and processes that regulate and promote community engagement in public affairs. See 5.4 below.

<sup>5</sup> Distinct from chapter 3, this chapter focuses on South African local government law, and there is no reference to international and African regional instruments as it were.

and public participation as a governance tool that is critical for enhancing bottom-up people-driven governance. This part argues that public participation is a cornerstone of local governance and that municipalities are obliged to ensure the participation of local communities in governance.

Part three discusses municipal institutional mechanisms and structures designed for the inclusion of people and their communities in governance. The analysis aims to identify structures in municipal governance and evaluate how they could promote the inclusion of children in decision-making processes in South African cities. It demonstrates how children could be engaged in these structures, and in some instances providing best practices and examples from other cities or local government processes.<sup>6</sup> Based on this exploratory evaluation, part four identifies possible barriers in law to the inclusion of children in decision-making processes at the city level. The final section concludes this chapter.

## **5.2 Municipalities, local governance and children**

South African municipalities are legal entities bestowed with legislative and executive authority to govern and administer local affairs.<sup>7</sup> In line with the principle of subsidiarity, local governments in South Africa have the original power and autonomy to deal with and govern issues that are more appropriately governed by subordinate levels of government.<sup>8</sup> Accordingly, this section explores the powers, functions and competencies of municipalities to govern their own affairs to build an understanding of how these powers, functions and competencies could be interpreted to benefit children and, specifically, their participation in decision-making processes. It also discusses the need for municipalities to cooperate with national

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<sup>6</sup> As noted in 1.6 above, the study does not use case study methodology but rather makes reference to some cities to demonstrate and clarify on how cities are inclusive towards children.

<sup>7</sup> Section 2(a) and (d) of the *Municipal Systems Act* states that a municipality is an organ of state within the local sphere of government that has a separate legal personality which excludes liability on the part of its community for the actions of the municipality.

<sup>8</sup> Mathenjwa 2015 *Journal of South African Law / Tydskrif vir die Suid-Afrikaanse Reg* 62-63. See also Carpenter "Cooperative Government, Devolution of Powers and Subsidiarity: The South African Perspective" 45; Du Plessis 2006 *Stellenbosch Law Review* 209.

and provincial spheres of government to comply with their constitutional and legislative mandates concerning issues relating to children.

### *5.2.1 The nature of municipal powers and functions*

The parameters of municipal powers and functions are set out in section 156 of the Constitution,<sup>9</sup> read with section 8 of the Municipal Systems Act.<sup>10</sup> Section 156(1) states that municipalities possess executive powers and the right to administer all issues listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution.<sup>11</sup> One may argue that there is no mention of children's rights in the functional areas of local government, except for reference to childcare services.<sup>12</sup> This could lead to a common presumption that the implementation of children's rights falls within the competency and functional areas of the national government, not the local government.<sup>13</sup> However, the above argument is not watertight for the reasons that the purpose of these constitutional schedules is not to articulate rights per se, but to set out power-sharing arrangements. As such, the functional powers therein must be exercised in line with the Bill of Rights obligations on all spheres of government.

Section 11 of the Municipal Systems Act provides the scope and ways to exercise executive powers and legislative authority at the local level. Section 11(3) of the Act states that a municipality exercises its legislative or executive authority by:

(a) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery; (b) promoting and undertaking development; ... (d) administering and regulating its internal affairs and the local government affairs of the local community; (e) implementing applicable

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<sup>9</sup> Section 156(1)(a) of the Constitution.

<sup>10</sup> Section 8(1) of the Municipal Systems Act provides that a municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution, and must exercise them subject to Chapter 5 of the *Municipal Structures Act*.

<sup>11</sup> Matters that have direct implication on or for children in the two schedules include air pollution, childcare facilities, public transport, water and sanitation, local amenities, local sports facilities, municipal roads, noise pollution, public spaces, refuse removal, and street trading.

<sup>12</sup> See the Constitutional Court decision regarding the functional areas of provincial government and local government over the operation and supervision of child care facilities, in *BE obo JE v MEC for Social Development, Western Cape* 2021 10 BCLR 1087 (CC). The case is a good example of the parameters on the power of local government as per the prescribed national legislation with the support of relevant municipal by-laws.

<sup>13</sup> However, this assumption is not correct as cities have a key role in the implementation of children's rights. See 2.4.1 above.

national and provincial legislation and its by-laws; ... (h) preparing, approving and implementing its budgets; ... (j) monitoring the impact and effectiveness of any services, policies, programmes or plans; ... (l) promoting a safe and healthy environment; (m) passing by-laws and taking decisions on any of the above-mentioned matters; and (n) doing anything else within its legislative and executive competence.

In addition, municipalities have power over any other matters assigned to them through national or provincial legislation.<sup>14</sup> The import of the phrase "any other matter assigned" means that the national or provincial government could assign additional responsibilities to municipalities<sup>15</sup> by agreement and subject to any appropriate conditions that accord with the principle of subsidiarity.<sup>16</sup>

Whether the national or provincial governments could assign functional areas related to children to municipalities<sup>17</sup> depends on various factors, such as competency on the issues in question and the need to avoid assigning unfunded responsibilities to municipalities. In addition, municipalities may make by-laws (i.e., city-level law that impacts children) in relation to matters on which they have legislative or assigned powers to administer.<sup>18</sup> In matters of original or assigned responsibility, municipalities have the right to exercise any reasonably necessary or incidental power to the matter in question.<sup>19</sup> The use of the incidental powers doctrine, as De Visser<sup>20</sup> notes, is not intended to add to the number of functional areas over which local governments have power. Instead, the rationale is to ensure a purposive interpretative approach to determining the ambit of municipal functional areas.<sup>21</sup>

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<sup>14</sup> Section 156(1)(b) of the Constitution.

<sup>15</sup> De Visser 2010 *Stellenbosch Law Review* 111-115. A discussion of the assigning of powers to local government falls beyond the scope of the current study.

<sup>16</sup> Section 156(4) of the Constitution provides that "national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if: (a) that matter would most effectively be administered locally; and (b) the municipality has the capacity to administer it."

<sup>17</sup> Some of the child-related functional areas that national and provincial government possess includes education, environment, pollution control, urban and rural development, and welfare services.

<sup>18</sup> Section 156(2) of the Constitution.

<sup>19</sup> Section 8(2) of the *Municipal Systems Act*. See also section 156(5) of the Constitution.

<sup>20</sup> De Visser *Developmental Local Government: A Case Study of South Africa* 122.

<sup>21</sup> Steytler and Fesha 2007 *South African Law Journal* 327.

In the exercise of their powers, municipalities are obligated to respect, protect and promote the rights of all people, as contained in the Bill of Rights.<sup>22</sup> Section 28 of the Constitution – the children's rights clause – is part of the Bill of Rights<sup>23</sup> and should be read together with local government and child-related laws to ensure that municipalities play their role in the respect, protection, and promotion of the human rights of children. This view aligns with Feature 1 of inclusive cities for children discussed above<sup>24</sup> and finds support in international children's rights law, specifically those relating to the provisions directed towards administrative bodies, the judiciary and juristic persons such as cities.<sup>25</sup> Thus, the responsibilities of municipalities in relation to children go beyond the functional areas listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution.

### *5.2.2 Good cooperative governance and children*

While acknowledging the distinctiveness and independence of municipalities, it is noteworthy that local governments are expected to cooperate and interrelate with other spheres of government, including matters relating to children. Arguably, good cooperative governance creates a conducive environment for good governance between and across all spheres of government and organs of state that consider and prioritise the rights and interests of children.

Section 41 of the Constitution states that municipalities are expected to operate within a cooperative government system.<sup>26</sup> In particular, it declares, among other things, that all spheres of government and all organs of the state must "respect the constitutional status, institutions, powers, and functions of government in other

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<sup>22</sup> Section 4(3) of the *Municipal Systems Act*.

<sup>23</sup> Yet, others have argued that section 4(2)(j) of the *Municipal Systems Act* which provides that municipalities shall "contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution", is exclusionary of section 28 of the Constitution. For a detailed criticism, see Couzens 2011 *Stellenbosch Law Review* 148-149.

<sup>24</sup> See 2.4.1 above.

<sup>25</sup> See 3.2 above.

<sup>26</sup> See also section 3(1) of the *Municipal Systems Act*. The component of intergovernmental relations is expounded in terms of the *Intergovernmental Relations Framework Act* 13 of 2005, and an extensive discussion thereof falls beyond the scope of this study.

spheres."<sup>27</sup> It forbids spheres of government from assuming any power or function except those constitutionally conferred.<sup>28</sup> It requires them to exercise their powers and perform functions in a manner that does not encroach on the functional or institutional integrity of others<sup>29</sup> and says they must "secure the well-being of the people,"<sup>30</sup> among others.<sup>31</sup> Cooperative governance provides that, in supporting municipalities to exercise their powers and functions, national and provincial governments should not interfere, compromise, or impede the exercise of municipal powers and authority.<sup>32</sup>

Cooperative governance reaffirms the independence of municipalities in defining and expressing autonomy in their functional areas without interference from national and provincial governments.<sup>33</sup> In essence, it fosters mutual support, coordination, and cooperation within and among the three spheres of government in their functional areas as they endeavour to work together<sup>34</sup> in mutual trust and good faith to pursue national interests.<sup>35</sup>

The principles of cooperative governance lay down expectations of how local governments interact with higher levels of government, both national and provincial.<sup>36</sup> For example, provincial governments are constitutionally empowered

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<sup>27</sup> Section 41(1)(e) of the Constitution.

<sup>28</sup> Section 41(1)(f) of the Constitution.

<sup>29</sup> Section 41(1)(g) of the Constitution.

<sup>30</sup> Section 41(1)(b) of the Constitution.

<sup>31</sup> There is ample case law, specifically from the Constitutional Court, emphasising original powers and autonomy of local government over its constitutionally conferred functional areas. See *Executive Council of the Province of the Western Cape v Minister for Provincial Affairs and Constitutional Development*; *Executive Council of KwaZulu-Natal v President of the Republic of South Africa* 2000 1 SA 661 (CC); *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 6 SA 182 (CC); *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 1 SA 374 (CC).

<sup>32</sup> Section 3(2) of the *Municipal Systems Act*.

<sup>33</sup> Section 154(1) of the Constitution. On non-interference, see Fuo 2017 *De Jure* 324-345; *City of Cape Town v Robertson* 2005 2 SA 323 (CC) para 60.

<sup>34</sup> Nel, Du Plessis and Retief "Key Elements for Municipal Action" 16.

<sup>35</sup> Section 41(1)(h) of the *Municipal Systems Act*. See also Tau 2015 *Journal of Public Administration* 801-802.

<sup>36</sup> See section 154(1) of the Constitution which notes that "the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions."

to "provide for the monitoring and support of local governments"<sup>37</sup> through legislative and other measures and develop the capacity of local governments in the province to manage their affairs. In essence, the provincial government has a duty to support and strengthen the efforts of municipalities to facilitate the inclusion of children in local governance, specifically through participation in public affairs.

As noted above, provincial governments play an oversight and supervisory role and guide municipalities on the performance of their mandates.<sup>38</sup> This entails supporting, regulating, monitoring and strengthening municipalities.<sup>39</sup> This means that provincial governments must draft framework legislation and model by-laws,<sup>40</sup> handbooks and other useful tools to guide municipalities in their provinces.<sup>41</sup> In essence, provincial governments have the power to influence how municipalities consider and implement certain issues within their original or delegated powers.<sup>42</sup> A good example is the Western Cape Provincial Government's unprecedented move to set up a Commissioner for Children (WCCC) - an independent institution from the provincial government.<sup>43</sup> The WCCC reports to the Western Cape Provincial Parliament on the activities, functions and progress of its objectives.<sup>44</sup>

Although a comprehensive discussion of the WCCC falls beyond the scope of this study, it is imperative to note that the office works with provincial departments<sup>45</sup> and municipalities to influence policy interventions and programmes in relation to children.<sup>46</sup> Importantly, the WCCC directly engages with and consults children on

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<sup>37</sup> Section 155(6) of the Constitution.

<sup>38</sup> Sections 139 and 155(6)-(7) of the Constitution. See *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* para 66.

<sup>39</sup> Sections 154(1) and 155(6)-(7) of the Constitution.

<sup>40</sup> Muir 2015 *South African Public Law* 569.

<sup>41</sup> Borgström and Naidoo 2014 *Constitutional Court Review* 60-61.

<sup>42</sup> See Humby 2015 *Journal of South African Law / Tydskrif vir die Suid-Afrikaanse Reg* 180-188.

<sup>43</sup> Presently, the Western Cape Commissioner for Children (WCCC) is administratively stationed in the Office of the Premier, a situation which does not truly reflect its independence and oversight role as an autonomous governance institution.

<sup>44</sup> Western Cape Government 2022 <https://www.westerncape.gov.za/childrens-commissioner/>.

<sup>45</sup> Such as DSD, Department of Education (DoE), and Department of Health (DoH).

<sup>46</sup> WCCC *Annual Report of the Western Cape Commissioner for Children* 27-29.



various issues in partnership with the Department of Local Government.<sup>47</sup> through the Community Child Rights Workshops (CCRWs).<sup>48</sup> This is one of the child participation models introduced by the WCCC to hear their views and create platforms for children to influence their governance.<sup>49</sup> The WCCC has a great potential to set models and guide municipal authorities in the province on how to engage children, making practical aspirations set out in the NPAC to ensure that there are ORCs in all spheres of the government.<sup>50</sup>

Pieterse argues for "a rights-based governance approach"<sup>51</sup> within the context of section 41(1) of the Constitution because the provision is broadly expansive. This rights-based approach can be interpreted in the spirit of the indivisibility of constitutional rights. For instance, the principle that aims to ensure that each sphere must "secure the well-being of people"<sup>52</sup> could be broadly and expansively defined.<sup>53</sup> Du Plessis<sup>54</sup> argues that well-being refers to a good or satisfactory condition of existence. The existence is said to extend to the "development of a person, [fulfilment] and making a contribution to the community."<sup>55</sup> She further

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<sup>47</sup> This is because the City of Cape Town has entered into a cooperation Implementation Protocol Agreement for Social Development with the provincial department of Social Development to ensure integration and collaborative partnerships in driving social development programmes, such as community engagement including for children. The Protocol Agreement facilitates the link between the work in supporting at the provincial level to efforts at the national level.

<sup>48</sup> WCCC *Community Child Rights Workshops: Hessequa Municipality* 1.

<sup>49</sup> See WCCC *Community Child Rights Workshops: Hessequa Municipality* 1-56.

<sup>50</sup> See 3.3.2.2 above.

<sup>51</sup> See Pieterse 2014 *South African Law Journal* 150. He notes that the Constitution, within the sphere of local government, introduced a rights-based governance system.

<sup>52</sup> For instance, in the context of local environmental governance, section 24 of the Constitution entrenches the well-being clause which when read with section 41(1)(b) of the Constitution it imposes obligations on local government to undertake a range of governance measures that respect, protects and promotes the rights and interests of people. For an extensive discussion on the meaning of well-being in section 24 of the Constitution, see Du Plessis 2018 *South African Journal on Human Rights* 198-207.

<sup>53</sup> The term is used in different contexts and fields such as psychology, philosophy, anthropology, legal, and health, among others. In the case of child well-being, it relates to "the realisation of child rights and the fulfilment of the opportunity for every child to be all she or he can be in light of a child's abilities, potential and skills, as a result of effective protection provided by the state." See Bequele "Governance and Child Well-being: Evidence and Lessons from Africa" 47.

<sup>54</sup> Du Plessis 2018 *South African Journal on Human Rights* 193-196. Sen views wellbeing (and capability) noting that it relates to a person's living combining various doings and beings, evaluated in terms of the capability of a person to achieve valuable functioning. See Sen "Capability and Well-being" 36.

<sup>55</sup> Du Plessis 2018 *South African Journal on Human Rights* 194-195.

notes that well-being is "one of the things that feed into a person's ability to execute valuable acts" and that it is "influenced by expectations arising from education [or] prior exposure."<sup>56</sup> Taking this understanding into account, it could be argued that, among other things, well-being is interdependent with child participation or a precondition of the ability to contribute to and participate in governance.<sup>57</sup> This may also be linked to nurturing children's ability to individually and collectively participate in decision-making in public affairs. Cooperative governance urges all three spheres of government to work together towards respecting the rights entrenched in the Bill of Rights,<sup>58</sup> including children's rights, as well as achieving development policies at the city level.<sup>59</sup>

The WCCC example above demonstrates that it is crucial to understand the relationships between different spheres of government, as this provides a framework in which municipal institutional structures and governance instruments operate. In addition, it must be noted that good cooperative governance between all spheres of government and organs of state creates a conducive environment for the inclusion of children in the decision-making process at the city level.

### **5.3 Local governance instruments and public participation**

In the context of the powers, functions and competencies of municipalities discussed above,<sup>60</sup> this section identifies and critically evaluates municipal governance instruments and public participation to understand how municipalities can leverage existing tools to advance the inclusion of children in decision-making processes at the city level.

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<sup>56</sup> Du Plessis 2018 *South African Journal on Human Rights* 200.

<sup>57</sup> Importantly, wellbeing is tied to the object of local governments to coordinate service provision that ultimately command improvement in the lives of people within the municipality.

<sup>58</sup> Section 7(2) of the Constitution.

<sup>59</sup> For similar sentiments, see Government of South Africa *Sustainable Development Goals: Country Report* 28.

<sup>60</sup> See 5.2 above.

### 5.3.1 *Municipal governance instruments*

This section examines municipal governance instruments that can be used to drive and advance the inclusion of children in decision-making processes. Municipalities are constitutionally viewed as entities with governance functions.<sup>61</sup> In the execution of their constitutional and legislative mandates, municipalities utilise local governance instruments. According to Nel, Du Plessis, and Du Plessis,<sup>62</sup> local governance instruments in South Africa are classified as follows:

(a) compliance-based instruments that can be used where municipalities are regulated or governed by other organs of state; (b) governance-based instruments, i.e. those instruments used by municipalities to govern and control their own affairs and processes; (c) governing-based instruments, ie those instruments that municipalities use to control the behaviour of other[s]; (d) those instruments that cut across the governed, governance and governing function of municipalities; and (e) those that have been adopted and innovatively used by South African local government.<sup>63</sup>

The above categorisation relates to a wide range of issues, including local environmental governance, which Nel, Du Plessis and Du Plessis robustly explore. In the context of this study, governance-based and governing-based instruments, as well as those adopted and innovatively used by South African local governments, are relevant to help build an understanding of the inclusion and participation of children in decision-making processes in municipal governance.

Governing-based instruments are divided into four categories: command-and-control, incentives and disincentives, agreement-based, and rights- and civil-based instruments.<sup>64</sup> Command-and-control and rights-and-civil-based instruments are discussed below. First, command-and-control governance instruments are used to regulate and govern others in demarcated municipal areas.<sup>65</sup> Once command-and-control governance instruments are adopted, they bind municipalities. For example, a municipality can use legislative and executive measures to regulate its affairs.<sup>66</sup>

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<sup>61</sup> Nel, Du Plessis and Retief "Key Elements for Municipal Action" 6-16.

<sup>62</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 3.

<sup>63</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 3.

<sup>64</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 32.

<sup>65</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 33.

<sup>66</sup> Nel, Du Plessis and Retief "Key Elements for Municipal Action" 6.

On the one hand, the use of legislative powers entails drafting, promulgation, implementation, enforcement, monitoring and amending by-laws on matters of the original or assigned functional areas.<sup>67</sup> Governing in terms of by-laws demands the capacity of the municipality. In the event of not having the said by-law, a municipality could adopt draft standard by-laws (should these exist on the required governance issue).<sup>68</sup>

On the other hand, executive authority can be used to develop, adopt, implement and monitor the impacts of its policies, budgets, strategic guidelines, plans and programmes.<sup>69</sup> For example, municipalities are legislatively instructed to develop IDPs as governance instruments to help them govern and enhance the delivery of constitutional objectives of local governments.<sup>70</sup> Accordingly, municipalities could draft and adopt by-laws and policies that recognise and provide special mechanisms for the participation of children in decision-making and urban governance processes.

Second, civil-based instruments and rights are employed to support municipalities in regulating and governing their affairs. To this end, Nel, Du Plessis and Du Plessis observe that civil rights-based instruments are mutually interdependent and supportive of one another and are classified into structural instruments, procedural instruments, and rights-based instruments.<sup>71</sup> They further explain that structural civil-based instruments are:

[O]ffer formal institutionalised structures for participation in local government, whereas procedural ... instruments provide the public with processes to ensure their participation in [governance] matters. Rights-based instruments, on the other hand, provide the public or community with the opportunity or right to engage in [governance] matters.<sup>72</sup>

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<sup>67</sup> Sections 11(3)(m), 12, and 13 of the *Municipal Systems Act*.

<sup>68</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 34-35, lament the by-law making capacity of South African municipalities and they note that it remains a challenge. Further, they note that the deficiency is exacerbated by the fact that the drafting of law can be a complex and onerous task for local government.

<sup>69</sup> Section 11(3)(a)-(b) of the *Municipal Systems Act*.

<sup>70</sup> For a discussion of IDPs, see 5.3.3 below.

<sup>71</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 33, 46-47.

<sup>72</sup> Nel, Du Plessis and Du Plessis "Instruments for Local Environmental Governance" 47.

The following discussion explores these instruments to understand the interaction of procedural and rights-based instruments to ensure and promote the inclusion and participation of children in urban governance.

### *5.3.2 Public participation in municipal governance*

This section discusses public participation as a legal tool for local governments. Public participation refers to different aspects of various settings. It is defined as an open and accountable process through which individuals and groups of people in each community share their views and influence decision-making outcomes.<sup>73</sup> In addition, it refers to activities by which people's concerns, priorities, needs, interests, and values are incorporated into public decisions, interventions, programmes, and actions.<sup>74</sup> Public participation ensures that all stakeholders affected by the decisions or actions of a public authority are engaged, consulted, and contribute to the decision-making process.<sup>75</sup>

Nonetheless, it should be noted that there is a distinction between public participation as envisaged in local government law in South Africa and that provided under international children's rights law to promote child participation in public affairs.<sup>76</sup> Public participation in local governance is for everyone without any set conditions, whereas child participation, as discussed in Chapter 3, has numerous

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<sup>73</sup> *National Policy Framework on Public Participation* (2007) 15. Napier observes that public participation aims to influence the decision-making processes, inform policymakers about the people's choices and preferences, and empower all residents in governance processes. See Napier 2008 *Journal for Contemporary History* 167.

<sup>74</sup> Nabatchi and Leighninger *Public Participation for 21st Century Democracy* 6, 13. While the different typologies of public participation are beyond the scope of this chapter, it is crucial to note that some scholars identify three types of public community participation (different from the child participation noted in 4.3 above) namely: passive participation, consultative participation, and interactive participation. Passive participation involves, primarily, the dissemination of information to the community as stakeholders, and this can take place during an awareness campaign or any other community activity. Consultative participation takes place when community members are consulted before a decision or resolution is made. Its shortfall is that the community is secluded from shared responsibility in the decision-making process. Finally, interactive participation takes place when community members are actively and meaningfully involved in collaborative analysis and decision-making processes. See Ababio 2004 *Journal of Public Administration* 274.

<sup>75</sup> SALGA *Effective Public Participation* 2.

<sup>76</sup> See 3.2 above.

requirements and conditions that meet the special age-based needs of children. It is, therefore, important to understand how public participation is viewed and implemented in local governance. This understanding will enable city authorities to better understand how the participation of children, as discussed in Chapters 3 and 4, could be implemented within the broader framework of general participation and special requirements for the inclusion of children in decision-making processes.

Generally, the value of participation in public affairs is reflected through community members' contributions and influence in decision-making and the process involving all affected groups.<sup>77</sup> In this regard, public participation processes should provide participants with the information needed to participate in a meaningful way, including ensuring that information is accessible and understood.<sup>78</sup> Operationally, public participation includes both electoral and non-electoral participation that contribute to, add to, and include the views, preferences, and choices of people in the governance of their constituencies.<sup>79</sup>

In South Africa, community public participation is part of the developmental role of local governments.<sup>80</sup> It is an integral part of the concept of developmental local government, in which local governments are committed to working with citizens (including children) to establish sustainable ways to meet their needs and improve their quality of life.<sup>81</sup> For instance, section 152(1)(e) of the Constitution provides for community participation in local governance. It instructs local governments to encourage the involvement of communities in matters of local governance and ensure the accountable governance of their constituencies. In addition, section 195(1)(e) of the Constitution underscores that the public must be encouraged to participate in policy-making.

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<sup>77</sup> See Siphuma *An Assessment of the Role of Public Participation in IDP: The Thulamela Municipality* 27; Ababio 2004 *Journal of Public Administration* 274.

<sup>78</sup> See 4.6.1.1 above.

<sup>79</sup> See Smith and Vawda 2003 *Urban Forum* 29.

<sup>80</sup> Section 153 of the Constitution; section 16 of the *Municipal Systems Act*.

<sup>81</sup> Smith and Vawda notes that developmental local government has four core elements, namely, "cultivating citizens through participation in service delivery, good governance, democratising development, and fostering economic growth." See Smith and Vawda 2003 *Urban Forum* 29.

The White Paper on Local Government established foundational principles on how municipalities should work with people and promote community participation.<sup>82</sup> It delineated four (non-exhaustive) levels of how people can participate in local governments.

As 'voters'<sup>83</sup> – to ensure maximum democratic accountability of the elected political leadership for the policies they are empowered to promote. As citizens who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that the policies reflect community preferences as far as possible. As consumers and end-users, who expect value-for-money, affordable services and courteous and responsive service. As organised partners involved in the mobilisation of resources for development via for-profit businesses, non-governmental organisations and community-based institutions.<sup>84</sup>

The same vision is echoed in the preamble of the Municipal Systems Act, which states that the "active engagement of communities in the affairs of municipalities"<sup>85</sup> is a fundamental aspect of the local government system. Community participation must take place at all levels and in all municipal governance activities, interventions, programmes, and decision-making processes.<sup>86</sup>

The Municipal Systems Act provides for the rights and duties of local communities, including the right to contribute to the decision-making processes of the municipality through mechanisms and procedures set out in the Act.<sup>87</sup> As envisaged in the Act, these mechanisms are often political processes that combine representative democracy (based on regular local government elections) and participatory democracy, which aims to ensure the involvement of all in local governance.

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<sup>82</sup> *White Paper on Local Government*. For instance, it notes that municipalities should develop mechanisms to interact with the community to identify service needs and priorities that inform governance. See section F, para 3.

<sup>83</sup> It is acknowledged that children do not exercise the right to vote until the age of 18 years.

<sup>84</sup> *White Paper on Local Government* section B, para 3.3.

<sup>85</sup> Preamble of the *Municipal Systems Act*, para 4.

<sup>86</sup> *SALGA Effective Public Participation* 7.

<sup>87</sup> Section 5(1)(a) of the *Municipal Systems Act*.

Section 17 of the Municipal Systems Act sets up mechanisms, processes, and procedures for conventional participation.<sup>88</sup> It declares that:

- (1) Participation by the local community in the affairs of the municipality must take place through — (a) political structures for participation in terms of the Municipal Structures Act; (b) the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act; (c) other appropriate mechanisms, processes and procedures established by the municipality; (d) councillors; and (e) generally applying the provisions for participation as provided for in this Act.
- (2) A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality.<sup>89</sup>

Municipalities should develop a culture of municipal governance that promotes participatory governance by encouraging and creating conditions for participation in local affairs.<sup>90</sup> Such participatory governance should be evident in processes such as the preparation, implementation, and review of IDPs and in the formulation of strategic decisions.<sup>91</sup> Participation should also be extended to remote electronic governance (e-governance), in which communities can use ICT to participate and input in public affairs.<sup>92</sup>

Section 17 of the Municipal Systems Act explicitly states the need for both direct and indirect participation in the governance of municipalities, considering the special needs of vulnerable groups such as persons with disabilities, women, the illiterate, and other disadvantaged groups.<sup>93</sup> The Act, however, does not define what "disadvantaged groups" mean, nor is there any criteria provided on how to

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<sup>88</sup> Nabatchi and Leighninger *Public Participation for 21st Century Democracy* 21-24, classify this form of public participation as conventional in that it is traditional and dictated by laws, with minimum room for innovative approaches, especially those informed by digital technology.

<sup>89</sup> Specifically, it provides that municipalities must provide for "(a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community; (b) notification and public comment procedures, when appropriate; (c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate; (d) consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and (e) report-back to the local community."

<sup>90</sup> Section 16(1) of the *Municipal Systems Act*.

<sup>91</sup> Section 16(1)(a) of the *Municipal Systems Act*.

<sup>92</sup> See Venter "Local Government and Its External Environment" 96. See also the South African *Electronic Government - The Digital Future: A Public Service IT Policy Framework* (2001) 4.

<sup>93</sup> Section 17(3) of the *Municipal Systems Act*.



determine who qualifies for this classification, especially after the express reference is made to women and persons with disabilities.<sup>94</sup> This interpretation is open to the discretion and innovation of local authorities. While the interpretation of disadvantaged groups should specifically include the elderly and children, there is a risk that these groups could be left out of decision-making processes based on political conditions and priorities.

Furthermore, municipalities are required to contribute to and facilitate capacity-building and the strengthening of local communities to enable their participation in local governance.<sup>95</sup> Capacity-building is expansive and can be integrated into training and education campaigns aimed at enabling children and other vulnerable groups to participate in local governance. In the same vein, it could be argued that capacity-building must be aimed at councillors and municipal administrative staff to ensure that, among other things, they are equipped to understand the legal requirement that children have the right to participate in the governance of public affairs<sup>96</sup> and to understand the safeguards needed to engage and involve children.<sup>97</sup>

Notably, the Municipal Systems Act does not expressly account for children's involvement in community participation or in local governance.<sup>98</sup> While the Act is silent, it is expansively drafted in such a way that it leaves room for innovation. For example, the Municipal Systems Act defines "local community member" or "community" in the context of local governance to mean the body of persons comprising residents, ratepayers, CSOs, NGOs, private sector or other bodies which

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<sup>94</sup> Using the rule of statutory interpretation namely *expressio unius est exclusio alterius* which means an express mention of the other excludes the other, this could potentially result in restrictive interpretation that exclude children from the list of vulnerable groups. It has to be noted, however, that this restrictive interpretation is not sustainable because children can also be classified as members of a community and vulnerable in the context of local governance issues such as environmental governance. See, for instance, Fambasayi 2021 *Stellenbosch Law Review* 406.

<sup>95</sup> Section 16(1)(b)(i) of the *Municipal Systems Act*.

<sup>96</sup> On municipal capacity building and strengthening, including of staff personnel, see Maserumule 2008 *Journal of Public Administration* 441-449.

<sup>97</sup> See section 16(1)(b)(ii) of the *Municipal Systems Act*.

<sup>98</sup> The concern is based on the principle of statutory construction *expressio unius est exclusio alterius* that noted above, which implies that an expression mention of women potentially excludes the children.

are involved in local affairs and visitors who make use of municipal services and facilities. It also includes the poor and other disadvantaged sections of such a body of persons.<sup>99</sup> Thus, children (including migrant children) are members of the community or residents, even if they are vulnerable or disadvantaged persons.<sup>100</sup> As such, a proper reading of the provisions on community participation creates a legally valid, enforceable, and relevant expectation on the part of children to exercise and enjoy the right to be heard and participate in decision-making.

This implies that the local government has an obligation towards fulfilling children's participatory rights.<sup>101</sup> To better understand this point, one must appreciate that the right to participate is classified under the traditional category of civil and political rights and not under the classification of socio-economic rights.<sup>102</sup> The classification of rights has unique legal implications for local governments in South Africa. Commenting over the human rights responsibilities of local governments, De Visser<sup>103</sup> notes that municipalities share the obligation to "respect, protect, and promote" all fundamental socio-economic rights. Arguing from a constitutional standpoint, De Visser advances the school of thought that local governments do not have the mandate to "fulfil" socio-economic rights, given the pre-conditions for the need to take legislative, administrative, budgetary, judicial and other measures.<sup>104</sup> On the contrary, and looking at civil and political rights, local governments are equally obligated to "respect, protect, promote, and fulfil" these rights. They must refrain from interfering with the rights, protect them against violation by third parties, and advance their implementation without requiring progressive realisation.<sup>105</sup>

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<sup>99</sup> Section 1 of the *Municipal Systems Act*.

<sup>100</sup> Section 1 of the *Municipal Systems Act* defines "resident" in relation to a municipality, to mean any person who is ordinarily resident in the municipal area.

<sup>101</sup> See 2.4.2 above.

<sup>102</sup> See Assim "Civil Rights and Freedoms of the Child" 394.

<sup>103</sup> De Visser 2003 *Law, Democracy and Development* 203. Note that the obligation to "fulfil" is excluded from this argument – on the obligation to "respect, protect, promote and fulfil."

<sup>104</sup> Yet, it should be noted that the obligation to fulfil socio-economic rights could flow from any constitutionally sanctioned or assigned area of functional competencies. See De Visser 2003 *Law, Democracy and Development* 204.

<sup>105</sup> De Visser 2003 *Law, Democracy and Development* 203-204.

Thus, it follows that municipalities are constitutionally bound by section 7(2) of the Constitution, read in line with the applicable legislative provisions, to respect, protect, promote and fulfil the participatory rights of everyone. In other words, local government has a constitutional and legislative obligation to ensure respect, promotion, and fulfilment of the rights of children to participate in decision-making processes in local governance.

It goes without saying that children, as community members, have the right to be informed of the decisions of their municipal councils<sup>106</sup> and to regular access and disclosure of the public affairs of the municipality's matters affecting them.<sup>107</sup> The information must concern municipal governance issues that affect children and in which the community is urged to participate,<sup>108</sup> mechanisms and procedures that facilitate participation,<sup>109</sup> local governance problems and strategies, and, importantly, their rights and duties as residents within the jurisdiction of the municipality.<sup>110</sup> City authorities must communicate the information by considering language preferences and common usage in the municipality<sup>111</sup> and giving regard to the special needs of persons who cannot read or write, including children.<sup>112</sup> Municipal information is vital for capacitating and enabling the community to exercise its rights efficiently and effectively,<sup>113</sup> thereby contributing to good governance.

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<sup>106</sup> Section 5(1)(c) of the *Municipal Systems Act*.

<sup>107</sup> Section 5(1)(d) of the *Municipal Systems Act*.

<sup>108</sup> On access to information, see 4.6.1.1 above.

<sup>109</sup> See 5.4 below.

<sup>110</sup> Section 18(1) of the *Municipal Systems Act*. See also SALGA *Effective Public Participation* 5.

<sup>111</sup> Presumably, this places a duty on the municipality to translate municipal information into local languages spoken in the community for the communities to read and understand issues that will require their views and contribution. However, the cost implications of a multi-language practice are acknowledged, especially for municipalities with people of different languages.

<sup>112</sup> Section 18(2) of the *Municipal Systems Act*. See SALGA *Effective Public Participation* 7. In this regard, special consideration should be given to children in difficult circumstances such as children without access to radio, newspapers or the internet – prompting the need to be innovative and use the school system as a platform to convey information vital for and to children.

<sup>113</sup> Ababio 2004 *Journal of Public Administration* 286. The author argues that "a poorly informed community cannot obtain high levels of genuine community participation."

Jurisprudence emphasises the critical role of access to information on community participation. For instance, in *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy*, the High Court said that "a person who does not know of the process [and meetings] cannot be expected to ... participate in the process as an interested [or] affected person."<sup>114</sup> The court went further to declare that "in order to become interested and affected persons, community members had to have the knowledge about the event, processes, amongst other things."<sup>115</sup> The pronouncement by Bloem J is valid in relation to access to information, especially for children who must participate in local governance processes.

Access to information on municipal governance is central to community participation. As Fuo<sup>116</sup> argues, public participation must be envisaged as a continuous process that ranges from providing information to raising awareness, and to partnering in decision-making. To ensure that information is received by local communities, municipalities are expected to use media, such as newspapers circulating in their jurisdictions and radio broadcasts covering the municipal area.<sup>117</sup> Communication must be in official languages determined by the council with regard to language preferences and usage dominant in the demarcated municipal area.<sup>118</sup>

Where an invitation is made for the public to make written comments, oral representations or express views on a matter before the municipal council,<sup>119</sup> it is expected that the invitation must prescribe the office or staff members and office hours of the official who will support those who cannot read and write.<sup>120</sup> This implies a duty on the part of the municipality to ensure that there are designated offices or staff members to facilitate and support the participation of children as far

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<sup>114</sup> *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* (Unreported Case) 3491/2021 para 21.

<sup>115</sup> *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* para 29. This view was expressed in relation to the interpretation of public participation in environmental governance, as envisaged in the *NEMA*.

<sup>116</sup> Fuo *Local Government's Role in the Pursuit of the Transformative Constitutional Mandate of Social Justice in South Africa* 233.

<sup>117</sup> Section 21(1) of the *Municipal Systems Act*.

<sup>118</sup> Section 21(2) of the *Municipal Systems Act*.

<sup>119</sup> See 4.4 above for linkages.

<sup>120</sup> Section 21(4) of the *Municipal Systems Act*.

as this is realistic and reasonable. Moreover, the prescriptions of section 21(4) of the Municipal Systems Act raise a legitimate expectation on the part of children that municipal information has to be accessible and that a municipal official will be assigned to help them participate in urban governance.

While the Municipal Systems Act is silent on the use of websites and social media platforms to disseminate information, it has become common practice to share information with people through social media channels.<sup>121</sup> However, it is noted that there are challenges for children without access to online presence and with no access the municipal websites or other social media platforms. Regarding those with access to online presence, the duty to ensure access to information requires local authorities to evolve and capture the target audience by using an appropriate medium of communication. This means that, as noted earlier,<sup>122</sup> city authorities should consider appropriate methods for communicating with and including children in ways that they understand. However, one must be cautious of demanding too much information from local governments, especially as it relates to how information should be accessible to children.<sup>123</sup> Notwithstanding this, sight should not be lost regarding the obligation of municipalities to provide people and children specifically with the information they need to participate in decision-making processes and in the governance of their cities.

Participatory processes, in terms of constitutional and legislative prescriptions, place a duty on all spheres of government to facilitate community involvement by creating spaces for people to be involved in public affairs.<sup>124</sup> At the policy level, there are

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<sup>121</sup> See Kaunda "Public participation platform: Municipalities must actively engage with citizens on social media" available on <https://www.dailymaverick.co.za/opinionista/2021-09-12-public-participation-platform-municipalities-must-actively-engage-with-citizens-on-social-media/>.

<sup>122</sup> See 4.4 above.

<sup>123</sup> In this case, without giving a prescription, it would be legitimately expected that information must be shared with mature children, who possess evolved capacities to understand governance issues at hand, to the exclusion of infants and toddlers, or young children.

<sup>124</sup> See, for example, *Matatiele Municipality v President of the Republic of South Africa* 2006 5 SA 47 (CC) paras 62-64.

numerous general policy documents geared towards promoting public participation in local governance.<sup>125</sup>

Building on the argument in 3.3.2.3 above, it should be noted that Chapter 15 of the NDP emphasises participatory community involvement in governance. Notably, the NDP acknowledges that participation must be pursued through formal participation structures established at the municipal level.<sup>126</sup> The NDP further underscores that municipalities should develop their own mechanisms to enable communities to participate in decision-making processes.<sup>127</sup> Chapter 13 of the NDP urges the government to engage with the people through state-established forums and people-driven initiatives. This means that all spheres of government, including the local sphere, can utilise forums and platforms to engage with people and share information on governance issues.<sup>128</sup> The NDP stresses the value and importance of participatory governance and community action. A people-driven governance approach in developing, implementing, and monitoring municipal programmes and interventions enhances ownership because communities believe in co-governance and their role in governance.<sup>129</sup> While it does not speak directly to children, one can understand from the NDP that people-driven governance approaches do not exclude opportunities for children to participate in local governance.

As shown in 3.3.2.4 above, the IUDF envisages inclusive urban governance through two of its four strategic goals: inclusion and access and governance.<sup>130</sup> Some of its policy levers are effective urban governance and empowered active communities.<sup>131</sup> Collectively, these could help achieve the IUDF vision of cities that are socially integrated, inclusive, and in which residents actively participate in urban life.<sup>132</sup> They also boost implementation and interventions at the local level, improve and

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<sup>125</sup> See 3.3.2.3 above.

<sup>126</sup> *National Development Plan 2030: Our Future - Make it Work* 474.

<sup>127</sup> See *National Development Plan 2030: Our Future - Make it Work* 474-477.

<sup>128</sup> See *National Development Plan 2030: Our Future - Make it Work* 435-437.

<sup>129</sup> See Government of South Africa *Sustainable Development Goals: Country Report* 260.

<sup>130</sup> Strategic goals 2 and 4 of the *Integrated Urban Development Framework* 39.

<sup>131</sup> Policy levers 7-8 of the *Integrated Urban Development Framework* 40-41.

<sup>132</sup> See *Integrated Urban Development Framework* 40.

strengthen how cities are governed, and empower communities to participate in governance.<sup>133</sup> Specifically, the policy lever on active and empowered communities acknowledges the existing framework of public participation at the local level and notes that the participation of residents in local government activities and decision-making processes promotes social inclusion and the rights of communities.<sup>134</sup> The interpretation of the IUDF requires a deliberate children's rights lens to ensure that the interests of children are integrated into all local governance processes.

Despite remarkable legislative and policy commitment to ensure the participation of communities in local governance,<sup>135</sup> communities are often excluded from decision-making processes. Some of the challenges relate to the failure of officials to intentionally include communities as a developmental priority but as a tick-box exercise. Expressing concern over public participation, De Visser,<sup>136</sup> notes that it has become:

a technical exercise, where officials "tick off" the relevant sections of the Act... The success of public participation will not come from the framework of the Municipal Systems Act but from the creativity displayed by municipalities in their own policies and by-laws on public participation.

Therefore, one must be cautious and aware of public participation challenges. This understanding will enable municipalities to be innovative while adopting special mechanisms for children to participate in decision-making processes. Statutory requirements for community participation in local governance should manifest in processes such as integrated development planning, budgeting, performance management systems and evaluations, and annual reporting.<sup>137</sup> Given the limitations of the scope of this study, the following section critically reflects on the integrated development planning process as a key example.

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<sup>133</sup> Government of South Africa *Sustainable Development Goals: Country Report* 260.

<sup>134</sup> *Integrated Urban Development Framework* 92-93.

<sup>135</sup> See 3.3.1–3.3.2; 5.2 above.

<sup>136</sup> De Visser *Developmental Local Government: A Case Study of South Africa* 106.

<sup>137</sup> *National Policy Framework on Public Participation* (2007) 24-28.

### 5.3.3 Integrated Development Planning

Municipalities are legally required to develop IDPs<sup>138</sup> through a process known as integrated development planning.<sup>139</sup> The significance of integrated development planning was first recognised in the White Paper on Local Government, which notes that municipalities encounter varying degrees of developmental challenges.<sup>140</sup> The White Paper underscores the need for municipalities to develop a concrete vision and strategy to which the IDP is the conduit for the realisation and financing of that vision. It further notes that by means of the integrated development planning process, a municipality establishes its short-, medium- and long-term plans.<sup>141</sup>

First introduced in the White Paper, the requirement for IDPs was cemented in local government legislation. For instance, section 23(1) of the Municipal Systems Act instructs that municipalities must undertake developmentally oriented planning aimed at achieving the objectives of local government (set out in section 152 of the Constitution),<sup>142</sup> which give effect to its developmental duties (as required by section 153 of the Constitution),<sup>143</sup> and cooperatively contribute to the progressive realisation of fundamental rights enshrined in sections 24, 25, 26, 27, and 29 of the Constitution).<sup>144</sup> Accordingly, integrated development planning is one of the mechanisms available to a municipality through which local government gives expression to its legislative mandate.<sup>145</sup> According to Van der Walddt,<sup>146</sup> integrated development planning is a participatory planning process that merges sectoral

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<sup>138</sup> Section 26 of the *Municipal Systems Act* sets out the key components of what should be constituted in IDPs.

<sup>139</sup> Providing a historical review, Retief and Cilliers links integrated development planning to the desire to correct the legacy of apartheid through an integrated approach to planning. They note that integrated development planning can be defined as "a participatory approach to integrate economic, sectoral, spatial, social, institutional and fiscal strategies in order to support the optimal allocation of scarce resources in a manner that provides sustainable growth, equity and empowerment of the poor and the marginalised." See Retief and Cilliers "Municipal Integrated Development Planning" 2.

<sup>140</sup> *White Paper on Local Government* para 3.1.

<sup>141</sup> *White Paper on Local Government* para 3.1.

<sup>142</sup> Section 23(1)(a) of the *Municipal Systems Act*.

<sup>143</sup> Section 23(1)(b) of the *Municipal Systems Act*.

<sup>144</sup> Section 23(1)(c) of the *Municipal Systems Act*.

<sup>145</sup> Retief and Cilliers "Municipal Integrated Development Planning" 10.

<sup>146</sup> Van der Walddt "Municipal Management: An Orientation" 95. See also Retief and Cilliers "Municipal Integrated Development Planning" 167-170.



strategies to determine the optimal allocation of resources for sustainable use. It is further noted that planning is done in a manner that promotes the empowerment of poor and marginalised groups. Essentially, it is an important, non-negotiable and participatory exercise for municipalities.

During the drafting of IDPs, municipalities are required to use appropriate mechanisms, processes, and procedures set out in Chapter 4 of the Municipal Systems Act regarding community participation<sup>147</sup> and ensure that local communities are consulted on their development needs, views and priorities.<sup>148</sup> This ensures that the input of communities is guaranteed during the drafting process, thus fulfilling an indispensable legal requirement. The Act further instructs municipalities to ensure wide consultations and engagement, including traditional leaders.<sup>149</sup> In addition, it calls for "other role players"<sup>150</sup> to be identified and consulted. The use of the phrase "other role players" by the drafters of the Act could be construed as an expansively liberal approach to who is involved in the development of IDPs, which should include any interested group such as business, civil society or interested persons such as children.<sup>151</sup>

After the planning process, a municipality adopts its IDP,<sup>152</sup> which provides a time-bound vision and a strategic framework for municipal governance. An IDP assists municipalities in achieving the constitutional objectives of local government (also set out in section 23 of the Municipal Systems Act) and fulfilling their mandates.<sup>153</sup> An IDP must be executed in line with the spirit of cooperative governance.<sup>154</sup> Specifically, it must be aligned with and complement development plans, priorities, and strategies of other organs of state.<sup>155</sup>

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<sup>147</sup> Section 28(2) of the *Municipal Systems Act*.

<sup>148</sup> Section 29(1)(i)-(ii) of the *Municipal Systems Act*.

<sup>149</sup> Section 29(1)(iii) of *Municipal Systems Act*.

<sup>150</sup> Section 29(1)(iii) of *Municipal Systems Act*.

<sup>151</sup> On interested groups, generally, see Visser 2001 *Urban Studies* 1678.

<sup>152</sup> Section 28 of the *Municipal Systems Act*.

<sup>153</sup> Retief and Cilliers "Municipal Integrated Development Planning" 167–170.

<sup>154</sup> See 5.2.2 above.

<sup>155</sup> Section 24(1) of the *Municipal Systems Act*.

Section 25(1) of the Municipal Systems Act instructs that every municipality shall adopt a "single, inclusive, and strategic plan", which:

(a) links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality; (b) aligns the resources and capacity of the municipality with the implementation of the plan; (c) forms the policy framework and general basis on which annual budgets must be based; (d) complies with the provisions of this Chapter; and (e) is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.<sup>156</sup>

An IDP informs the developmental trajectory of the municipality concerning its budgets,<sup>157</sup> programmes, strategies, and interventions that are required to deliver on the vision of the municipality.<sup>158</sup> This principal strategic document guides and informs all developmental plans and decisions in the municipality.<sup>159</sup> Once adopted, an IDP has legislative backing and legal force to bind the municipality in the exercise of its executive authority and all other natural and juristic persons.<sup>160</sup> within the municipal boundaries.<sup>161</sup> In addition, the IDP remains in force until the next municipal council adopts a new plan.<sup>162</sup> De Visser notes that an IDP enables municipalities to conduct extensive assessments of their social, environmental, and

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<sup>156</sup> Section 25(1) of the *Municipal Systems Act*. See Fuo 2013 *Potchefstroom Electronic Law Journal* 233 who argues that an IDP is expected to link with and complement national development priorities such as those identified in the NDP.

<sup>157</sup> Municipal budgeting is dealt with in terms of the *Local Government: Municipal Finance Management Act* 56 of 2003. Although budgeting for children is an important aspect, generally, child-rights budgeting falls beyond the scope of this study. It is acknowledged that in light of local government functional powers and competencies, some may contest conferring children's rights at the local level, but rather at the national and provincial level. However, the view may not hold water considering the constitutional right and constitutional principle of the best interests of the child that binds all levels of government. When budgeting, municipalities should, thus, consider the best interests of the child in municipal budgeting, whether directly or indirectly.

<sup>158</sup> Section 26 of the *Municipal Systems Act*. See also Retief and Cilliers "Municipal Integrated Development Planning" 3.

<sup>159</sup> Section 35(1)(a) of the *Municipal Systems Act*. It is considered as a roadmap and a decision-making tool that must guide and inform all decisions in local governance. See Retief and Cilliers "Municipal Integrated Development Planning" 167.

<sup>160</sup> These could be local businesses, developers, local community organisations and associations, to include, in the context of this study child-led groups.

<sup>161</sup> Section 35(1)(b)-(c) of the *Municipal Systems Act*. See also Du Plessis 2017 *Law Democracy & Development* 251-252; Van der Berg "The Pursuit of SDG 11 Through the Lens of Integrated Development Planning" 215.

<sup>162</sup> Section 25(2) of the *Municipal Systems Act*. IDPs are flexible, and may be adjusted based on, and to meet new challenges and developments. See Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 464-465.

economic terrain and audit available human and financial resources to enable prioritisation of interests.<sup>163</sup>

As noted above, municipal developmentally oriented planning must contribute to the progressive realisation of fundamental rights in sections 24, 25, 26, 27, and 29 of the Constitution.<sup>164</sup> Interestingly, section 28 of the Constitution – the children's rights clause – is not mentioned in section 23 of the Municipal Systems Act. Couzens<sup>165</sup> laments the failure of the Act to include section 28 of the Constitution in the list of rights that municipalities must promote through IDPs. Couzens' argument is that it could provide the local government with excuses and opportunities to contend that legislation governing their functional mandates excludes children's rights and, therefore, falls outside the municipal mandate. However, Couzens omits the recognition that the rights mentioned in section 23 of the Act are socio-economic rights that are progressively realised. Moreover, not all rights in section 28 of the Constitution require progressive realisation. This justifiably explains the rationale behind the exclusion of children's rights clause from the list of rights to be included in IDPs as noted above. This understanding implies that the argument by Couzens,<sup>166</sup> wherein it is underscored that the exclusion of children's rights may cause confusion regarding the duty of municipalities to apply the best interests as a standard (principle and right) with inferences that the best interests is inapplicable to the IDP process, is faulty and challenging to ascribe to. The Constitutional Court's proclamation that children's socio-economic rights in section 28 of the Constitution overlap with those in sections 24, 25, 26, 27, and 29 sets the record clear.<sup>167</sup> Although not obvious, it is anticipated that any failure to allow children's involvement and participation in the development of IDPs will result in exclusionary practices that ignore their interests in local governance. As such, the failure will be an affront to

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<sup>163</sup> De Visser *Developmental Local Government: A Case Study of South Africa* 103–105.

<sup>164</sup> Section 23(1)(c) of the *Municipal Systems Act*.

<sup>165</sup> Couzens 2011 *Stellenbosch Law Review* 148.

<sup>166</sup> Couzens 2011 *Stellenbosch Law Review* 148.

<sup>167</sup> *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 74.

South African law and policy regarding the inclusion of children in matters concerning their lives.<sup>168</sup>

Despite its positive intentions, the integrated development planning process often encounters numerous practical challenges that pose significant threats to its effectiveness in local governance,<sup>169</sup> specifically for children. While the drafting process is legislatively managed by the executive mayor and executive committee, it can be assigned to the municipal manager.<sup>170</sup> Some municipalities hire consultants to develop IDPs.<sup>171</sup> In the end, local communities, particularly children, could potentially be left out of the planning and development process, as there is a risk that consultants may ignore the need to consult or engage children unless it is entrenched in municipal laws and policies. Laws and policies that explicitly demand the inclusion of children in all local governance processes should mitigate the risk of leaving children out.

#### **5.4 Municipal mechanisms for inclusive decision-making**

In this study, municipal mechanisms imply structures such as the council of the municipality or any committee or other collective municipal structures, as provided for in the Municipal Systems Act, as read with the Municipal Structures Act.<sup>172</sup> These institutional structures enable the actualisation and implementation of the rights discussed above. This section identifies existing municipal or institutional structures in terms of local government law and explores their mandates to evaluate their adequacy in facilitating, protecting, and promoting child participation in South African municipalities.<sup>173</sup> These structures include municipal councils and ward

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<sup>168</sup> See 3.3 above.

<sup>169</sup> See Van der Berg "The Pursuit of SDG 11 Through the Lens of Integrated Development Planning" 219.

<sup>170</sup> Section 30 of the *Municipal Systems Act*.

<sup>171</sup> De Visser 2009 *Commonwealth Journal of Local Governance* 23. See also Maphunye and Mafunisa 2008 *Journal of Public Administration* 470.

<sup>172</sup> Section 1 of the *Municipal Systems Act*.

<sup>173</sup> In other words, it probes the into the opportunities for children's inclusion and participation in decision-making processes at the city level.

committees.<sup>174</sup> as well as innovative structures such as junior councils. Case studies by UNICEF demonstrates that children in some countries, such as in Nepal, participate in various local governance structures and processes as the ones discussed below;<sup>175</sup> for example, participation in ward-level school committees, citizens' forums and processes at the district and village development committees.<sup>176</sup>

It is argued that an inclusive institutional system, environment, or space for participation enables children to share their views freely and voluntarily in decision-making processes.<sup>177</sup>

#### *5.4.1 Municipal councils*

Every municipality is legally obligated by the Municipal Structures Act to establish a municipal council.<sup>178</sup> This is a non-negotiable legal requirement. A municipal council is a deliberative body and legislative assembly legally mandated to govern a municipality as an organ of state.<sup>179</sup> It has the right to govern the local affairs of the community and exercise executive and legislative authority without interference from other spheres of government.<sup>180</sup> Some of the powers of a municipal council include the right to review the needs of the community, set priorities to meet those needs, establish processes and mechanisms to involve the community, and perform other duties that may be ideal for achieving its objectives.<sup>181</sup> A municipal council must strive within its capacity to achieve local government objectives, as enshrined in the Constitution.

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<sup>174</sup> Some of the political structures such as the office of the speaker and executive mayor or administrative offices such as municipal managers are excluded from this analysis. It focuses on systems that enable collective decision making.

<sup>175</sup> See 5.4.1-5.4.4 below.

<sup>176</sup> See UNICEF *Child Participation in Local Governance – Country Case Studies* 4.

<sup>177</sup> See WVI *Child and Youth Participation Strategic Direction* 8.

<sup>178</sup> Section 18(1) of the *Local Government: Municipal Structures Act* 117 of 1998.

<sup>179</sup> Van der Walddt and Van der Walddt "Municipal Structures" 78.

<sup>180</sup> Section 4(1) of the *Municipal Systems Act*.

<sup>181</sup> Section 19(1)-(2) of the *Municipal Structures Act*.

A municipal council is considered to be the most influential and important structure in a municipal area.<sup>182</sup> It is the decision-making body<sup>183</sup> that may set up committees that are suitable for the execution of its mandate, such as executive committees.<sup>184</sup> Clearly, this is an important governance structure to ensure that the interests of the community are considered in decision-making processes.

As highlighted earlier, a municipal council is required to "develop mechanisms to consult the community"<sup>185</sup> and encourage the "involvement of the local community"<sup>186</sup> in decision-making processes, the exercise of its powers, and in performing its functions. One may legitimately assume that the power to establish mechanisms to consult the community is wide and discretionary, implying that a municipal council should be innovative and adopt its own initiatives to expand its participation. However, a reading of section 17 of the Municipal Systems Act gives the impression that these mechanisms are embedded within political structures for participation. Section 17(1) reads that participation must take place through the following:

- (a) political structures for participation in terms of the Municipal Structures Act;
- (b) the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act;
- (c) other appropriate mechanisms, processes and procedures established by the municipality;
- (d) councillors; and

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<sup>182</sup> Mokale and Scheepers *A Practical Guide to Achieving Excellence in Municipal Governance in South Africa* 59.

<sup>183</sup> See section 80 of the *Municipal Structures Act*.

<sup>184</sup> An executive committee is appointed for municipalities that do not have an executive mayor in terms of sections 43-44 of the *Municipal Structures Act*. Executive committees broadly mirror the composition of the municipal council. Whereas executive mayor is appointed in terms of sections 55-56 of the *Municipal Structures Act* – a system which conferred executive powers in one councillor who is appointed as the mayor to provide executive leadership. In turn, the executive mayor may also appoint his mayoral committee from amongst ordinary councillors to support the execution of the mayoral duties. A detailed discussion of these political appointees and internal dynamics of their functions falls beyond the scope of the present inquiry. For criticism around their internal challenges, see De Visser 2009 *Commonwealth Journal of Local Governance* 16-17; Pieterse 2020 *South African Journal on Human Rights* 131-153.

<sup>185</sup> Section 19(3) of the *Municipal Structures Act*.

<sup>186</sup> Section 4(2)(c) of the *Municipal Systems Act*.

(e) generally applying the provisions for participation as provided for in this Act.<sup>187</sup>

As noted earlier, the phrase "political structures" refers to a municipal council, any committee, or other collective structure of a municipality, as envisaged in terms of the Municipal Structures Act.<sup>188</sup> It could be argued that the legislative intent at the time of drafting the law was to correct apartheid wrongs that restricted black men and women from participatory governance while adopting laws that potentially excluded other groups, such as children, from local governance. The potential exclusion of children can be gleaned from section 17(3) of the Municipal Systems Act, which states that when establishing mechanisms, processes, and procedures for community participation, the municipality must consider the special needs of people who cannot read or write (presumably old and uneducated people), persons with disabilities, women, and other disadvantaged groups. It is concerning that the Act, in enlisting other groups, omitted children, young people, and youth from this important provision. A possible explanation for this omission could be ascribed to the fact that at the time of the promulgation of the Municipal Systems Act, the Children's Act, which provides expansive provisions on the importance of child participation, had not entered into force.<sup>189</sup>

Moreover, participation in municipal council business is preserved for councillors (persons above 18 years of age who are qualified to vote and elected in terms of the prescribed laws).<sup>190</sup> However, the public is not restricted from attending and participating in open meetings. In addition, municipalities have the latitude to adopt

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<sup>187</sup> This provision has to be read with section 17(2) of the Act, which notes that "[a] municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for— (a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community; (b) notification and public comment procedures, when appropriate; (c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate; (d) consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and (e) report-back to the local community."

<sup>188</sup> Section 1 of the *Municipal Systems Act*.

<sup>189</sup> The *Children's Act* entered into force in June 2006, whereas the *Municipal Systems Act* was assented into law in November 2000.

<sup>190</sup> Section 21(1) of the *Municipal Structures Act*.

rules and procedures in by-laws and policies that allow the involvement of children as non-permanent council members.

#### 5.4.2 Ward committees

Ward committees are established in terms of the Municipal Structures Act<sup>191</sup> as structures for metropolitan and local municipalities that opt to have them.<sup>192</sup> The primary objective of ward committees is to facilitate and enhance the participation of communities in local democracy and participatory local governance and to<sup>193</sup> disseminate information and support in the improvement of service delivery.<sup>194</sup> Essentially, ward committees serve as conduits of mobilisation for community action to advance municipal strategic goals set in the IDP framework.<sup>195</sup> Ward committees act as formal channels of communication between communities and municipal councils,<sup>196</sup> providing a forum for dialogue between the governed and governors on municipal governance issues.<sup>197</sup>

Section 74 of the Municipal Structures Act outlines the powers and functions of ward committees. This includes making recommendations on any matter affecting the ward to the councillor or through the ward councillor to municipal leadership.<sup>198</sup> The *Guidelines for the Establishment and Operation of Municipal Ward Committees*, 2005 (Ward Committees' Guidelines) note that a ward committee creates cooperative partnerships between the community and council in that it must:

- i. Advise and make recommendations to the ward councillor on matters and policy affecting the ward;

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<sup>191</sup> See sections 72-78 of the *Municipal Structures Act*. The institution of ward committees was first introduced through the publication of a *Green Paper on Local Government*, 1997 and later in the *White Paper on Local Government*. See Napier 2008 *Journal for Contemporary History* 168.

<sup>192</sup> Section 72(1)-(2) of the *Municipal Structures Act*.

<sup>193</sup> *Guidelines for the Establishment and Operation of Municipal Ward Committees* 2005 para 4(1).

<sup>194</sup> Section 72(3) of the *Municipal Structures Act*. See Draai and Taylor 2009 *Journal of Public Administration* 116; SALGA *Effective Public Participation* 6.

<sup>195</sup> See 5.3.3 above.

<sup>196</sup> See CoGTA *State of Local Government in South Africa: Overview Report - National State of Local Government Assessments* 13. See also Ababio 2004 *Journal of Public Administration* 275.

<sup>197</sup> Sections 73-74 of the *Municipal Systems Act*.

<sup>198</sup> Also, the ward committee may exercise any other duties and powers as the municipal council may delegate.



- ii. Assist the ward councillor in identifying [the] challenges and needs of residents;
- iii. Disseminate information in the ward concerning municipal affairs such as the budget, integrated development planning, performance management system, service delivery options and municipal properties;
- iv. Receive queries and complaints from residents concerning municipal service delivery, communicate [them] to council and provide feedback to the community on council's response;
- v. Ensure constructive and harmonious interaction between the municipality and community through the use and coordination of ward residents meetings and other community development forums; and
- vi. Interact with other forums and organisations on matters affecting the ward.<sup>199</sup>

In other words, ward committees act as an umbilical cord connecting community issues with municipal authorities – a channel through which the government consults with communities.<sup>200</sup> Ward committees promote bottom-up accountability processes. Pieterse<sup>201</sup> argues that they mainstream community participation. Simply put, ward committees are empowered to undertake participatory needs assessments and analyses at the ward level.

The Ward Committees' Guidelines note that for one to qualify as a member of a ward committee, that person must be a registered voter in the ward and should have other qualities such as good standing.<sup>202</sup> The requirements may be restrictive to the involvement of children in ward committees since children are legally not eligible to vote. This provision might be a stumbling block to the demands of children to participate at the ward committee level. It could be argued that stripping children of voting powers in ward committee business takes away their voices, making the participation process tokenistic. As noted above, the ward committee platform ought to be a liberalised platform for everyone, including children,<sup>203</sup> thereby granting

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<sup>199</sup> *Ward Committees' Guidelines* para (3)(b).

<sup>200</sup> SALGA *Effective Ward Governance System* 5. See also Napier 2008 *Journal for Contemporary History* 170.

<sup>201</sup> See Pieterse *At the Limits of Possibility: Working Notes on a Relational Model of Urban Politics* 145-146.

<sup>202</sup> *Ward Committees' Guidelines* para 8(2)(b).

<sup>203</sup> See 5.4.2 above.

children the "space, voice, audience, and influence"<sup>204</sup> over decision-making processes.

A ward committee consists of a councillor (elected political representative) representing the ward and other people not exceeding ten.<sup>205</sup> The category of other persons is left open, which may include representatives from grassroots organisations, civil society forums, religious groupings, traditional leaders, trade unions, resident associations, and persons with disabilities.<sup>206</sup> Section 72(3) of the Municipal Structures Act emphasises the need for women to be represented equitably, including representation of a diversity of interests. The express reference of women in the Act to the exclusion of youth and children could be problematic in terms of providing a representation to the views of children. Often, municipalities apply the law in black and white with limited innovation or expansive interpretation that favours a liberal approach to governance issues that could be referred to as unfunded areas.

Whether children or child-led groups are included in the category of "other persons" as envisaged in section 72(3) of the Municipal Structures Act depends on the understanding by municipal authorities of their children's rights obligations, the municipality's rules of engagement, and the understanding of councillors in relation to the obligation to hear the views of children.<sup>207</sup> One could also argue that the meaning of "diversity of interests" is expansive in representing every category, group or interested party. This expansive interpretation aligns with the constitutional imperative to ensure that all statutory provisions are construed to give effect to the Bill of Rights.

This study does not argue for the participation of children as official ward committee members, given the above requirement for a person to be above the age of 18 years. However, it is contended that children must participate in ward committee

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<sup>204</sup> See 4.5 above.

<sup>205</sup> Section 73(2) of the *Municipal Structures Act*.

<sup>206</sup> *Ward Committees' Guidelines* para 7(4).

<sup>207</sup> In other words, children's participation is at the mercy and discretion of the local leadership.

meetings as non-official and non-permanent members of the committees and in public ward meetings that are not political platforms but are meant for the general community to participate and contribute views and input.<sup>208</sup> This can only be achieved by allowing children to directly participate in ward committees when matters that affect them are under consideration or indirectly through representatives, such as by having civil society work with children, consulting with children and presenting their views in ward committee meetings.

The functionality and effectiveness of ward committees have often been criticised and questioned.<sup>209</sup> Some argue that given that they are purely advisory structures with no decision-making powers, they have no influential role in the policy-making process in local governance.<sup>210</sup> Pieterse observes that ward committees are usually regarded as "dysfunctional and ineffective, and residents tend not to make use of them."<sup>211</sup> The ineffectiveness of ward committees may be ascribed to funding issues,<sup>212</sup> their politicised nature due to party politics and patronage networks that exclude genuine contributions and inputs,<sup>213</sup> and the lack of trust by communities in local authorities to provide feedback on issues on which the people would have expressed their views in decision-making processes.<sup>214</sup>

The South African Local Government Association (SALGA) underscores that the terminology that is used, such as calling it a "committee", creates an impression of an elitist group in a ward that has the prerogative to identify, discuss, and raise

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<sup>208</sup> *Ward Committees' Guidelines* para 11.

<sup>209</sup> See CoGTA *State of Local Government in South Africa: Overview Report - National State of Local Government Assessments* 13.

<sup>210</sup> Draai and Taylor 2009 *Journal of Public Administration* 118.

<sup>211</sup> Pieterse 2020 *African Journal of International and Comparative Law* 631-632. See also CoGTA *State of Local Government in South Africa: Overview Report - National State of Local Government Assessments* 13; Oldfield "Participatory Mechanisms and Community Politics: Building Consensus and Conflict" 487–500.

<sup>212</sup> See Ababio 2004 *Journal of Public Administration* 278. As such, it is important to caution against expecting too much from ward committees without adequate funding to support initiatives. Yet, it is not an excuse for the failure to comply with statutory requirements in favour of the participation of communities in local governance and promote democracy – a constitutional principle.

<sup>213</sup> SACN *State of South African Cities Report 2016* 211-212.

<sup>214</sup> See Napier 2008 *Journal for Contemporary History* 177.

community issues with the councillor and municipal council.<sup>215</sup> This framing of an elitist group fortuitously side lines other community members, such as children, from governance matters that affect them. For effective ward governance, SALGA notes that there could be a need to refocus and regard them as ward meetings, as opposed to ward committee meetings, thereby creating regular inclusive local gatherings with all interest groups.<sup>216</sup> This proposition is persuasive, considering how it could enable children to participate without stringent requirements of age or perceptions regarding the meetings as elitist. This less-elitist approach supports the inclusion of children and their participation in raising governance matters concerning them in the ward and, subsequently, the municipality. Arguably, the concept of ward meetings can enhance participation and inclusivity at the local level and ensure that all interests in the ward are represented.<sup>217</sup>

#### *5.4.3 IDP representative forums*

One platform for the formal engagement of communities in governance, where no other municipality-wide structures exist, is through IDP representative forums (IDP forums). Established in terms of Regulation 15(1) of the *Local Government: Municipal Planning and Performance Management Regulations* 2001 (MPPMR),<sup>218</sup> IDP forums are a platform to enhance community participation in the drafting and implementation of IDPs. In other words, IDP forums institutionalises and guarantees the participation of the community in IDPs drafting process.

Constitutively, IDP forums often have various stakeholders, including the council executive committee, councillors, traditional leaders, senior municipal officials, representatives from organised stakeholders or campaign groups, and other community representatives.<sup>219</sup> The categories of "representatives from organised stakeholders or campaign groups" and "community representatives" are open-ended to include persons, organisations of persons with disabilities and child-led

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<sup>215</sup> SALGA *Effective Ward Governance System* 3.

<sup>216</sup> SALGA *Effective Ward Governance System* 3-4.

<sup>217</sup> SALGA *Effective Ward Governance System* 4.

<sup>218</sup> *Local Government: Municipal Planning and Performance Management Regulations* (2001).

<sup>219</sup> See *Local Government: Municipal Planning and Performance Management Regulations* (2001).

organisations. However, children are not always allowed to participate in these forums.

The primary aim of IDP forums is to lay a foundation for stakeholders (including children) to represent their interests as they relate to their constituency, thereby facilitating inclusive, transparent, and participatory decision-making.<sup>220</sup> SALGA notes that IDP forums are a platform for stakeholders to advance and defend the inclusion of their interests in the municipal IDPs.<sup>221</sup> In fact, IDPs are important municipal governance instruments.<sup>222</sup> The inclusion of children in their development ensures that their interests are considered and prioritised by city authorities.<sup>223</sup>

#### 5.4.4 Junior city councils

To facilitate the involvement of children in decision-making and civic engagement in local governance, some municipalities have established JCCs modelled on the same structure as the municipal council,<sup>224</sup> such as in the metropolitan cities of Johannesburg and Cape Town. Cape Town is used as an illustrative example in the interest of the scope and focus of this study.

The City of Cape Town provides for children and youth programmes, such as after-school programmes for indoor and outdoor games and sporting activities, pre-school and daycare details, and youth clubs (such as Ikamva Youth and Nyanga Yethu).<sup>225</sup>

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<sup>220</sup> SALGA *Effective Public Participation* 8.

<sup>221</sup> SALGA *Effective Public Participation* 8.

<sup>222</sup> See 5.3.2.1 above.

<sup>223</sup> As an indication of best practice, in Nepal local governments are mandated to carry out two types of development planning process: five-year periodic planning and annual development planning; and the annual process includes planning and budgeting for projects that directly affect children. Through child consultations known as *bal bhela* consultations, which are conducted prior to the development planning cycle, children use participatory tools to identify their needs and priorities. These needs and priorities are then brought to the attention of district and village development committees and municipal authorities. The issues raised by children and their potential solutions are then included in an action plan and are coupled to a budget estimate. See UNICEF *Child Participation in Local Governance – Country Case Studies* 4-5.

<sup>224</sup> In South Africa, Junior city councils have a long history, and spread across different cities and functioning on the basis of local enabling law and policy frameworks. As far as could be ascertained, in this study, there is no national legislative framework that govern the establishment of junior councils.

<sup>225</sup> City of Cape Town, Children and Youth Programmes <https://www.capetown.gov.za/City-Connect/Activities-and-programmes/Sport-and-recreation/children-and-youth>.

For instance, the Nyanga Yethu youth programme, which forms part of the Mayoral Urban Regeneration Programme, provides children and youths with opportunities to engage in empowerment and recreational activities such as film screening, floor games, and yoga.<sup>226</sup> Further, it highlights community halls that children and youth can use in their social engagement. These include the Desmond Tutu Hall, which is used for the Ikamva Youth Programme and provides empowerment and educational support.<sup>227</sup> These platforms create the space necessary for children to meet, associate, engage, and deliberate on matters that affect them in the city.

The City of Cape Town has a designated JCC, an initiative that facilitates and enables children in secondary schools to understand the mandate and functions of the City Council.<sup>228</sup> As a non-political programme, the JCC is designed to foster a sense of civic responsibility among children and youth, develop their skills and self-image, broaden their knowledge of local government and municipal matters, and understand the scope of the functions performed by local authorities.<sup>229</sup> Participation in the JCC is free and voluntary. Members serve for a two-year term, deliberating on and engaging in issues that affect children and youth in Cape Town.<sup>230</sup>

Operationally, the JCC Code of Conduct notes that members serve two core functions: acting as junior governance structures in the city structure and as community ambassadors who respond to challenges and needs in the communities they serve. Designed in the same manner as the municipal city council, as shown in Annexure B,<sup>231</sup> the JCC comprises a junior mayor, junior deputy mayor, junior speaker, junior chief whip, and sub-council chairpersons.<sup>232</sup> JCC members play a

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<sup>226</sup> City of Cape Town, Children and Youth Programmes <https://www.capetown.gov.za/City-Connect/Activities-and-programmes/Sport-and-recreation/children-and-youth>.

<sup>227</sup> See Ikavha Youth <https://ikamvayouth.org/>.

<sup>228</sup> See a document developed by the city to operationalise the junior city council, City of Cape Town Junior City Council <https://www.capetown.gov.za/Family%20and%20home/meet-the-city/city-council/junior-city-council>.

<sup>229</sup> City of Cape Town Code of Conduct: Junior City Council para 1.

<sup>230</sup> City of Cape Town Code of Conduct: Junior City Council paras 1-2.

<sup>231</sup> The said Annexure B is useful to provide a template of the duties, roles, and responsibilities of JCC in Cape Town.

<sup>232</sup> On the duties of the respective junior officials, see Annexure B below.

crucial role in municipal decision-making and governance, such as participating in advisory roles in ward committees, but they have no voting power.<sup>233</sup> The involvement of the JCC in Cape Town is an exemplary and extraordinary step toward the inclusion of children in decision-making processes at the city level.

The JCC has five sittings per year and often meets political leaders to deliberate on issues of concern to children and youth in the City of Cape Town.<sup>234</sup> Through the speaker, the city appoints elected councillors to the position of JCC Coordinator(s) who serve as custodians of the JCC.<sup>235</sup> The custodians are responsible for administrative issues such as supporting junior councillors by setting up meetings, preparing the agenda, taking minutes, and keeping the JCC in touch with the municipal council and other relevant stakeholders to advance the junior council's business. In other words, custodians bridge the city's political dynamics and civic engagement required for the junior council to fulfil its mandate. They also work with the coordinator to ensure accountability over budget allocation and reporting to the council. However, caution is taken to the fact that not all South African cities have JCCs. In the event that junior councils exist, they may either malfunction or fail to deliver expected outcomes. Such failures may compromise the inclusion of children and diminish their role in influencing decision-making in urban governance.

These mechanisms create opportunities for children to participate in decision-making processes. However, where opportunities exist for participation, challenges abound.

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<sup>233</sup> For more details, see City of Cape Town Ward Committees <https://www.capetown.gov.za/Family%20and%20home/Meet-the-city/City-council/Wards>.

<sup>234</sup> Administratively, the JCC has an office responsible for coordinating its activities and programmes.

<sup>235</sup> The current custodians have set out three pillars to operationalise the JCC, namely: governance, leadership, and civic engagement/participation. First, the governance pillar is aimed at ensuring that children and young people understand the governance of their city, the structure, processes, and any relevant governance processes. Second, leadership is a pillar that aims at ensuring that members of JCC are trained through mentorship programmes by councilors and other city leaders. This provides an opportunity to assume leadership roles and responsibilities in their communities, as the membership in the JCC entails taking a leadership role. Lastly, civic engagement focuses on active citizenship, and facilitate that JCC members are ambassadors and be involved in their communities and wards. In so doing, the JCC provides a mechanism for the voices of children to be heard and taken into account in decision making processes of cities.

Thus, the following discussion explores the barriers that may hinder the participation of children in the local government sphere.

## **5.5 Barriers to inclusive decision-making in South African cities**

The chapter has illustrated municipal powers, functions and competencies in terms of local government law, municipal governance instruments, and municipal mechanisms that should promote inclusive decision-making in urban governance in South African cities. It should be noted that the implementation of legal tools (laws and policies) and mechanisms also face challenges. Thus, this section identifies and critically evaluates the barriers to participation and challenges to the inclusion of children in decision-making processes.<sup>236</sup>

The barriers and challenges are often multifaceted. Kamete<sup>237</sup> underscores what is termed systematic challenges and barriers. These relate to instrumental rationality, a concept that largely notes that the problem lies with decision-making processes in public administration. In this case, Kamete notes that public governance follows a planning cycle that is often mandated by techno-bureaucrats, who define problems, set goals, and formulate objectives.<sup>238</sup> As a result, it is argued that children (and youths) are excluded from the process as they are considered "nothing more than 'decision objects' whose role is to abide"<sup>239</sup> by the decisions made by officials without their involvement. Additionally, adults are often concerned about protecting children from the burden of local governance responsibility, thereby creating barriers to their participation.<sup>240</sup> This section explores barriers to the participation of children in decision-making processes within the South African local government sphere. Some of the barriers include political, institutional, socio-cultural, and legal

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<sup>236</sup> What is portrayed here as barriers only flow from the desk-based analysis and limited interpretation of the law as it is, because no empirical work has been carried out in this study.

<sup>237</sup> Kamete 2007 *Africa Insight* 329.

<sup>238</sup> Kamete 2007 *Africa Insight* 329-330.

<sup>239</sup> Kamete 2007 *Africa Insight* 330.

<sup>240</sup> See Moses 2008 *International Journal of Children's Rights* 330.



factors.<sup>241</sup> These are identified in the literature based on how they play out in the South African context.<sup>242</sup>

#### *5.5.1 Institutional and political barriers*

As observed earlier in 5.4 above, institutional mechanisms that are political in nature present significant barriers to the inclusion of children in decision-making processes at the city level. Some of these barriers are inherent in the local governance structures of the South African government. For instance, local government is explicitly unambiguous with respect to the participation of people who have reached voting age – in this case, persons older than 18 years.

Historically, the South African local government political system was designed in a way that disenfranchised black adults and deprived them of civil and political rights.<sup>243</sup> It could be argued that there was a perception in the local government sphere that children have little to no place, impact, or influence on decision-making processes in urban governance. Echoing the same sentiment, Adu-Gyamfi<sup>244</sup> notes that children are perceived to lack understanding of governance systems and that, as a result, they should not influence such systems. Therefore, children are deprived of the opportunity to contribute meaningfully to public decision-making processes at the city level.

The political system shapes institutional mechanisms and structures in South African cities.<sup>245</sup> Over a decade ago, Moses argued that governance systems in South Africa had

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<sup>241</sup> These barriers hinder the effective transformation of child participation in the public sphere from theory (law and policy) to practice (governance processes).

<sup>242</sup> See Adu-Gyamfi 2015 *Journal of Social Science* 1-12; Twum-Danso Imoh and Okyere 2020 *Children and Youth Services Review* 1-23.

<sup>243</sup> See 5.4 above.

<sup>244</sup> Adu-Gyamfi 2015 *Journal of Social Science* 10-11.

<sup>245</sup> See 5.2-5.4 above.

non-child-friendly institutional cultures, procedures and structures as well as a lack of adult skills for engaging children, all continue to limit children's meaningful participation.<sup>246</sup>

This observation remains true for current institutional arrangements at the city level.<sup>247</sup> This has created a governance culture in which children's views are not prioritised, and in instances where they are considered, the "adult-child hierarchy devalu[e] children's inputs"<sup>248</sup> in local governance.<sup>249</sup> Taylor and Percy-Smith<sup>250</sup> observe that adult rules of engagement often drive participation,<sup>251</sup> and decision-makers do not move beyond consultation into actual implementation. In many instances, adults seldom engage in mutual dialogue with children,<sup>252</sup> assuming that they should not be engaged at all. To address this point, the Municipal Systems Act and Municipal Structures Act envisage the participation of communities in decision-making processes largely through the use of political structures that serve as pathways to drive the involvement of people in governance.<sup>253</sup>

As noted above,<sup>254</sup> institutional mechanisms established in terms of local government legislation and policy, such as the requirement for members of ward committees to be above 18 years, limit the participation of children in decision-making and governance of their cities.

It has been observed that long-standing practices and political systems often act as barriers to child participation.<sup>255</sup> While it may be contested that some barriers have little to do with the law, it must be noted that these barriers negatively affect the

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<sup>246</sup> Moses 2008 *International Journal of Children's Rights* 330.

<sup>247</sup> See 5.3-5.4 above.

<sup>248</sup> Moses 2008 *International Journal of Children's Rights* 333.

<sup>249</sup> Percy-Smith and Taylor 2008 *International Journal of Children's Rights* 379-383. See also Baraldi and Iervese "Observing Children's Capabilities as Agency" 46; Duncan *Participation in Child Protection: Theorizing Children's Perspectives* 164.

<sup>250</sup> Percy-Smith and Taylor 2008 *International Journal of Children's Rights* 379-383.

<sup>251</sup> This is partly influenced by how civil and political rights were framed under international human rights law.

<sup>252</sup> Percy-Smith and Taylor 2008 *International Journal of Children's Rights* 379-383.

<sup>253</sup> See 5.4.1-5.4.3 above.

<sup>254</sup> See 5.4 above.

<sup>255</sup> *General Comment No.12 on the Right of the Child to be Heard* para 4.

effective implementation of legal provisions that promote the right of children to have their views heard.

### 5.5.2 Socio-cultural barriers

In addition to institutional and political barriers mentioned above, one can also identify socio-cultural barriers. These are challenges embedded in the intangible social infrastructure of the local government sphere and which limit the capacity of children to contribute to public decision-making processes.<sup>256</sup> These have a bearing on how laws and policies are drafted, interpreted, implemented, and reformed in the local government sphere.

Some socio-cultural ideologies and attitudes in South African municipalities, such as traditional beliefs and perceptions of children's lack of capacity and autonomy to participate,<sup>257</sup> play a central role in the inclusion and exclusion of children in decision-making processes. In addition, culturally entrenched attitudes build on the need to maintain paternal authority over children in ways that do not foster the inclusion of children.<sup>258</sup>

In many local communities, tradition, cultural norms and religious practices often emphasise reverence and deference to elders and authority such that the participation of children can tacitly be regarded as undermining the power or authority of elders.<sup>259</sup> Predominantly, South Africa is a "gerontocratically structured society"<sup>260</sup> in which the adult-child relationship is structured on the basis of age. This inhibits the influence of children. In some cases, an interpersonal attitude to guard against parental authority over children often undermines and restricts children from participating in family and community settings.<sup>261</sup> Consequently, this

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<sup>256</sup> Adu-Gyamfi 2015 *Journal of Social Science* 9.

<sup>257</sup> Adu-Gyamfi 2015 *Journal of Social Science* 9-10. See Bessel 2009 *Childhood* 298-300.

<sup>258</sup> See Bessel 2009 *Childhood* 298-316; Hill *et al* 2004 *Children and Society* 77-96.

<sup>259</sup> Adu-Gyamfi 2014 *African Journal of Social Sciences* 7. See also Save the Children *Regional Study on Children's Participation in Southern Africa: South Africa, Swaziland and Zambia* 20-21.

<sup>260</sup> See Adu-Gyamfi 2014 *African Journal of Social Sciences* 8. Gerontocratically, in this context, refers to the rule or governance by older persons specifically male figures thereby creating a considerably big age and generational difference with children.

<sup>261</sup> CASE *An Assessment of Child Participation in the Family in South Africa* 5.

silences children's voices in the governance of their communities and in public affairs.

According to Moses,<sup>262</sup> the participation of children in local governance in South Africa is hampered by dominant perceptions of "children's (in)competence" on the one hand and, on the other hand, the "concerns about protecting children from being burdened with too great responsibility." Similarly, Lansdown<sup>263</sup> notes that the perception of adults that children need protection and that they are dependent on adults places a barrier and limitation on participation opportunities in practice. While the above concerns are non-legal, it must be noted that they are inseparable from how law, including international children's rights law and local government law, as well as policies, are interpreted and applied in any given jurisdiction.

South African local government law only allows adults to be officers and powerholders in governance.<sup>264</sup> At the same time, these adults often have strong cultural beliefs about the participation of children. They think that they are appointed or elected to positions of influence and authority in city governments and are responsible for protecting children from potential harm in governance processes. Twum-Danso Imoh<sup>265</sup> expresses deep concern regarding many participatory initiatives in which adults remain in control, such as deciding the terms and conditions of who participates in which process and how they do so. When children participate, adults decide the agenda or topics on which they participate. Adults also influence participation outcomes. In South African communities, adults and children have stratified relationships that clearly define roles. These power dynamics do not allow children to express their views and input into adult decisions.<sup>266</sup> The same can

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<sup>262</sup> Moses 2008 *International Journal of Children's Rights* 330.

<sup>263</sup> Lansdown "The Realisation of Children's Participation Rights" 16.

<sup>264</sup> See 5.4 above.

<sup>265</sup> Twum-Danso Imoh "Adults in Charge: The Limits of Formal Child Participatory Processes for Societal Transformation" 60, 67. She further argues that, "through the formal initiatives developed to promote or facilitate the ability of children's participation, strategies are actually being developed to not only regulate and control children, but also work to limit and restrict them."

<sup>266</sup> CASE *An Assessment of Child Participation in the Family in South Africa* 5.

be said about power dynamics in city governance, which place children in a subservient role in urban governance.<sup>267</sup>

Cultural practices amplify the inherent power imbalances between children and adults. They are perpetuated by the strong belief that children are at the bottom rung of family and community hierarchies.<sup>268</sup> In addition, some aspects of South Africa's traditional cultures disadvantage children and, in many instances, exclude them from participation in society's decision-making.<sup>269</sup> As noted in the Children's Declaration,<sup>270</sup> cultural traditions, particularly patriarchy, remain a challenge that impedes the participation of children in governance, particularly in urban governance.

It is worth noting that patriarchal values inculcate gender stereotypes that often undermine and limit girls from expressing their views. They also amplify challenges such as a lack of support for female children to be heard and for their views to be given due weight.<sup>271</sup> This is a remarkably important acknowledgement by the CRC Committee of the social and cultural challenges of child participation as well as discrimination based on gender within local governance. Socio-cultural traditions, including municipal leadership, are deeply ingrained within South African societies.<sup>272</sup> Carr and Williams<sup>273</sup> contend that what is required in South Africa for children to participate fully in governance is "the development of a democratic culture and ethos to pervade ... society." Traditional barriers cannot be legislated, as they require behavioural change (a non-legal issue). It is pertinent to highlight that these barriers hinder the participation of children in city governance.

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<sup>267</sup> See 5.3-5.4 above.

<sup>268</sup> Motha, Makgamatha and Swartz 2019 *HTS Teologiese Studies/ Theological Studies* 2.

<sup>269</sup> *African Common Position on Children: Declaration and Plan of Action Towards an Africa Fit for Children* para 80.

<sup>270</sup> See 3.2.1 above.

<sup>271</sup> *General Comment No.12 on the Right of the Child to be Heard* para 77.

<sup>272</sup> It has to be noted that these challenges are exacerbated by socio-economic barriers, especially for children living in extreme poverty who are unlikely to participate even if some of the mechanisms discussed in 5.4 above are available.

<sup>273</sup> Carr and Williams 2009 *South African Journal of Education* 80.

## **5.6 Conclusion**

This chapter examined South African local government law and explored the opportunities that manifest in governance instruments and institutional mechanisms for the participation of children in decision-making processes in local governance. Also, it identified barriers that hinder child participation at the local level. The chapter established that local government is a distinct and independent sphere of government and has the autonomy to govern its affairs in accordance with the powers and functional areas conferred in Part B Schedule 4 and Part B Schedule 5 of the Constitution. It is clear from the foregoing that the functional areas of municipalities, directly and indirectly, impact and affect children.

It was argued that local governance instruments and institutional mechanisms are the entry points for the engagement and involvement of communities in decision-making processes. Another important observation pertains to the role of legislative requirements in ensuring the participation of communities in the governance of their municipalities. Considered from a child rights lens, public participation could be leveraged with a considerable degree of innovation from decision-makers to ensure that children are included in decision-making processes and that their views are taken seriously in urban development decisions.

Broadly construed, institutional mechanisms such as municipal councils, IDP representative forums, and ward committees are political structures designed without children in mind. Notwithstanding, they present tremendous opportunities for municipalities to be inclusive of children in decision-making processes in urban governance when implemented from a children's rights perspective. This requires city authorities to unlock this potential and take responsibility for opportunities that arise. In addition, IDPs are an integral part of the municipal development trajectory, providing a great opportunity for mainstream children and their participation in governance. The omission or disregard of children's views in IDPs will inevitably result in municipalities adopting policies that are not inclusive of children's views,

rights and interests. While ascribing to Couzens'<sup>274</sup> view that public participation could be utilised as a vehicle to enhance the participation of children in public affairs, there is a need for deliberate efforts to create spaces and mechanisms for children to participate in local governance.

There are notable barriers to the inclusion of children in that local government law lacks the specificities that compel municipalities to involve children in city governance. For instance, municipal mechanisms such as councils are urged to encourage community participation in local governance<sup>275</sup> but the Municipal Systems Act instructs that the mechanisms, processes and procedures for community participation should make use of political structures established in terms of the Act. However, this could restrict the participation of children. Some argue that local government laws are designed for everyone, including children. While this is true, caution should be exercised against the general assumption that municipalities will interpret the law in an expansive manner without explicit reference to child law and policy.

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<sup>274</sup> See Couzens 2012 *International Journal of Children's Rights* 674-704.

<sup>275</sup> Section 4(2)(c) of the *Municipal Systems Act*.

## CHAPTER 6

### CONCLUSION

#### 6.1 Rationale and scope of the study

Cities are growing rapidly as more people live in them like never before.<sup>1</sup> Statistically, children constitute 55% of the global urban population, as explained at the beginning of this study.<sup>2</sup> In general, the global urban population is estimated to increase from 55% to 60% by 2030.<sup>3</sup> and 68% by 2050.<sup>4</sup> This implies that by 2030, six out of every ten people will be living in cities. There is considerable evidence that South African cities are rapidly urbanising. Staggering projections estimate that 70% of South Africans will live in cities by 2030 and that in 2050, the number will rise to 80%.<sup>5</sup> This means that more children will live in cities globally, as well as in countries such as South Africa.<sup>6</sup> This study was undertaken against the fact that children are a significant constituent of the urban population.

The concept of inclusive cities was explored at the beginning of this study. A broad discussion was set to build a foundation for framing the concept of inclusive cities for children and their connection to participation in city-level governance. The analysis of the concept of inclusive cities was carried out within the confines of the existing literature and international urban policies and laws. To the best of the researcher's knowledge, no prior comprehensive study explored the concept of inclusive cities for children from a legal perspective. As such, until this study there was no detailed analysis of the concept of inclusive cities from a children's rights

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<sup>1</sup> See 1.1 above.

<sup>2</sup> The UN estimates that the demographics of urban populations is younger, and estimates that by 2030, the majority of the world's urban population will be under the age of 18 years. See *Evaluation of UNICEF Work for Children in Urban Settings* para 1.

<sup>3</sup> United Nations *World Urbanization Prospects: The 2018 Revision* 9-11. See also UNICEF *Shaping Urbanization for Children: A Handbook on Child-Responsive Urban Planning* 13.

<sup>4</sup> UN-DESA 2018 <https://population.un.org/wup/Publications/Files/WUP2018-KeyFacts.pdf>.

<sup>5</sup> See 1.1 above.

<sup>6</sup> As noted in 1.1 above, by 2030, South Africa will have more children living in cities than ever before in the history of the country. There is considerable evidence showing that South African cities are rapidly urbanising – with a staggering projection for a rise to about 70% by 2030, and 80% by 2050.



lens. Scholars of inclusive cities have not yet provided a comprehensive conceptual framework on what inclusive cities for children mean or entail.<sup>7</sup> Even urban law scholarship around SDG 11 (the urban goal) and the NUA remains mute on the concept of inclusive cities for children.<sup>8</sup> Understanding the concept of inclusive cities for children is essential for city authorities to comprehend their legal obligation for the inclusion and involvement of children in decision-making processes in urban governance.<sup>9</sup> Accordingly, this study framed the concept of inclusive cities for children as the nexus of international urban policies and international children's rights law.<sup>10</sup> The study focused on South Africa.

After analysing the concept of inclusive cities, the study proceeded to a discussion of the legal mandates and powers of city authorities to administer public affairs in their jurisdictions in South Africa.<sup>11</sup> These powers are usually exercisable in various functional areas, including decision-making in matters that affect children. Cities play a critical role in children's lives and, more specifically, in the inclusion of children in public decision-making processes.<sup>12</sup> This position has gained prominence over the years in the literature, with concrete affirmations from international and regional child rights monitoring bodies, such as the CRC Committee.<sup>13</sup> In particular, the CRC Committee declared that "much of the opportunity for the participation of children takes place at the [local] level."<sup>14</sup> Its counterpart, the African Children's Committee,<sup>15</sup> has also emphasised that local authorities generally possess legislative

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<sup>7</sup> See Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 39-51; Magidimisha-Chipungu and Chipungu "Southern African Cities at a Glance: An Introduction" 11-20.

<sup>8</sup> See Aust and Du Plessis "Good Urban Governance as a Global Aspiration: On the Potential and Limits of SDG 11" 201-221; Du Plessis "The Global Aspiration of 'Safe, Sustainable, Resilient and Inclusive' Cities: South African Local Government Shaping Up" 9-32.

<sup>9</sup> See 2.4.1-2.4.4 above.

<sup>10</sup> Through a local governance lens, the concept of inclusive cities for children was used in this study within a limited sense focusing on the participation of children in decision-making processes.

<sup>11</sup> See 5.2.1 above.

<sup>12</sup> See 2.4.1 above.

<sup>13</sup> See 3.2.1.3 above.

<sup>14</sup> *General Comment No.12 on the Right of the Child to be Heard* para 127.

<sup>15</sup> See 3.2.2.1 above.

and administrative mandates that should be leveraged to "foster children's participation in local governance processes."<sup>16</sup>

Children have a right to be heard and taken seriously in matters concerning them.<sup>17</sup> This is an established legal imperative and not an issue of charity that is subject to the benevolence of city authorities. The position is established in terms of international children's rights law and emphasised in South African law and policy, as explained in detail in Chapter 3 of this study. Domestic local government law declares a need for people to participate in the governance of their communities.<sup>18</sup> Furthermore, there is a selection of laws and policies in South Africa that promote the inclusion of children in decision-making in urban governance.<sup>19</sup> This highlights the rationale for the inclusion of children in city-level governance.

This study focused on the South African local government landscape in which city authorities are situated. However, this desktop study has some limitations. For instance, no empirical work was conducted due to limitations on the availability of resources and time.<sup>20</sup> Thus, no personally captured experiences of children and their voices are reflected in the study.<sup>21</sup> As such, the findings of the study are based on existing laws and policies as well as scholarly literature on inclusive cities, local government law, and children's participation rights. Also, another limitation is that the study does not adopt case studies that explore existing city-level initiatives, laws, policies and governance instruments to ascertain whether and if so what are the existing key features of inclusive cities for children and how they ensure the participation of children in decision-making processes in South Africa.<sup>22</sup>

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<sup>16</sup> *Guidelines on Child Participation* para 106.

<sup>17</sup> See 3.2 above.

<sup>18</sup> See 5.3.2 above.

<sup>19</sup> See 3.3.2.1-3.3.2.4, and 5.3.2 above.

<sup>20</sup> Firstly, part of the study was undertaken during the COVID-19 pandemic against the background of global and South African health restrictions. Secondly, most of the time the researcher worked and lived in 3 different countries in Eastern and Southern Africa (Ethiopia, South Africa, and Zimbabwe) during the course of the study.

<sup>21</sup> While children can be consulted as research subjects, such research methodologies require ethical clearance a process which was not designed for this study.

<sup>22</sup> As noted in 1.6 above, case studies are not part of the research design.

This study contributes to the novel area of inclusive cities for children, which is at the intersection of urban law and policy, local government law, and children's rights. This provides a conceptual and theoretical basis for advancing the inclusion of children in decision-making processes at the city level. Decision-making is one of the many ways to ensure that cities are inclusive of children. In this context, the study adds to the growing scholarship on inclusive cities from a child rights perspective while also enhancing the understanding of the localisation and implementation of children's rights at the city level and within the governance architecture provided in constitutional and local government law. The findings and recommendations in this study could be contextualised to identify opportunities for and address local challenges hindering the meaningful participation of children in city-level decision-making processes in South Africa and across the African continent.

## **6.2 Research question and objectives**

The central research question answered in this study is: What are the legal tools, as well as opportunities in South African law and policy for the inclusion of children in urban governance against the background of inclusive cities?

The main objective of the study was to identify the legal tools to achieve inclusive cities for children and to explore the opportunities in law and policy for the inclusion of children in urban governance in South Africa.

Secondary objectives were as follows:

- a. To explore theoretical perspectives on inclusive cities to ascertain what it means, identify its features, and frame the concept of inclusive cities for children with a special focus on the nexus between inclusive cities and the participation of children in local governance.
- b. To outline the multi-level (international, African regional, and South African) law and policy framework that demands and provides for the participation of children in decision-making processes, particularly in public governance.

- c. To identify and discuss typologies, forms, methods, and models of child participation to clarify how city authorities could include children in decision-making processes at the city level.
- d. To critically evaluate South African local government law, identify legal tools for inclusive cities for children, and explore opportunities for child participation in the domestic legal and policy framework, specifically in local governance.
- e. To arrive at a conclusion and make recommendations on how inclusive cities for children should meaningfully involve children in urban governance and optimise opportunities in South African law and policy within the local government sphere.

### **6.3 Structure and outline of the study**

As indicated above, the study was designed to identify some of the legal tools needed to achieve inclusive cities for children and to explore the opportunities in law and policy for the inclusion of children in decision-making processes in South African cities. As such, the conceptual chapter explored some theoretical perspectives on inclusive cities in the scholarly literature and international urban policy to frame the concept of inclusive cities for children. Following the identification of the four features of inclusive cities for children in Chapter 2, Chapter 3 critically analysed the multi-level (international, African regional, and South African) law and policy frameworks for the participation of children in decision-making processes, thereby establishing the normative and legal basis for the inclusion of children in governance and in public decision-making. The discussion of the law and policy frameworks was central to understanding the obligations of city authorities as duty-bearers towards the inclusion of children in decision-making processes.

In Chapter 4, the study explored how the right of children to participate can be realised. To that end, it identified the typologies, forms, and methods of child participation and adopted the Lundy model of child participation that declares the need for authorities to create the "space, voice, audience and influence" to ensure

that children are practically included in decision-making processes at the city level. The chapter also discussed procedural rights and child rights principles as enablers for the participation of children in decision-making with a view to exploring opportunities that could be leveraged to expand and enhance the involvement of children in decision-making processes in urban governance.

Chapter 5 discussed South African local government law and the concept of inclusive cities for children. It also explored opportunities for the participation of children in municipal governance. The current chapter is the conclusion, which provides the main findings and proposes recommendations on how South African cities could be inclusive cities for children through meaningful participation of children in decision-making processes in urban governance. The main findings and recommendations are discussed below.

#### **6.4 Main findings**

This study established that the concept of inclusive cities for children should be understood within an assortment of laws and policies at various levels. First, international children's rights law and international urban policies<sup>23</sup> and laws provide some standards and guidance on the inclusion of children in decision-making processes. The standards must be observed within the framework of principles laid under international law on state responsibility.<sup>24</sup> Second, national laws that are binding to the government (in all three spheres) and other role players, such as the business sector, as well as national policies, provide for inclusive governance. Third, the subnational law and policy levels (provincial and municipal) are critical regulatory frameworks that guide city authorities in their governance mandate as they interface with children. These laws and policies must be implemented collaboratively at different levels in the spirit of cooperative governance.<sup>25</sup>

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<sup>23</sup> For example, see SDG 11, the NUA, and other normative global and regional agendas, such as Agenda 2040.

<sup>24</sup> See 2.4.1 above.

<sup>25</sup> See 5.2.2 above.

This study observed that South African law and policy provide legal tools for inclusive governance, such as municipal councils, which could potentially be used to advance the inclusion of children in decision-making processes at the city level. These observations are made in light of local government law and policy as read together with other national laws and policies that are applicable to children. The key findings of this study are as follows.

#### *6.4.1 Key features of inclusive cities for children*

This study established that while the phrase 'inclusive cities for children' has not been used in South Africa (and in literature) until this study, the key features of the concept of inclusive cities for children exist in South African local government contexts. However, these features have not been expressly linked to the concept of inclusive cities for children in the South African context.<sup>26</sup> Building on the conceptual understanding of inclusive cities in scholarly literature and international urban policy (specifically SDG 11, the NUA, and the Decentralisation Charter), this study established some key features of inclusive cities for children. Using the 'tailor-made city inclusivity' approach,<sup>27</sup> this study distilled the central features of inclusive cities for children from international urban policies. These features are the respect and promotion of the human rights of children,<sup>28</sup> the creation of spaces for democratic engagement and involvement of children,<sup>29</sup> child-responsiveness,<sup>30</sup> and the enactment of legal and regulatory frameworks that protect the interests of children and future generations.<sup>31</sup>

First, the study noted that respect for the fundamental human rights of children is at the heart of South African law and policy framework in general. Cities are organs

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<sup>26</sup> In other words, the features are used in a fragmented manner across different laws and policies in South Africa without the acknowledgement of how they are connected to the concept of inclusive cities for children.

<sup>27</sup> See Magidimisha-Chipungu and Chipungu "Interrogating Conceptual Dimensions of Inclusive Cities" 44.

<sup>28</sup> See 2.4.1 above.

<sup>29</sup> See 2.4.2 above.

<sup>30</sup> See 2.4.3 above.

<sup>31</sup> See 2.4.4 above.

of the state and thus play a constitutional role in the implementation of human rights.<sup>32</sup> The study finds that the implementation of children's rights is a multi-level and multi-stakeholder process that takes place in all spheres of government, including at the city level.<sup>33</sup> It was shown that scholars such as Oomen and Baumgärtel,<sup>34</sup> Starl,<sup>35</sup> Grigolo<sup>36</sup> and Soohoo<sup>37</sup> argue for 'human rights cities' and in support of human rights from a bottom-up approach, implying the localisation of international children's rights at the city level.<sup>38</sup>

Moreover, the study highlighted that the role of cities in the respect and promotion of children's rights has gained prominence and recognition from international human rights bodies such as the Human Rights Council,<sup>39</sup> the CRC Committee,<sup>40</sup> and the African Children's Committee. These institutions call for respect for the human rights of children in all spheres and branches of the government, including the local sphere.<sup>41</sup> As a signatory to international children's rights law, South Africa has domesticated children's rights within its constitutional, legislative, and policy frameworks.<sup>42</sup> Remarks of treaty bodies provide persuasive guidance towards human rights implementation at the local level.

South African law and policy frameworks provide clear human rights obligations for all spheres of government, including city authorities. First, the Constitution declares that the Bill of Rights applies with equal force and binds all spheres of government and organs of state. Second, local government legislation emphasises that local authorities must respect and promote human rights in line with their constitutional

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<sup>32</sup> See 5.2 and 3.3.1 above.

<sup>33</sup> See 5.2 above.

<sup>34</sup> Oomen and Baumgärtel "Human Rights Cities" 709-729.

<sup>35</sup> Starl "Human Rights and the City: Obligations, Commitments and Opportunities" 199-219.

<sup>36</sup> Grigolo *The Human Rights City: New York, San Francisco, Barcelona* 1-35.

<sup>37</sup> Soohoo "Human Rights Cities: Challenges and Possibilities" 257-275.

<sup>38</sup> De Feyter "Sites of Rights Resistance" 11-39. See also Blank "International Legal Personality/ Subjectivity of Cities" 113.

<sup>39</sup> See *General Comment No.31: The Nature of the General Legal Obligation imposed on States Parties to the Covenant* para 4.

<sup>40</sup> *General Comment No.5 on General Measures of Implementation of the Convention on the Rights of the Child* paras 40-41.

<sup>41</sup> See 5.2.1 above.

<sup>42</sup> See 3.2-3.3 above.

powers and functional competencies.<sup>43</sup> Municipalities have a vertical and horizontal relationship with the national government, which places them in a position to collaborate, engage, and advance the human rights of children within the parameters of established normative standards.<sup>44</sup> This study established that the responsibility to respect and promote the rights of children is placed at the doorstep of city authorities.

Second, this study established that South African local government laws and policies promote participatory governance with communities.<sup>45</sup> By definition, children are community members. As observed earlier, South African constitutional and legislative frameworks place responsibility for the implementation of children's rights at the doorstep of city authorities. This implies the responsibility to promote the participation of children in decision-making processes in the local sphere of government. Third, the study noted that there is little evidence pointing towards the child-responsiveness of South African city authorities.<sup>46</sup> Fourth, inclusive cities for children promote sustainability governance embedded in fostering inter- and intragenerational equity between and within generations. When considered in the totality of the features, it is observed that inclusive cities for children explicitly anchor their local laws, policies, programmes, and decision-making processes to prioritise children's rights and interests, promote participatory governance, and be responsive to them.

#### *6.4.2 South African local government laws and policies omit children's inclusion in local governance*

This study established that local government laws and policies provide legal tools for the inclusion of people in the governance of public affairs. A concerning observation made in this study is that municipal legislation such as the Municipal Systems Act and Municipal Structures Act do not explicitly mention 'child' or

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<sup>43</sup> See 5.2-5.3 above.

<sup>44</sup> Davis "Finding International Law 'Close to Home': The case of Human Rights Cities" 233.

<sup>45</sup> See 5.3.2 above.

<sup>46</sup> See 6.4.2 below.



'children', which could result in unintended consequences such as the exclusion of children by local authorities. Such exclusion may manifest when local authorities claim that matters of children are not within their mandates and competencies.<sup>47</sup> This has the potential to enable municipalities to side-line children's issues, specifically their inclusion, arguing they are outside their legislative mandate. Moreover, municipalities could claim that children's issues are an unfunded mandate that is not specified for them in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution. This approach may result in violations of principles set out in international children's rights law and international urban policy, which assert that cities have duties and obligations in relation to the respect and protection of children's rights, such as the right to participate.<sup>48</sup> However, as observed earlier,<sup>49</sup> the purpose of these constitutional schedules is not to articulate rights per se, but to set out power-sharing arrangements. Thus, the protection and promotion of the rights of children should be viewed, considered, and exercised in line with the Bill of Rights obligations on all spheres of government that place on local government a duty to respect, protect and fulfil the rights of children even within their functional areas.

As shown in this study, public participation is a constitutional and legislative requirement in the local government.<sup>50</sup> Local government law and policy dictate the need for participatory governance through municipal mechanisms that must promote the rights of communities to be included in decision-making processes.<sup>51</sup> However, no local government law specifically instructs the inclusion of children on these platforms or mechanisms. To a greater extent, local participatory mechanisms are designed to be political institutions suitable for persons older than 18 years. For instance, the Municipal Structures Act envisages that such participation should be exercised through political structures established in terms of the Act. Some of these

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<sup>47</sup> See 5.2-5.3 above.

<sup>48</sup> See chapters 2 and 3 above.

<sup>49</sup> See 5.2.1 above.

<sup>50</sup> See 5.3.2 above.

<sup>51</sup> See 5.3.2 above.

institutional and political structures include municipal councils,<sup>52</sup> ward committees,<sup>53</sup> and IDP representative forums.<sup>54</sup> While local government laws and policies broadly provide for the inclusion of people in public governance, they fall short of the requirement to ensure the inclusion of children in decision-making processes as a vulnerable group.<sup>55</sup>

#### *6.4.3 Lack of special mechanisms for child participation in municipalities*

This study found that there are institutional mechanisms for community participation in local governance in South Africa.<sup>56</sup> However, laws that require community participation are too broad and general. For instance, the Municipal Systems Act provides for public governance in a general sense without providing information on how to materially benefit children within the jurisdiction of the municipality. For this reason, the study noted that there is a lack of special mechanisms for the inclusion of children in decision-making processes in city-level governance.

While there are legal and policy frameworks to ensure access to local governance, children have limited access to local governance structures and mechanisms.<sup>57</sup> In addition, the Municipal Structures Act, which is informed by South Africa's apartheid history of segregating adult persons of colour, pays little or no attention to the participation of children. Kamete<sup>58</sup> argues that young people often do not have structured or defined access to local government. Without access to governance structures, children have no influence because accessibility to these structures is a precondition for inclusive cities and societies.<sup>59</sup> Local institutional mechanisms, such as municipal councils, render the participation structures and systems of many communities dysfunctional.<sup>60</sup> In addition, many municipalities have limited internal

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<sup>52</sup> 5.4.1 above.

<sup>53</sup> 5.4.2 above.

<sup>54</sup> 5.4.3 above.

<sup>55</sup> See chapters 3 and 4 above on conditions and requirements for child participation.

<sup>56</sup> See 5.4 above.

<sup>57</sup> See 5.4-5.5 above.

<sup>58</sup> Kamete 2007 *Africa Insight* 333.

<sup>59</sup> Tucker *et al* "Building an Accessible and Inclusive City" 292.

<sup>60</sup> See, for example, Pieterse 2020 *South African Journal on Human Rights* 143.

understanding and capacity to engage meaningfully with communities,<sup>61</sup> particularly children. However, it should be noted that this does not negate the fact that children have legal rights and entitlement to engage and participate in these processes.

The lack of specialised mechanisms for children at the city level is concerning, as it places a barrier to their participation in decision-making. Cities should adopt practical, innovative, and strategic approaches to consider and effectively respond to the needs and interests of children in policy interventions and planning to recognise their vulnerability in urban governance from an age perspective.<sup>62</sup> This study noted that the governance dimension of child-responsiveness is critical in providing children with opportunities to contribute to decision-making in their cities.<sup>63</sup> Thus, there is a need to ensure that municipal laws, governance policies, and allocations of resources are tailored to create opportunities for children to participate and engage with local authorities to ensure that their interests and needs are protected.

#### *6.4.4 Opportunities for the inclusion of children in local governance are undermined by poor policy coordination*

This study observed that opportunities for the participation of children are undermined by poor policy coordination with different spheres of government. Policy coordination is an indispensable component of governance and critical for effective participation in governance. This study aligns with the view of Everatt and Ebrahim,<sup>64</sup> who argue that South Africa has an inordinate lack of policy coordination in municipalities regarding urban integration and social inclusion.

Based on a literature review, the study found that while there are policies at the national level that favour the participation of children, there is no clarity on how child-related policies should be coordinated to deliver opportunities for children at

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<sup>61</sup> *Integrated Urban Development Framework* 93.

<sup>62</sup> See 2.4.3 above.

<sup>63</sup> See 3.2 above.

<sup>64</sup> Everatt and Ebrahim "Urban Policy in South Africa" 287.

the city level, particularly in decision-making processes.<sup>65</sup> For instance, the NCPF is a tool developed under the leadership of NGOs, specifically Save the Children in South Africa.<sup>66</sup> There was no evidence that the local government was involved or consulted in the development of the NCPF. The section that highlights how the NCPF was developed shows that consultations were conducted and attended by national and provincial government officials as well as CSO representatives,<sup>67</sup> including discussions with children at a "national level" workshop.<sup>68</sup> Based on this explicit acknowledgement of the list of those who participated in the development of the NCPF, one can glean that no consultation or engagement with local governments was undertaken. However, municipalities are instrumental in implementing children's inclusion into decision-making processes in the local sphere of governance.

The National Plan of Action for Children was developed under the leadership of the government, particularly under the DSD.<sup>69</sup> At face value, the point of who led the development of the policy was a non-issue. It must be understood that the government is the primary duty-bearer in relation to the protection of children and, importantly, to the creation of a legal and policy environment for children to grow, thrive, and participate actively in the governance of their communities and cities. This explains the commitment of the government to invest, mainstream, and lead the inclusion of children in urban governance.

Consistent and good coordination may ensure that the use of municipal governance instruments, such as integrated development plans, which are a legal tool for city authorities to adopt sustainable long-term plans and strategies, is optimised. This

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<sup>65</sup> See 3.3.2 above.

<sup>66</sup> See the acknowledgements section, which categorically state that it is the Save the Children South Africa, and not the Department of Social Development, that expresses appreciation to contributions made by partners in the development of the Framework. While it was developed under the guidance of DSD, the leadership of government could have been more prominent.

<sup>67</sup> *National Child Participation Framework* 8-9.

<sup>68</sup> *National Child Participation Framework* 9.

<sup>69</sup> See 3.3.2.2 above.

entails deliberate intention to ensure that institutional mechanisms are fully utilised to embrace the inclusion of children in decision-making processes.

## **6.5 Recommendations**

Considering the above findings, this study makes general and specific recommendations in relation to legal tools as well as opportunities in South African law and policy for the inclusion of children in decision-making in urban governance. In general terms, it is recommended that the concept of inclusive cities for children could provide a conceptual framework that enables city authorities to see and mainstream children as key stakeholders in local governance. In addition, to ensure that child participation in decision-making at the local level is a reality, South African cities should localise the principles laid down in the NCPF, as it is a useful tool that provides guidance on how states should include children.<sup>70</sup> The NCPF notes that the inclusion of children is a bottom-up strategy to ensure that their views influence decision-making processes.

This study has shown that the concept of inclusive cities for children has four key features that manifest in urban governance.<sup>71</sup> These are cities that respect the human rights of children,<sup>72</sup> create spaces for democratic engagement and involvement of children,<sup>73</sup> are child-responsive,<sup>74</sup> and enact legal and regulatory frameworks to protect the interests of children and future generations.<sup>75</sup> It is recommended in light of 6.4.1 above that in making use of their governance instruments, such as enacting by-laws and policies, city authorities must leverage these features to mainstream children's issues in decision-making at the local level. For example, in the South African context, the city of Cape Town (although not used as a case study) has unique features that exhibits an inclusive city for children. The

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<sup>70</sup> Similarly, there is a worthy of guidance that could be obtained from the Child Participation Guidelines recently adopted by the African Children's Committee, which carries great potential to positively impact child participation practices in general and in urban governance.

<sup>71</sup> See 6.4.1 above.

<sup>72</sup> See 2.4.1 above.

<sup>73</sup> See 2.4.2 above.

<sup>74</sup> See 2.4.3 above.

<sup>75</sup> See 2.4.4 above.

following recommendations concern legal tools and opportunities in South African law and policy for the inclusion of children in urban governance.

#### *6.5.1 Local government law reform is needed*

To address the challenges established in 6.4.2 above, this study recommends the need for law reform to ensure that local government law is explicitly inclusive of children. There is a need for the amendment of the Municipal Systems Act and the Municipal Structures Act to explicitly clarify the role of municipalities in relation to children and their participation in local governance. For instance, it has been noted in this study that the use of terms such as 'communities',<sup>76</sup> 'local communities'<sup>77</sup> or 'other stakeholders' is imprecise and could negatively be used to marginalise children in urban governance.

While it may be argued that local government law is inclusive of everyone, including children, it has to be noted that the express mention of other groups, such as persons with disabilities and women, excludes children.<sup>78</sup> In light of the right to participate set out in the Children's Act, it will benefit municipal authorities that strictly rely on local government law to understand that they have obligations in relation to children. In addition, legal reform will clarify how legal tools available to municipalities could be used to promote the rights and interests of children and promote the inclusion of their voices in city-level decision-making.

#### *6.5.2 Municipalities should institutionalise child participation mechanisms*

To address the challenges identified above,<sup>79</sup> municipalities should institutionalise special mechanisms for the inclusion of children in decision-making processes. This institutionalisation will guarantee child-specific legal tools for the inclusion of children

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<sup>76</sup> For instance, the *Municipal Systems Act* declares that the "active engagement of communities in the affairs of municipalities" is a fundamental aspect of the local government system. See para 4 of the preamble of the Act.

<sup>77</sup> The *Municipal Systems Act* provides for the rights and duties of "local communities", including the right to contribute to the decision-making processes of the municipality. See Section 5(1)(a) of the Act.

<sup>78</sup> See 5.3.2 and 5.4.2 above.

<sup>79</sup> See 6.4.3 above.

in urban governance. This study established that South Africa has domesticated international children's rights law.<sup>80</sup> However, it is not enough for local authorities to say that there are national laws and policies promoting the development and implementation of democratic principles and values without adopting dedicated mechanisms and establishing platforms for children to engage and be involved in the governance of their cities. There is a need to move beyond theory to practical participatory practices that embed children in decision-making processes.

Local authorities must pursue dialogue with children in urban governance and ensure that their views are incorporated into decision-making processes.<sup>81</sup> This means municipalities must institutionalise participatory governance, develop strategies, and put in place mechanisms that foster open and inclusive dialogue among all interested parties, with special attention to the needs and priorities of children in general, including vulnerable children such as children with disabilities.<sup>82</sup> The institutionalisation of child participatory mechanisms at the subnational level provides opportunities for children to be involved in decision-making processes.

An entry point could be to leverage the mechanisms proposed in the NCPF,<sup>83</sup> as they provide systematised inclusion of child participation in decision-making. The proposed structures are the national children's forum, provincial children's forum, district junior council, municipal junior council, and children's ward committees. There is a need to institutionalise and formalise municipal child councils or junior councils. The establishment of formal municipal child councils is a legislative and policy step that assures children that their inclusion is a priority on the municipal agenda. Without formal structures, it is difficult for IDPs and municipal decision-making processes to consider and set aside resources for child inclusion in the governance. Furthermore, municipalities require cooperative support from national and provincial governments. These must be established in terms of provincial and local laws and policies. This calls for political commitment from the Premier's office

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<sup>80</sup> See 3.3 above.

<sup>81</sup> See *Report of the UN Conference on Human Settlements* para 45(h).

<sup>82</sup> See Habitat II para 113(i).

<sup>83</sup> See 3.3.2.1 above.

at the provincial level and the mayor's office at the municipal level. Accordingly, it is recommended that local governments invest financial and human resources in the operationalisation of the ORC. The allocation of financial resources is a significant step towards the localisation of the ORC across South Africa.

Using existing institutional mechanisms such as municipal councils and ward committees has the potential to provide opportunities for children to participate in the governance of their cities. These mechanisms could be utilised, harnessed, and shaped to achieve the inclusion of children in decision-making processes and ensure inclusive cities for children. For instance, ward committees are situated within local knowledge and experience, presenting children with rich opportunities to participate in local governance. This calls for the mainstreaming of a child rights-based approach to city management that prioritises the rights and interests of children, including institutionalising offices such as the ORC in municipal administration.

#### *6.5.3 Municipalities must embrace ICT to engage children*

Municipalities must embrace online and virtual engagements to advance opportunities for children to participate in governance.<sup>84</sup> Section 18 of the Municipal Systems Act declares the need for municipalities to communicate to their communities information regarding available mechanisms, processes, and procedures to encourage and facilitate community participation and inform them of their rights and duties pertaining to municipal governance matters. However, the Act prescribes the use of traditional media, such as newspapers and radio broadcasts,<sup>85</sup> which are now outdated and not relevant for communicating and informing young people.

There is evidence that young people spend most of their time online using social media platforms, which has become critical for citizens to share their views and concerns about the governance of their cities and communities.<sup>86</sup> Since city

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<sup>84</sup> See 4.4.3 above.

<sup>85</sup> See section 21(1) of the *Municipal Systems Act*.

<sup>86</sup> See 4.6.1.1 above.



authorities have ICT tools at their disposal, it is recommended that they leverage technology to engage children on matters concerning the governance of their cities from a child rights lens.

#### *6.5.4 Provincial governments must support municipalities*

As demonstrated in this study, provincial governments play a critical supervisory and supportive role in South African municipalities.<sup>87</sup> This often manifests in the promulgation of framework legislation or model by-laws and policies to guide municipalities on how to deal with or govern specific matters, such as how municipalities can improve the inclusion of children in decision-making.<sup>88</sup> This study used the Western Cape Provincial Government as a key example. The Western Cape Provincial Government established the Office of the Commissioner for Children in the Premier's office. The Commissioner has great influence over all municipalities in the province and is a beacon of elevating children's voices in the Western Cape. The provincial government could pursue and leverage the development of PPAC which will in turn provide leadership and coordination in supporting municipalities in the development of their LPAC.

Further, schools provide an opportunity for the provincial government to support children's participation,<sup>89</sup> in that provinces can assign to local governments (with the capacity to do so, depending on the mechanism for participation) the powers to create platforms for children's views to be heard. This could be a useful platform for cooperation between provincial and local government to enable child participation.

Thus, it is recommended that provincial governments<sup>90</sup> invest in and support municipalities to ensure the inclusion of children in the decision-making processes and governance of their communities.

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<sup>87</sup> See 5.3.1 above.

<sup>88</sup> See 5.2.2. above.

<sup>89</sup> Schools (education) is within the competencies of the national and provincial government.

<sup>90</sup> It is acknowledged that provincial governments could have their own challenges and limitations, with them in need of support from the national government through Treasury.

#### 6.5.5 *Municipalities must leverage the expertise of local actors*

This study observed that municipal governance is a multi-stakeholder engagement.<sup>91</sup> This suggests appreciation for the role of other local actors, such as civil society, the business community, local think tanks, and the media.<sup>92</sup> The participation of local actors is key to uplifting and improving communities and enhancing participatory democracy.<sup>93</sup> As Pieterse<sup>94</sup> observes, municipalities have opportunities to enter strategic partnerships with external actors, thereby obtaining technical expertise, training infrastructure, and capacity strengthening in certain functional areas that they are unable or not equipped to perform. CSOs assume duties for the realisation of children's rights and child participation at the local level. Hence, it is pertinent for city authorities to leverage this expertise, partnership, and support, as it could enhance and advance the participation of children in decision-making processes and governance.<sup>95</sup>

The participation of CSOs in governance structures is critical for social accountability and is beneficial in keeping city authorities abreast of governance challenges experienced by children and facilitating collective responses to them.<sup>96</sup> Some NGOs are influential in facilitating and organising logistical, ethical, and programmatic issues relating to the participation of children in urban governance. Accordingly, city authorities can capitalise on the robust complementary and collaborative contributions of CSOs in implementing, reviewing, and monitoring urban governance programmes. In addition, local actors can significantly facilitate the actualisation of the Lundy model, thereby giving children a 'space, voice, audience, and influence.'<sup>97</sup>

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<sup>91</sup> See 5.2.2 above.

<sup>92</sup> Also, local actors, such as CSOs and the private sector involved in local affairs within municipalities are recognised by the Municipal Systems Act in its definition of the local community. See section 1 of the *Municipal Systems Act*.

<sup>93</sup> Venter "Local Government and Its External Environment" 101.

<sup>94</sup> Pieterse *Participatory Urban Governance: Practical Approaches, Regional Trends and UMP Experiences* 30-32.

<sup>95</sup> Section 76(b) of the *Municipal Systems Act* notes that a municipality can enter into a service agreement with CBOs and NGOs to offer service delivery to the community.

<sup>96</sup> *South Africa's Second Country Report to the African Committee of Experts on the Rights and Welfare of the Child on the African Charter on the Rights and Welfare of the Child* para 20.

<sup>97</sup> See 4.5.1-4.5.2 above.

Thus, city authorities should leverage the expertise of civil society and the business community as they could be resourceful in providing resources and other opportunities that can facilitate the implementation of methods of child participation while supporting city authorities to engage children in line with principles for safeguarding child participation.<sup>98</sup>

*6.5.6 Government and partners must support capacity building, education and awareness-raising on children's rights in local governance*

Section 16(1)(b)(i) of the Municipal Systems Act declares that a municipality must contribute towards capacity building of the local community to enable effective participation in local governance. As such, the inclusion of children in urban governance can be as effective as their willingness to actively and meaningfully participate in decision-making at the city level. The South African legal and policy framework provides children with a justiciable right to be heard and to have their views taken seriously in all matters concerning them.<sup>99</sup> The establishment of child participation structures, as noted above,<sup>100</sup> provides a strong link for children at the subnational level to be engaged in decision-making processes. However, a central feature that can ensure the effective and meaningful participation of children is the government's investment in capacity building, training or education, and awareness raising of local governance, municipal governance tools, and children's rights. This could be done through various government Departments or other units such as those working with young people and on resilience in local government. These will ensure the free and continuous flow of information by children to influence policies and decision-making at all levels of governance.

Therefore, it is critical for children to be informed and empowered so that they can be actively involved in the governance of their cities. Children should be at the centre of all the consultative processes initiated by municipalities.<sup>101</sup> They should also be

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<sup>98</sup> See 4.3-4.4 above.

<sup>99</sup> See 3.2-3.3 and 5.2-5.4 above.

<sup>100</sup> See 6.5.2 above.

<sup>101</sup> See 4.3 above.

at the frontline of collaborative and child-led participatory initiatives in the governance of South African municipalities.<sup>102</sup> Educated and informed children can leverage ICT and social media to demand their inclusion and accountable governance. To this end, the following recommendations are made:

- The national government must invest resources and expertise in developing child-friendly materials and ensure their accessibility so that children can continue to learn about their rights in the context of local governance.
- Provincial governments must invest financial and human resources in capacity building, education and awareness of the participation of children through the provincial parliaments and emphasise the need for children to be engaged in their localities.
- Local governments must invest financial and human resources in capacity building, training and raising awareness of the right of children to participate in local democratic governance.
- Through its Commissioner responsible for children, the South African Human Rights Commission should invest resources towards capacity building, training and raising awareness on the participation rights of children at the city level. This includes educational campaigns, radio and talk shows, and other advocacy efforts.
- Civil society, NGOs, and the business community should also invest resources in the education, awareness, and capacity development of young people in their communities. For example, SALGA and the SACN could play a critical in providing guidance and advocacy for child participation in line with the NCPF.<sup>103</sup> The collaboration of all stakeholders, together with the government, is critical for achieving inclusive cities for children in South Africa.
- The academia and media fraternity have a critical role to play and must invest in supporting municipalities to ensure that the information is translated,

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<sup>102</sup> See 4.3 above.

<sup>103</sup> See Annexure A below.

simplified, and communicated to children in a child friendly manner, including using pictorially designed formats to inform and educate the children.

## **6.6 Future research agenda**

This study noted that the concept of inclusive cities for children has a strong foundation in international urban policies and national laws. However, it is up to local government officials and politicians, local actors, and stakeholders such as businesses and NGOs to give effect to the right of children to participate in the governance of their cities. It is up to these actors to make legal tools, laws and policies, systems, and structures of local government to provide continuous opportunities and platforms for children to participate in the governance of their municipalities meaningfully and appropriately.

Future research could dig deeper and explore city law and policies in relation to the participation of children in decision-making in urban governance. As demonstrated in this study, cities (at least in South Africa) have the requisite legislative authority and executive powers to promulgate by-laws and policies on matters related to the governance of their affairs.<sup>104</sup> Accordingly, future research could be devoted to specific South African cities and delve into legal tools and mechanisms at the city level to give flesh to the city-level argument. With an understanding of the importance of the localisation of inclusive governance in South African municipalities, further engagement with city by-laws and policies provides an opportunity to paint the best practices in different cities for the benefit of other municipalities. A survey and case study of municipalities in categories A, B and C will enhance a holistic understanding of best practices and the implementation of the NCPF and other national laws and policies at the local level.

This study demonstrated the significance of urban policy and law in children's lives and vice versa. There are multiple facets of urban governance that impact the lives of children. For instance, SDG 11 makes this point clear by its aspiration to make

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<sup>104</sup> See 5.2.1 above.

cities "safe, 'inclusive,' resilient, and sustainable." The four modifiers highlighted in SDG 11 demonstrate the multifaceted nature of urban policies for children. While the current study explored the element of inclusivity, future research could be devoted to enhancing the understanding of the meaning of safe, resilient, and sustainable cities for children living in South African cities from a legal perspective. Similarly, future studies could perform comparative legal analyses on other African cities. More specifically, future research agenda could focus on the legal (as well as non-legal) dimensions of these modifiers and their targets and how cities could upscale implementation to achieve their targets by 2030 and beyond.

Future research could devote time to engaging children in different South African cities in compliance with participatory research methodologies and ethical and safeguarding requirements for the protection of children. A child participatory and consultative study will go beyond the literature review to understand the concerns, challenges, and insights of children on matters of governance in their cities. Future research could also focus on ascertaining whether and, if so, how cities create meaningful opportunities for children to be heard and participate in the governance of their cities in practice. Empirical research demands considerable time and resources but has various benefits, such as filling the gap in how children experience and perceive the child-inclusiveness of their cities.

## ANNEXURES

### ANNEXURE A <sup>1</sup>

#### Broad overarching checklist

| Questions to assess if transparent and informative                                                                                                                                                                              | Yes | No |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| • Have children been given a clear idea of the purpose of the participatory process?                                                                                                                                            |     |    |
| • Have children been given information about their right to participate in a child-friendly and accessible format?                                                                                                              |     |    |
| • Does this information clearly state how children will participate, why they have been given the opportunity to participate, the scope of their participation, and the potential or anticipated impact of their participation? |     |    |
| • Are the roles and responsibilities of all involved (children and adults) clearly outlined, understood and agreed upon?                                                                                                        |     |    |
| • Has the selection of child representatives been based on principles of democracy and non-discrimination?                                                                                                                      |     |    |
| Questions to assess if participation is voluntary                                                                                                                                                                               | Yes | No |
| • Have children been given the opportunity to give their personal, informed consent to their participation?                                                                                                                     |     |    |
| • Are children aware that their participation is voluntary and their right to withdraw at any time they wish?                                                                                                                   |     |    |
| • Have parents/guardians, teachers, etc. been informed about the need for the participation of girls and boys?                                                                                                                  |     |    |
| Questions to assess if participation is relevant                                                                                                                                                                                | Yes | No |
| • Are the issues covered relevant to the children involved?                                                                                                                                                                     |     |    |
| • Are children involved in setting the criteria for selection and representation for participation?                                                                                                                             |     |    |
| • Has the process been designed in a way that considers the appropriate level, capacity and interest of those children involved?                                                                                                |     |    |
| • Has consideration been given to the social, economic, cultural and traditional practices of the children involved?                                                                                                            |     |    |
| Questions to assess if participation is respectful                                                                                                                                                                              | Yes | No |

<sup>1</sup> South African National Child Participation Framework 45-47.

|                                                                                                                                                                                                                                          |            |           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|
| <ul style="list-style-type: none"> <li>• Have mechanisms been put in place to ensure children are able to freely express their views and be treated with respect?</li> </ul>                                                             |            |           |
| <ul style="list-style-type: none"> <li>• Have principles of democracy been utilised to select child representatives?</li> </ul>                                                                                                          |            |           |
| <ul style="list-style-type: none"> <li>• Have mechanisms been put in place to ensure the process enables children to feel that they have valid experiences and views to contribute?</li> </ul>                                           |            |           |
| <b>Questions to assess if participation is child-friendly</b>                                                                                                                                                                            | <b>Yes</b> | <b>No</b> |
| <ul style="list-style-type: none"> <li>• Have children been consulted to find out their preferred mediums of expression?</li> </ul>                                                                                                      |            |           |
| <ul style="list-style-type: none"> <li>• Have sufficient time and resources been made available for the participation process?</li> </ul>                                                                                                |            |           |
| <ul style="list-style-type: none"> <li>• Is the meeting place child-friendly?</li> </ul>                                                                                                                                                 |            |           |
| <ul style="list-style-type: none"> <li>• Is the meeting place accessible to children with disabilities?</li> </ul>                                                                                                                       |            |           |
| <ul style="list-style-type: none"> <li>• Has accessible information been shared with children in child-friendly formats and in languages that the children understand, including children with visual or hearing impairments?</li> </ul> |            |           |
| <b>Questions to assess if participation is inclusive</b>                                                                                                                                                                                 | <b>Yes</b> | <b>No</b> |
| <ul style="list-style-type: none"> <li>• Have all children been given an equal chance to participate?</li> </ul>                                                                                                                         |            |           |
| <ul style="list-style-type: none"> <li>• Have efforts been made to reach out to children in their local settings?</li> </ul>                                                                                                             |            |           |
| <ul style="list-style-type: none"> <li>• Has the age range, gender and abilities of children been taken into account in the way participation is organised?</li> </ul>                                                                   |            |           |
| <ul style="list-style-type: none"> <li>• Are those working with children able to facilitate an environment that is non-discriminatory and inclusive?</li> </ul>                                                                          |            |           |
| <b>Questions to assess if adults have been trained</b>                                                                                                                                                                                   | <b>Yes</b> | <b>No</b> |
| <ul style="list-style-type: none"> <li>• Have adults been provided with appropriate training and tools to work effectively and confidently with children of different ages and abilities?</li> </ul>                                     |            |           |
| <ul style="list-style-type: none"> <li>• Are mechanisms in place to support and supervise adults, and evaluate their participation practice?</li> </ul>                                                                                  |            |           |
| <b>Questions to assess if participation is safe and sensitive to risk</b>                                                                                                                                                                | <b>Yes</b> | <b>No</b> |
| <ul style="list-style-type: none"> <li>• Are children aware of their right to be safe from abuse?</li> </ul>                                                                                                                             |            |           |
| <ul style="list-style-type: none"> <li>• Do children know where to go for help if needed?</li> </ul>                                                                                                                                     |            |           |
| <ul style="list-style-type: none"> <li>• Have safeguards been put in place to minimise risks and prevent abuse?</li> </ul>                                                                                                               |            |           |
| <ul style="list-style-type: none"> <li>• Has a system for reporting critical incidents been put in place and understood by all staff?</li> </ul>                                                                                         |            |           |



|                                                                                                                                                                                          |            |           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|
| • Has consent been obtained for the use of all information provided by children?                                                                                                         |            |           |
| • Has a formal complaints procedure been set up to allow children involved in participatory activities to make a complaint?                                                              |            |           |
| • Are all those involved clear that no photographs, videos or digital images of a child can be taken or published without that child's explicit consent for a specific use?              |            |           |
| • Have responsibilities relating to liability, safety, travel, and medical insurance been clearly delegated and effectively planned for?                                                 |            |           |
| <b>Questions to assess if participation is accountable</b>                                                                                                                               | <b>Yes</b> | <b>No</b> |
| • Have follow-up and evaluation processes been included in the process?                                                                                                                  |            |           |
| • Are mechanisms in place to give children rapid and clear feedback on the impact of their involvement, the outcome of any decisions, the next steps and the value of their involvement? |            |           |
| • Are mechanisms in place to ensure feedback reaches all children involved?                                                                                                              |            |           |

## Checklist for child participation interventions targeting community settings <sup>2</sup>

| Questions to assess child participation in household and family                                                                                                                                                                                                                                               | Yes | No |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| • Have systemic structures and mechanisms been established to enable children to participate in local governance issues?                                                                                                                                                                                      |     |    |
| • Are child participation at local government and community level moved away from ad hoc initiatives?                                                                                                                                                                                                         |     |    |
| • Has support been provided to enable children to establish their own organisations through which they can represent themselves and other children at the local government and community level?                                                                                                               |     |    |
| • Have formal spaces been created for children to access decision-makers and policy-makers?                                                                                                                                                                                                                   |     |    |
| • Have opportunities for children's engagement through children's parliaments, representation on local bodies, consultation on specific issues, support for child-led initiatives and organisations, access to the media, and involvement of children as auditors or monitors of local services been created? |     |    |
| • Have spaces and responsiveness been created for the participation of children within the community and traditional leadership forums?                                                                                                                                                                       |     |    |

<sup>2</sup> South African National Child Participation Framework 49.

## Checklist for child participation at policy level/national reporting<sup>3</sup>

| Questions to assess child participation in child protection setting                                                                                                                                                                                                                                                                | Yes | No |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| • Are laws and mechanisms in place to institutionalise child participation at all levels of relevant government decision-making, including legislative reform, policy-making, planning, data collection and resource allocation?                                                                                                   |     |    |
| • Are children's rights to expression, association, peaceful assembly and access to information guaranteed by law                                                                                                                                                                                                                  |     |    |
| • Are relevant government documents in child-friendly language to make it easier for children to participate?                                                                                                                                                                                                                      |     |    |
| • Are children supported to establish their own organisations?                                                                                                                                                                                                                                                                     |     |    |
| • Are efforts made to raise awareness among the public on children's right to participate in local and national public decision-making and have the government institutionalised capacity-building with government officials, state employees and other decision-makers on how to meaningfully engage with and listen to children? |     |    |
| • Are children systematically receiving feedback on views and recommendations shared?                                                                                                                                                                                                                                              |     |    |
| • Are the CRC Committee basic requirements for the implementation of the right of the child to be heard adhered to?                                                                                                                                                                                                                |     |    |
| • Are procedures followed to ensure the protection and safety of children involved in public decision-making?                                                                                                                                                                                                                      |     |    |
| • Are children involved in monitoring the implementation of their rights?                                                                                                                                                                                                                                                          |     |    |
| • Are children with disabilities able to contribute significantly towards understanding the attitudinal, communication, physical and mobility barriers that need to be removed before they can realise their rights?                                                                                                               |     |    |
| • Are children involved in the reporting process to the CRC Committee, African Children's Committee, and other relevant international and regional accountability mechanisms?                                                                                                                                                      |     |    |
| • Are children supported to participate in relevant national and international forums and regional and international conferences?                                                                                                                                                                                                  |     |    |

<sup>3</sup> South African National Child Participation Framework 50.

## **ANNEXURE B**

### **Duties of the JCC executive committee**

#### **Mayor:**

- The mayor attends ceremonial functions, such as formal dinners, official openings of events or new facilities, talking to clubs and societies, and visiting schools.
- The mayor acts as a host to distinguished visitors from the area and must always receive requests for visits.
- The mayor is responsible for furthering the interests of the City of Cape Town whenever and wherever an appropriate occasion arises.
- The mayor takes a role similar to the facilitator and leader of a group and, as such, considers what is necessary to make the group run smoothly and successfully.
- The mayor's facilitation skills play a key role in ensuring that the council operates smoothly and successfully.
- The mayor can also support good governance by modelling good behaviour and ethics in fulfilling council and community leadership roles.
- Concepts such as participation, communication, leadership, involvement, consensus, mutual respect, and listening are also important.
- The mayor asks the Deputy mayor to stand in if the mayor is not available.

#### **Deputy mayor:**

- The Deputy mayor exercises the powers and performs the duties of the mayor if the mayor is absent or unavailable or if the office of the mayor is vacant.
- Advises the mayor.

**Speaker:**

- Manages and presides over all meetings and must act with authority and impartiality.
- Ensures the orderly flow of business and that meetings are conducted in accordance with the rules and orders of the JCC.
- Interprets the rules impartially, maintains order and defends the rights and privileges of members, including the right to freedom of speech.
- Guides the Council through its deliberations by calling the items on the agenda, reading the text aloud, recognising members who wish to participate in the debate, and putting the questions to the Council for decision.

**Chief whip:**

- Maintains sound relations between all members.
- Records minutes of meetings.
- Determines and compiles a list of speakers at meetings.
- Make lists of unfinished businesses and matters that are known in advance.

**Sub-council chairpersons:**

- Ensure that projects are implemented and organise sub-council meetings.
- Manage discipline and behaviour of councillors in subcouncil meetings.
- Submit concerns of councillors to the Chief Whip.

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