



Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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GERMAN CITIZENS REQUESTING RESPONSIBLE LAND GOVERNANCE

Opportunities and Limitations of Citizens' Initiatives in Germany – and Elsewhere

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Abstract

Local councils take decisions on land uses. If the reasons for such a decision are not conclusive to the public, benefits for local community not visible, the land in question of special importance for local citizens, or if people fear a negative environmental impact, people sometimes set out to protest. One reason why protest by local populations arises is that citizens are no longer willing to tolerate insufficient transparency of local politics, lack of meaningful public participation, and local council decisions that reflect neither the law nor local citizens' interests. In Germany, such situations sometimes lead to citizens' initiatives, which – if successful – can result in referendums. The article explores such citizens' initiatives to find out:

- a) How efficient this tool is to improve land governance and
- b) To which extend or under which conditions it may be applied in other countries, including developing countries.

Key Words:

Local land governance, citizens' initiative, referendum, landscape protection, greenfield development



Introduction

Everything seems to be clear. There is a land use plan that defines the (future) uses of the land. Then suddenly, a local council takes a decision, which is not in line with the land use plan, and results in green land to be converted into construction land. If the reasons for this decision are not conclusive, the benefit to the local community not visible, and this green land holds some significance to local citizens –even being protected as a biotope or part of a natural or landscape protection area – people often initiate protest. One reason why protest by local populations arises so frequently is that citizens are no longer willing to tolerate insufficient transparency of local politics, lack of meaningful public participation, and local council decisions that reflect neither the law nor local citizens’ interests. In Germany, such situations sometimes lead to citizens’ initiatives, which – if successful – can result in referendums.

The article explores such citizens’ initiatives to find out:

- a) How efficient this tool is to improve land governance and
- b) To which extend or under which conditions it may be applied in other countries, including developing countries.

What Are Citizens’ Initiatives and Referendums and How Do They Function?

A citizens’ initiative (“Bürgerbegehren”) is a formal procedure where citizens at the lowest administrative level, for example, community or submunicipal level, initiate a political decision via the local council. In Germany, this procedure is regulated by the federal states, which means that the rules differ among the 17 federal states. (In Bavaria, for instance, the rules are regulated by Municipal Government Act, article 18a, containing 18 paragraphs.) The general principles are, however, the same: Those who initiate the citizens’ initiative have to formulate their request in a formal way and collect a significant number of signatures (mostly around 10% of the population entitled to vote)¹. The request has to be formulated in a way that is clear, not manipulative, and ready to be used by the municipal council to vote on it. The initiative can only be signed by citizens of voting age (above 18 years) and who have their primary residence in the community. If the citizens’ initiative is successful – in other words, it is signed by more than 10% of the

¹ The percentage depends of the number of inhabitants: the higher the number of inhabitants, the lower the percentage that has to be achieved; for example, in Bavaria, 10% of all eligible voters for up to 10.000 inhabitant and 3% of all eligible voters for more than 500.000 inhabitants. In many other states, higher percentages have to be achieved.



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eligible voters – it leads to a referendum (“Bürgerentscheid”). A referendum has to be organized by the municipal council and administration. It is successful if more than half of the population participates in the referendum and the majority votes in favor of the referendum (although there are slight differences among the states and the number of citizens that also plays into it)². A successful referendum is binding for the municipality and cannot be counteracted for at least the following two years. It is generally seen as the public’s will and the municipal councils normally implements it – at the very least as a measure to be reelected.

If a referendum is initiated by a municipal council it is called municipal initiative and municipal referendum (“Ratsbegehren” and “Ratsentscheid”). These tools offer a mechanism to identify the will of the people. However, these happen far less often than a citizens’ initiative and in the case below it is even done to counter a citizens’ initiative.

In Germany, citizens’ initiatives were introduced in 1956 but only in the federal state Baden-Württemberg at the onset. Nordrhein-Westfalen followed in 1974, Bavaria in 1989, and all others after 1991 (reunification) with Berlin being the last state in 2001.

The rules and regulations differ among the different states. Some require higher percentages than others to reach quorum. Some states are more focused on formalities than others are. The main difference, however, applies to the topics that can be addressed. Whereas some states allow for all legal topics, some are very restrictive. A few states, for instance, do not allow citizens’ initiative against legally binding land use plans and construction projects, which weakens their significance for land governance.

Between 1956 and 2015, 5,788 citizens’ initiatives were made in all of Germany. 3,491 resulted in a referendum; 52% of these have been successful. In addition, there are some cases where municipal councils reacted directly after a successful citizens’ initiative. In 804 cases (13.9%) no referendum was necessary; the municipal council could be convinced to directly decide in favor of the initiative. In total, 38.7% of all citizens’ initiatives have been successful (Rehmet, 2017).

² Always, the majority of all votes cast need to be in favor of the referendum, but there are different requirements that determine which percentage of the eligible voters this needs to reflect. In Bavaria, for instance, the referendum is successful if at least 20% of the eligible voters are in favor of it in communities up to 50,000 inhabitants, 15% in communities of up to 100,000 inhabitants, and 10% in communities above 100,000 inhabitants. In many other states, higher percentages need to be achieved.



Quite a high number of citizens' initiatives, however, have been declared invalid (29%), which shows the high barrier for such procedures. Reasons have been (Rehmet, 2017, p. 25):

- Insufficient number of signatures/beyond deadline (21.2%),
- Topic not allowed (19.7%),
- Formalities not fulfilled (15.4%),
- Financial proposal missing or insufficient (14.8%),
- Several reasons (11.4%),
- Topic too broad or unspecific or manipulative (5.4%),
- Illegal objective (5.3%),
- Confusing/manipulative justification (3.6%),
- Wrong level addressed (meaning that the local level is not responsible for this type of issue and cannot take a decision on it) (1.6%),
- Too many/not enough persons (0.9%),
- Consistency (0.6%).

The way in which citizens' initiatives are treated differs tremendously among states. In Bavaria, only 16.4% have been declared invalid compared to 56.3% in Saarland. According to Rehmet (2017), the rules are most citizen-friendly in Bavaria, Hamburg, and Berlin. Due to a very restrictive range of permissible topics and the very high percentages of signatures and votes required, Saarland, Mecklenburg-Vorpommern, Niedersachsen, and Sachsen rank last.

In summary, citizens' initiatives and referendums improve democracy. They are very useful tools for citizens to articulate their interests, to have a voice, to have their voice heard, and to influence political decision-making. By now, they are valuable tools in states such as Bavaria where it is becoming standard to apply them. Still, there is scope for improvement – in some states more than in others. The high rate at which citizens' initiatives are declared invalid suggests that it may not be so easy to apply them. What it takes to run a citizens' initiative and a referendum successfully is described and analyzed below.



The Case:

Local population in a small German town initiates referendum against local government's plan to allow an investor to construct a production site in the middle of a landscape protection area

Despite being well into the digital age, the small Bavarian community Schliersee possesses only one old paper-based land use plan, which is kept at the construction office in the town hall. A copy is also kept with the administrative district office. Decisions about land use changes are made ad hoc by the municipal council. For years, citizens have called for the participatory development of a municipal development strategy on which the land use plan – also to be updated with public participation – should be based. The request went ignored.

Meanwhile, the municipal council took some questionable decisions on land use changes favoring council members. In one example, a council member living near the lake in the landscape protection area had received permission to extend her house by literally converting mountain into building, removing huge amounts of rock.

In another example where the mayor's current girlfriend had entered into procedures to construct a new house close to the lake, the construction permit was granted based on a very questionable change of an existing legally binding land use plan. This cast a shadow of dubious intent since the mayor's party held the majority in the local council. The original land use plan for this area had been established with the sole aim of protecting the old hostels close to the lake after the establishment of the landscape protection area. With the new land use plan, the area was extended past the small road that served as the initial perimeter to include just one parcel big enough for the new house of the mayor's girlfriend. Up to that time, the other side of the road was used entirely as grazing land for horses and shaped the landscape south of the lake. The house was then declared to include rooms for tourists.

In addition, rumors circulated that the old school and gym would be destroyed and the public land would be developed by a private investor in spite of the priority that had been identified for public infrastructure (childcare) and low/medium income housing for locals.

In 2016, against this background, the majority of the municipal council decided to submit a district level request to take some land located at the lakeshore and zoned as "agricultural land, alpine pasture and



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rocks” out of the landscape protection area so it could be used for manufacturing purposes. The municipal council members agreed on this in spite of clear rejections by the district environmental protection department and the request by the regional and state planning authorities to come to an agreement with the environmental protection department. The decision was against the spirit of the local landscape protection act and the International Convention of the Alps.

The land in question was partly covered by a registered biotope and located directly at the lake, which constitutes the center of the landscape protection area. Citizens who did not want to see the banks of their lake being entirely built up, and afraid of this case setting a precedent, collected about 800 signatures and requested a referendum. Meanwhile, the district council took the decision to take the requested land out of the landscape protection area, but agreed to make its implementation conditional on the outcome of the referendum. Over 50% of the population participated in the referendum, which resulted in the majority being against the investment project and in favor of the preservation of the landscape protection area – despite massive public relation measures over a period of months by the investor.

Still, the case was more complex. The land that the investor wanted to buy was mainly private green land, but also included a small strip of public land that had already been built upon in the past. There was no resistance to have this small strip used as construction land again, as long as the buildings would fit into the typical rural mountainous landscape and would not cause any environmental harm. What most citizens did not like was the idea that the municipal council – always short of money and hardly owning any more land – had envisioned to sell this land to the investor far below market price. Concerning the smaller area under municipal ownership, no land valuation had taken place, no bidding procedure was put in place, and the price already negotiated with the investor was well below market value – a fact that infringed EU regulation TFEU³, art. 107, para 1. Concerning the private green land, the municipal council did not intend to apply any value capture, although Bavarian law provides a base for it. Hence, there was not just the question of environmental and landscape protection, it also touched municipal finance accountability.

Furthermore, a significant number of people mistrusted the investor who was not only one of the two owners of the cosmetic-pharmaceutical company, but also a real estate investor. Indeed, it was the real estate company that wanted to buy the land and then lease it to the cosmetic-pharmaceutical company,

³ Treaty of the Functioning of the European Union



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which was once established in Schliersee and considered a traditional local company. Knowing about the weak financial situation of the cosmetic-pharmaceutical company, some citizen assumed that the real plan of the investor was to just get the land in prime location and then use it for other purposes. The cosmetic-pharmaceutical company was in poor financial standing; hence the case for seeking additional commercial tax income could not be defended. Likewise, the argument of additional jobs was equally unrealistic because the company presides in the neighboring town just a few miles away. Those distrusting the investor assumed that his real intention was to realize a major real estate project and not contributing to the return of this traditional company; the cases presented for the company were excuses to get the land at a low price. Finally, in the case that the company with the intended show-production would have been moved to the newly purchased site and would have attracted the announced number of visitors, many residents feared downsides such as additional traffic leading to a total transport collapse along the lake. In brief, there were different reasons why people were against the project, but they all had to do with the most adequate use of this piece of land.

What Did It Take to Win the Referendum?

The short answer is: nine months, 1,000 Euro, two persons taking initiative and responsibility, a core group of about 20-30 people being well connected or respected or both, investing huge amounts of time and nerve, connections to politicians, at least some fair media, and a population willing to reflect what is happening around it and to take a position. But let us look at it in more detail:

How many people have been involved? What were their educational or academic backgrounds?

Out of these 20-30 people, probably most had a high school degree, at least half had a master degree, and several even a PhD. Why is this relevant? The topic was rather complex. The risks had to be identified and explained to the population. The arguments of the municipal council had to be dismantled; they may have seemed convincing, but were without base when examined in more detail. The arguments of the investor and the municipal council had to be revealed repeatedly. This required knowledge in commercial and income tax calculation, business finance, analysis of production procedures, evaluation of the product market, etc. The text to be prepared had to follow clear legal rules and strict formalities had to be respected. Even with a lawyer on the team, clarification was sought from a colleague specialized in German/Bavarian administrative law.



Which additional actors had to be included?

Useful support came from a civil society organization called *Mehr Demokratie e.V.* that offers advice and checks that the documents prepared for citizens' initiatives and referendums satisfied all formalities and were formulated in a valid way.

Several people from the core group had connections to district council members of different parties and ensured that the issue was discussed by the different parties before they had to decide on the case in the district council. This resulted in the fact that the council did not directly take the land out of the landscape protection area, but decided only to do so if the citizens' initiative would fail. This provided the initiative with the additional time to collect the signatures, to submit them, and to request the referendum.

What was the role of the media?

In the beginning, the two local newspapers reported objectively on the issue. After a while, the more significant one favored the investor. Given the high amount of money he invested in advertisement in this newspaper, this was not surprising. As part of his public relation tactics, he financed an entire page on the issue. While it looked like normal journalistic reporting, in one corner, in small light letters it was stated that it was an advertisement. Leading up to the referendum vote, the investor's slogan was printed on the front page. It is also quite possible that a poll by readers initiated by the journal a few days before the elections was manipulated in favor of the investor. [In the end, the high number of votes against the citizens' referendum may have worked in favor of the initiative by motivating citizens in favor of the referendum to go to the ballot boxes the following Sunday to make their voices count.]

Fortunately, for those who wanted to protect their landscape and keep the lakeshore attractive for tourism as much as for themselves, regional public TV and radio became interested in the issue and transmitted detailed documentaries and interviews with representatives of both side. One lesson learnt is that regional public media is much more objective than local private media as it is not so easy and affordable to influence. On the other hand, it was lucky for the citizens that the regional public media was currently interested in the topic and had already been watching the rapid conversion of green land into construction land all over Bavaria for quite some time with skepticism and concern. Another specific case fitted well into their program. They developed a short documentary and transmitted it in their regional television programming. They also transmitted several interviews over the radio. Another regional radio station also transmitted well-balanced reports.



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The initiative did not rely on existing journals, radio programs, and newspapers alone, but also conducted our own information campaign. Information was presented on a website, via Facebook, and through two flyers, one at the beginning and one briefly before the elections, to react to the incorrect information that was distributed by the majority of municipal council members in a letter distributed to all households. A group of influential people from the town who were not part of the core group, but supported the initiative ideologically, distributed a third flyer. In terms of media usage, one can conclude that it is crucial to involve a considerable diversity of media: local and regional; visual, audio, paper- and internet-based; self-created and existing platforms. In addition, it is highly important to speak directly to the people. Members of the citizen initiative had long discussions when collecting signatures and gave a detailed presentation during a panel discussion one evening in town.

How much did it cost and how much time did it take?

The municipal council's intention was presented during the annual citizens' assembly ("Bürgerversammlung"). I was left shocked and questioning. A municipal decision against the spirit of our local landscape protection act, and the international Convention on the Alps, in spite of several technical concerns and conditions and even violating EU law? Just in favor of one investor? Without any benefit for the community? Ignoring the value of the land for tourism? Destroying landscape and biotope and risking an environmental disaster (in the case chemicals would enter the lake)? It was unbelievable. I soon realized that I was not the only one who reacted that way and met first with the green/ecological party and then with the other municipal council members who had voted against the project to learn more about what had happened and to discuss the strategies to stop it. It did not take long to realize that a citizens' initiative was the only effective approach. From that moment, it took about one or two months to prepare the documents and to gather the signatures. One major lesson learnt during this period was the relevance of public space, which is needed to be able to inform citizens and to get their buy in (and signatures). We were not so much aware of its importance when we started. On a Saturday morning, we were standing in front of the mostly frequented supermarket in town to collect signatures. We had asked the manager for permission. Just half an hour later, an employee of the owner of property where the supermarket stands, who also happens to be a member of the municipal council, arrived and ordered us to desist. In many cases, big landowners and private investors either are represented in the municipal council or have strong connections to it. Hence, where can people meet, protest, and collect signatures if there is no public space, or at the least where people pass by? Finally, the signatures had been submitted to the



town hall. About four months later the referendum took place. It took an extended period for two reasons: the municipal council initiated a municipal referendum against it and both sides agreed that summer holidays should be respected to ensure sufficiently high participation in the elections.

Altogether, the process took about nine months. It is extremely difficult to calculate how much time each of us invested. The two initiators and about one dozen other people probably spent all their free time during this period – even foregoing sleep. A significant amount of time was needed for discussions within the core team to agree on actions and how they should be implemented.

In terms of finance and money spent, we received Euro 1,000 from one local resident – a retired person who is well off and did not take any personal advantage out of the issue, apart from the conservation of a nice environment in which he and all of us live. This money was spent to set up a professional website and to print flyers and posters. The owner of a printing company, being part of the core group, contributed with the printing of the first flyer free of charge. Having a lawyer in the team saved us costs for legal advice. Compared to the amount the investor spent (an estimated Euro 80,000 – 100,000), our budget was extremely small. Still, it would not have been possible without money.

What is the long-term impact of such an initiative?

The land use plan is still in the process of being digitized. It will probably one day be more readily accessible online. However, participatory land use planning remains a red rag for the municipal council. Citizens are informed and even once a year heard, but they are not *supposed* to get actively involved in planning and decision making. Public participation seems to be a no go for some council members. Even after the municipal and district administrative offices had declared the procedure and outcome of the citizens' initiative and referendum to be legal and valid, five local council members still voted against the **VALIDITY** of the referendum in the final municipal vote on that issue. Their rejections have no consequence as they only constitute a minority, but I think that they cast no doubt about their personal attitude towards public participation.

When the referendum was initiated, the mayor and other council members, as explained above, had just entered into procedures to construct new houses or extend their existing ones close to the lake. These developments could not be stopped. However, since the referendum a year and a half ago, the municipal council is somehow more careful when taking land use decisions.



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The development of the green land with biotope at the lake has been stopped. The public land has been valued and the old/original land use plan, which intended residential use on the public land that had already been developed in the past, has been put back in place. During the citizens' initiative, many people requested the municipal council not to sell the land below market value, while others suggested using the land for the construction of residential buildings for young local families (which often is subsidized by low land prices). The municipal council therefore decided on a combination of both; it sold the land on the market exclusively to local families after having it appraised and defined a minimum price. Stipulations were set that buyers have to commit themselves to use the land/houses/apartments for themselves as their primary residences for at least the next 15 years.

Elsewhere, land use decisions are mixed. The real estate investor mentioned before bought some private land in an already built-up area and received a building permit to develop it rather densely (too dense in the eyes of many). On a more recent occasion, the municipal council decided on the development of a legally binding land use plan to ensure that the area will not be built up more densely.

The old gym which was at risk of being destroyed as well as the public land which was also being given to an investor were not destroyed but renovated. A new building for an additional childcare group has been built next to it. The old school, which was supposed to suffer the same outcome as the gym still stands and a decision has yet to be taken on how to use that land. The real estate investor mentioned previously had made a secret offer to the municipal council to buy and develop the land where the old school and gym stand. The planned construction would not have fitted into the village landscape, and again urgently needed public land would have been lost. As of now, the gym and additional public childcare ("Kindergarten") remain. So at least for the moment, public interest has been respected in an increased way and private investors' influence decreased.

As a note, the investor has since sold his share of the cosmetic-pharmaceutical company to his co-owner who is a former well-known professional soccer player. He immediately announced that he will not buy or lease a greenfield site as a new construction site for the company as he does not want to create resentment/discontent in the population. He may even consider keeping the company where it is currently located.



Lessons Learnt

- Safe and accessible public space is a key prerequisite for citizens' initiatives, and hence for democracy in general.
- Getting sufficient media involved that is fair/well balanced in its reporting is imperative. Investors can easily influence local media; regional public media, however, are less likely to be influenced by investors.
- Absentee voting cannot be monitored. We observed the voting on voting day. It was only that day that we realized that absentee voting cannot be monitored. We did not have any reason to believe there was any manipulation. We just became aware of the risk and wanted to point it out as a factor for consideration.
- Initiators and their team need to have expertise in the specific area and be good campaigners.
- Many competencies (law, business finance, taxation, administrative procedures, bio-chemistry, geomorphology, politics, etc.) and skills (writing, talking, presenting, designing, networking, etc.) are required to succeed in a citizens' initiative and referendum.
- Initiators should be natives, have a good reputation, actively contribute to community development/activities in a positive way, be independent, and not have any skeletons in the closet.
- The general environment should be characterized by rule of law and a very low level of violence.
- Having connections to recognized authorities is helpful.

Conclusion

Citizens' initiatives and referendums are crucial tools to ensure that responsible land governance takes place, but require networks and capacities (in the form of educational and academic background as well as financial support) that may not be available everywhere. Citizens' initiatives and referendums are also limited to places where citizens do not have to fear life-threatening risks. We have been insulted and received lots of criticism, but we never had to fear about our health/lives or those of our family members and friends.

How long will the effects of the referendum last and decisions on land use serve the public interest rather than the interest of private investors? We will see. This has not been the first citizens' initiative in Schliersee and it may not have been the last one either.



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