



## E-Participation in the Legislative Process

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**Abstract:** *This paper assesses the success of an innovative national e-participation project in Estonia. To carry out this task, the paper combines quantitative (aggregate user data, content analysis via tagging) and qualitative (individual user survey and interviews with public officials) data analysis. The analysis is conducted with two principal research objectives in mind. Firstly, to explain how e-participation has fared in Estonia, both in terms of citizen mobilization and government responses. The second goal is to evaluate a series of procedural and technological changes for enhancing e-participation. The Estonian case provides ample lessons for ensuring that e-participation in practice can better meet the expectations of users and government officials alike.*

**Keywords:** E-participation, Estonia, e-democracy, mobilization

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In 2001, the Estonian State Chancellery launched a web-based e-participation application known as TOM – the acronym for “Today I Decide” in Estonian (<https://www.eesti.ee/tom/ideas.py/avaleht>). Whereas other e-participation initiatives around the globe have so far largely been restricted to the municipal, local or sub-national level (Avdic, et al., 2007; Carman, 2007; Seaton, 2005), TOM enables Estonian citizens to participate in the national legislative process.<sup>1</sup> The Estonian TOM platform provides an invaluable data set for understanding the dynamics of e-participation. This paper thus analyses the implementation of TOM and draws certain procedural (how the tool is best used by citizens and government) and technological (functionalities offered to users) lessons about using the internet to facilitate citizen input in legislative decision-making.

The paper is structured as follows. A first section presents the quantitative analysis of TOM-engendered citizen mobilization. Section two introduces the qualitative usage data and complements this with interviews with government officials to explore the expectations, frustrations and satisfaction of using TOM both from a citizen to government perspective (C2G) and government to citizen (G2C). The third section, draws on this data to provide a series of procedural (how the TOM tool is used in context) and technological (the functionalities it offers to users) suggestions for enhancing e-participation with this tool. A concluding section fits this argument into a more theoretical discussion of political participation. In particular, the extent to which e-participation initiatives offer new possibilities for citizens to express “voice”, meaning an attempt to improve the relationship between governed and governing by virtue of the former expressing grievances and proposals for reform (Hirschman, 1970).

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<sup>1</sup> A notable national e-participation initiative that was launched recently is the Bundestag’s e-petition system, which is modeled on the Scottish Parliament’s. See

## 1. Citizens' Use of E-Participation in Estonia and Its Results

First of all, it must be pointed out that the TOM project is more ambitious than an e-petition platform, such as the United Kingdom's (<http://petitions.pm.gov.uk/>) or Scotland's (<http://epetitions.scottish.parliament.uk/>).<sup>2</sup> Rather than being a mere medium for collecting signatures, the TOM tool is a forum for citizens to discuss legislative proposals, within a ten-day period following submission, and to vote upon them. After an idea has been proposed, the system functions as follows. To allow for discussion between TOM users, authors of legislative proposals have three days to amend them before they are voted upon by users (a simple 50% plus one majority is needed to pass). Once a proposal is backed by a majority, it is forwarded to the relevant government department, which then has a month to respond to the proposal explaining what action was or was not taken and why. This formal government response is then posted on TOM.

### 1.1. The Number of TOM-Generated Ideas and How they Fared When Voted on by the User Community

In total, 1045 legislative ideas were put forward using TOM. The first year was the most successful, in terms of the generation of legislative ideas, with the number of TOM legislative proposals dropping from a 2001 peak of 369 to almost a quarter (97) in 2004. Thereafter, the number of ideas climbed to 144 by 2006, still only 40% of the number of TOM-generated ideas in its launch year of 2001. The initial peak of activity can easily be explained by the fact that during its launch year TOM received plentiful media coverage, including a prominent presence on Estonia's most popular portal ([delfi.ee](http://delfi.ee)). Of these 1045 TOM-generated legislative ideas – at the time of conducting this study, March 2007 – 1025 had completed the TOM e-participation process.<sup>3</sup> Amongst this total of 1025 completed TOM proposals, 654 (or 64%) were voted in by registered users, 371 (34%) were voted out whilst 25 (2%) were stillborn and were not communicated to the government as they attracted no votes before the cut-off point (3 days after first being proposed),

### 1.2. The Subject Matter of TOM-Generated Ideas

Table 1 below shows the top ten most popular subjects for TOM-generated ideas.

Table 1: Top Ten Most Popular Subject Matter for TOM-Generated Ideas

| n   | Subject (Estonian) | Subject (English)      |
|-----|--------------------|------------------------|
| 142 | liiklus            | Traffic policy         |
| 70  | maksud             | Taxes                  |
| 59  | eestiasi           | Estonian nation        |
| 59  | pere               | Family policy          |
| 40  | põhiseadus         | Constitutional affairs |
| 37  | riigikogu          | Parliament             |
| 36  | krimi              | Crime                  |
| 32  | noored             | Youth policy           |
| 29  | alko               | Alcohol policy         |
| 29  | keskkonnakaitse    | Environmental affairs  |

<sup>2</sup> The comparative literature on e-petitioning initiatives is still in its infancy. However, for more information on the Scottish case see Carman (2007) and Seaton (2005). A good summary of current e-petitioning practices can be found in House of Commons (2008).

<sup>3</sup> Of the twenty that had not, 2 were still under discussion, 5 were yet to be voted on and 13 were still awaiting a government response.

### 1.3. The Number of TOM Users and Their Level of Activity

In total, the TOM platform attracted 6837 registered users. Visiting the site was possible without registration but registration was required for authoring, commenting and voting on legislative proposals. The intention was to provide a forum for citizens to debate and then vote upon the legislative proposals so as to provide government with more ample information about public opinion on certain issues. However, in practice the platform did not provide a successful medium for connecting the authors of legislative ideas with the wider user community in either the debating or voting phase. This is evident from the data on author participation, which shows that only 40% of authors commented on their own ideas and even fewer, 34%, actually voted on them.

Of the total number of registered citizens (6837), 45% were active users (3081); in total there were 6107 comments and 12502 votes. This in itself is a very high percentage of active users since the phenomenon of lurkers – users who never contribute or participate – is particularly prominent in online communities.<sup>4</sup> Nevertheless, participation inequality is particularly noticeable with regards to authoring TOM-generated ideas: only 9% of registered users have authored a legislative proposal (or 19% of active users). However, 34% of registered users voted on TOM-generated ideas (representing 75% of active users) whilst 19% commented on proposals (41% of active users). In addition, usage activity was highly unevenly distributed. The top 10% of users are responsible for 70% of TOM activity, including more than 40% of ideas and two-thirds of all votes. Moreover, the system is in fact dominated by a single user, who accounts for 10% of all TOM-generated ideas. Indeed, the top two percentile of active users, responsible for the generation of nearly a quarter of TOM legislative ideas consists of only ten users.

### 1.4. The Eventual Outcome of TOM-Generated Legislative Proposals

Government departments to which TOM legislative ideas were sent for consideration officially had one month to respond to the proposal through a posting on the TOM website. The analysis of every single government response reveals that, of the 654 TOM ideas successfully voted in, 580 elicited an official government response – an 89% response rate. The nature and distribution of government responses can be seen in Table 2, which shows that nearly half the answers were negative, whilst only 9 ideas (1% of the total) were implemented:

Table 2 The Nature of Government Responses to TOM Legislative Ideas

| Type of Answer                             | N   | Percentage of total answers |
|--|-----|-----------------------------|
| Negative                                   | 276 | 48                          |
| Existing legislation can solve the problem | 80  | 14                          |
| Amendment in progress                      | 79  | 14                          |
| Unclear                                    | 58  | 10                          |
| Supportive but not implemented             | 43  | 7                           |
| Possible implementation of TOM idea        | 35  | 6                           |
| Implemented, at least partly               | 9   | 1                           |

<sup>4</sup> Jakob Nielson, 'Participation Inequality: Encouraging More Users to Participate', [http://www.useit.com/alertbox/participation\\_inequality.html](http://www.useit.com/alertbox/participation_inequality.html)

Thus the overall success rate of TOM is very low; its ability to affect government legislation is trifling with only 1% of ideas implemented and a further 6% considered for possible future implementation. Given this situation, the analysis now turns to examining how users reacted to TOM's lack of success before considering what might be done to enhance the impact of e-participation initiatives so as to fulfill better their promise of democratic empowerment.

## **2. Expectations, Frustrations and Evaluations of both Authors of TOM-Generated Ideas and Government Officials.**

The qualitative data analysis presented here is based on two separate yet complementary elements: a survey of TOM users and a roundtable interview with six public officials charged with responding to TOM-generated ideas by writing official responses on behalf of their respective ministries.

### **2.1. The User Survey of TOM Authors**

An online survey was conducted among the registered users of TOM between 30 April and 14 May 2007. The questionnaire was sent to 80 persons who had presented ideas via TOM in the period June 2001 - March 2007. The sample consisted of the authors of the ideas with the highest number of votes cast. The survey was completed by 25 respondents (a 31% completion rate). The aim of the survey was to analyze the "lifestory" of the typical TOM-generated idea, focusing on how and why the idea came into being, the efficiency and user-friendliness of the commenting, editing, and voting phase of the portal as well as the eventual outcome. Only the most salient responses revealing expectations, frustrations and evaluations will be discussed here.

The vast majority of those authoring a TOM proposal did so for personal, work- or family-related reasons and, to a lesser degree, because of media coverage of a particular issue. Upon reflection, however, users felt they had not spent sufficient time in formulating the idea as, with the exception of one user who had consulted an outside expert, they were all based purely on individual reflection. TOM authors also tended to be disappointed that they had not taken advantage of opportunities to advertise their legislative ideas in other fora. In particular, they expressed frustration at not being able to connect with other TOM users who might have comments or vote on their idea. This attitude was closely associated with criticism of the absence of debate among TOM users. Although comments were highly regarded as valuable and insightful, it was acutely felt that there was not enough discussion or interaction amongst users. Authors would have preferred the ability to edit their ideas whilst still in the commenting phase. Moreover, users felt that as potential voters and commentators they needed better ways of keeping track of new TOM ideas, through the use of tagging, RSS feeds and email notification, as a means of facilitating debate.

The obstacles to contributing comments on TOM-generated ideas were not perceived as solely a problem of platform design due to the absence of tags, feeds or email notification. Survey respondents repeatedly mentioned how they felt they lacked the relevant knowledge and information necessary in order to be able to post comments and participate in thorough discussions. As most of the TOM-generated ideas concern a very specific policy area and require a certain amount of background information, the number of people commenting on TOM ideas is low and the persons involved in commenting and voting tend to be the same ones. Moreover, the reputation of TOM is considered high, a perception users referred to as the reason for not posting low-quality or offensive comments that are the norm in many Internet forums.

Besides the lack of discussion, the major criticism – dwarfing in fact the negative comments on the paucity of user debate – of the TOM e-participation initiative was reserved for public officials' answers to the TOM-generated ideas. All the respondents received negative answers and all the answers are described as being too general and mealy-mouthed. This was interpreted by respondents as the sign of an unwillingness on the part of civil servants to contribute to the possible implementation of an idea, which respondents believe is merely seen as extra work by these public officials. Some frustrated respondents ascribed civil servant inability to implement

TOM-generated ideas to the latter's low status and lack of higher-level political support. The absence of positive government responses to TOM-generated ideas thus resulted in the respondents' overall pessimism regarding the usefulness of the portal that can be illustrated with the statements like "nothing will change anyway", or "our opinion doesn't count" etc. This finding confirms the real problem of unmet expectations associated with e-participation.

## 2.2. Interviews with Public Officials

The first and most sizeable problem from the civil servants' perspective is the fact that ideas have passed through the system with very few votes as well as often being disproportionately authored by a select few users. Nonetheless, the quality of TOM-generated ideas was considered higher than the general correspondence from citizens that finds its way into the ministry inbox. Hence there was a willingness to see the TOM system improved as a way of lessening the burden of answering letters from citizens.

A second complaint concerns users' expectations of establishing a policy dialogue with the government courtesy of civil servants' responses to TOM-generated ideas. As with e-petitioning (*ibid.* 10), TOM users expect that the internet provides a unique and hitherto-inexistent means of having their voice heard by government. In practice, this entails burdening civil servants with the task of responding to TOM-generated ideas. Under the terms of the Estonian Public Information Act, Estonian citizens already have a far-reaching right to make public information requests. However, TOM-generated ideas are more difficult and time-consuming to treat because they typically require a more complex answer, one that is taken at a higher administrative level than a public information request.

Consequently, answers to TOM-generated ideas are treated as the official government position. This means the possibilities of citizen to government dialogue using the TOM platform are limited since once a government position has been determined civil servants are obliged in public to defend it. Civil servants thus pointed out that TOM induced unrealistic expectations of civil servants' ability to effect policy change – their function is to execute rather than decide public policy. Nonetheless, the interviewees accepted that TOM would be made more effective by providing users with the working plans of government ministries as well as allowing TOM-generated ideas to be supported by NGOs and other advocacy groups.

## 3. Enhancing E-Participation: What Technological and Procedural Changes Are Needed?

The above quantitative and qualitative analysis singled out two overarching problems with the current TOM tool: poor citizen mobilization and the low impact of TOM-generated legislative ideas. Both are symptomatic of TOM's limited ability to influence democratic legislative decision-making in Estonia. All modifications to the TOM platform, therefore, have to target ultimately the issue of unmet expectations about e-participation's ability to engender new forms of citizen to government and government to citizen interaction. In this sense, the problem of TOM is one of the burdens of expectations, which is also true of most areas of the nascent e-democracy (Schulman, 2003).

The study of the TOM data clearly demonstrated that the advent of the technological possibility of enabling citizens to participate in the legislative process was not by itself a sufficient condition for achieving a transformation in democratic practices. This merely confirms the fact that the simple causal interpretation of ICTs as leading to automatic change in social systems – technological determinism (Hansen, 1921; Heilbroner, 1967) – is erroneous (Preston, 2001). Rather than constituting a sphere separate from social life, it appears that technology is 'constitutive of social life' (Mackenzie and Wajcman, 1999: 23) and the recommendations for improving TOM take account of this fact.

Instead of representing a democratic *deus ex machina* (cf. Sunstein, 2000), therefore, e-participation needs to be embedded in the social and political landscape of a particular polity if it is

to fulfil any of its potential for empowering citizens. This is why, on the basis of the data analysis, we suggest a series of procedural changes, *viz* how TOM is used by government, so as to address the problem of embedding e-participation into the public sphere. This type of change requires political will in order to be put into practice. Nevertheless, technology is by no means neglected, since the analysis also points to the need for certain technological emendations concerning the functionalities the existing TOM platform offers to citizens keen to participate in the legislative process.

### 3.1. Problems with the Existing TOM Tool: The Causes

The intertwined causes behind poor citizen mobilization and the low impact of TOM in the Estonian public sphere can be summarized as follows:

Poor Mobilization:

- Few users
- Dominance of a few mega-users
- Authors disappointed by the lack of user comments
- No linkage between the authoring, commenting and voting phases
- Little discussion of government responses as no user notification of responses
- No possibility of re-submitting revised ideas

Low Impact:

- Public officials contemptuous of low public participation rate
- Answering is a burden on civil servants
- Ideas do not correspond with ministerial priorities
- Civil servants in charge of responding do not make policy decisions - they execute
- TOM-generated ideas are lost once responded to; they drop out of policy debate as civil servants defend official line
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### 3.2. Suggested Technological Changes: Improving TOM's User Functionality

Impact is directly related to the number of TOM users, in particular the number of user votes each idea musters. The current TOM tool only requires a simple majority of votes to allow an idea to pass; there is no quorum. This was interpreted by civil servants as a major weakness because it meant that they had to respond to ideas through a formal, cumbersome process on the basis of a mere handful of votes. To avoid this awkward situation, an *adjustable quorum* could be introduced to ensure that the ideas presented to the various government ministries have the backing of a more significant number of users. The quorum would be set in proportion to the total number of registered users so that greater citizen mobilization would be reflected directly in the voting process. As a result, the ideas voted in will have the sanction of a greater number of users, thereby increasing the chances that the government and other interested parties will take them seriously. Consequently, ideas voted in by only a small number of users would not burden civil servants, thereby avoiding removing a major source of their frustration with TOM.

Authors of TOM-generated ideas were particularly frustrated by the absence of a *comprehensive system of categorizing TOM-generated ideas*, which would allow for a search of TOM ideas by tags or categories as well as a notification system for alerting users to new or cognate ideas. The categorization of legislative ideas is easy to accomplish using a social bookmarking service such as [www.del.icio.us](http://www.del.icio.us), which would assign tags – in essence, keywords – to each idea and relevant

comments. The introduction of comprehensive tagging of all legislative ideas and comments on the TOM tool would have two immediate benefits. Firstly, it would make it much less likely that an existing proposal would simply be duplicated. Secondly, and more importantly, searchable tags would assist authors when proposing new legislative ideas in cognate areas. A searchable database would enable potential authors to make contact with previous authors and those who have commented on relevant previous ideas, thereby making it easier to mobilize a community of e-participation users to support a TOM-generated idea. Furthermore, the knowledge that comments will be stored for future use should also act as a disincentive for users to post *ad hominem* messages (replying to an argument or factual claim by attacking or appealing to the person making the argument or claim, rather than by addressing the substance of the argument or producing evidence against the claim).

Tagging needs to be complemented by the *introduction of a system of email notification or RSS feed* (Really Simple Syndication, an automatic system for alerting subscribers of updated website content without them having to visit the actual website) automatically informing users of new ideas in certain policy areas. In addition, this system could alert authors to comments on their ideas. Likewise, the RSS feed function would also notify commentators if an author amended her legislative proposal. TOM users' suggestion of introducing a "send to a friend" function also represents an optimal solution for increasing awareness of the e-participation platform as well as a way to generate more user discussion.

Authors were particularly disappointed with the lack of information regarding the progress of their TOM idea once successfully voted upon and sent to a government ministry. A remedy for this would be the creation of an automatic system (by email notification or RSS) whereby authors and other users can track the progress of a voted-in idea in the stages leading up to the official government response. This would not only enhance the transparency of the e-participation process, thereby showing that the government takes the fruits of e-participation seriously. It would also enable the user community to mobilize in the crucial period of government decision-making by allowing users to know the timing of government decisions and thus organize their mobilization accordingly. Indeed, this notification system should also encompass the eventual government response as the interviews with authors indicated that they were particularly dissatisfied by the failure of the existing tool to signal a government response to their idea. Government responses could then also be tagged and added to the searchable TOM database so as to help authors of new ideas to discover previous government responses to ideas similar to theirs.

Finally, the existing TOM tool does not allow for the resubmission of rejected ideas – a flaw TOM users, according to the analysis above, want to see rectified. Thus a system for revising and resubmitting ideas would represent a significant improvement of the e-participation tool. Depending on the type of response a TOM-generated idea received from the government, the resubmission facility should allow users to amend the legislative proposal accordingly. It seems only appropriate, however, that a newly-amended proposal for resubmission should also be subject to a new vote by the community of users. Resubmission could thus potentially serve to reflect the intensity of citizens' preferences, adding to the pressure on government for a positive response, especially if the idea was supported by third parties such as NGOs or political actors.

### **3.3. Suggested Procedural Changes: Changing the Way Government Uses E-Participation**

Perhaps the Estonian government's biggest shortcoming in its use of e-participation is its failure to publicize the TOM platform. If the government is serious, therefore, about realizing the full potential of e-participation, it *must take positive steps towards better advertising the existence of the TOM platform*. These steps can vary across different media yet are nevertheless simple to put into effect. For instance, internet portals and online newspapers can be mandated to incorporate permanent links to TID+ in their current affairs coverage. Likewise, traditional print media (newspapers and periodicals) as well as TV and radio coverage, especially public broadcasting, could mention the TOM website, even if only in a byline, as a forum for further public debate or for

demanding government action. By itself, the existence of an e-participation platform counts for little unless it is actively promoted as a means to pass new legislation.

Advertising alone is no nostrum for ensuring the success of e-participation. If TOM is to have a greater impact, it seems that *the ideas it generates ought not to be circulated solely to government ministries*. Citizen to government communication has to be understood more broadly, in terms of a public sphere (Habermas, 1989) in which citizens participate and to which government is responsive. Hence TOM-generated ideas can contribute to public debate within the public sphere if these legislative proposals are also communicated directly to decision-making actors such as parliamentary committees or even partisan or advocacy organizations such as political parties and NGOs. In fact, civil servants interviewed for this research approved the notion of allowing interest groups to express their support for TOM-generated ideas during the phase of government consideration. In this way, e-participation can have a greater impact on political decision-making instead of being left in the hands of unelected public officials whose mission is to execute rather than decide public policy.

One of the complaints common to both the authors of TOM ideas and civil servants was the fact that TOM-generated ideas did not match ministerial priorities. Consequently, even ideas that did not require high-level decision-making did not meet with a positive response. To overcome this problem, government needs to provide citizens using the e-participation tool with *detailed information on the current policy priorities of each government ministry*. This would enable potential authors of legislative proposals to tailor their suggestions to current priorities, thereby increasing the chances that ideas generated via e-participation will meet with a positive answer.

The final suggestion aimed at changing the way government uses e-participation concerns the relationship between e-participation and future statute amendments. If the possible impact of e-participation on the legislative process is to be maximized, it seems fruitless to simply lose track of rejected legislative proposals. Thus rejected ideas should be kept on file in the relevant ministries, especially those rejected for their lack of congruence with current government priorities. In this way, subsequent statute amendment or policy priorities that might correspond with or relate better to earlier TOM-generated ideas will not be lost and might well benefit from the input of earlier e-participation debates. Moreover, this promise to safeguard and potentially re-examine the usefulness of TOM-generated ideas will also demonstrate the government's willingness to incorporate citizen input into the legislative process, which as the interviews showed, is a key element of citizens' expectations about e-participation. If this expectation is not met, trust in e-participation as a cornerstone of reforming the democratic process in the twenty-first century is likely to be undermined.

#### **4. Conclusions: The Importance of Being Earnest About E-Participation**

E-participation gives citizens an unprecedented ability to use their "voice" (Hirschman, 1970) in the democratic process. This study has demonstrated, using data from the Estonian TOM initiative, citizens' trust in the e-participation process. However, the analysis also revealed the extent to which citizens were frustrated by the inability of TOM to meet their expectations about having their voice heard – only one percent of TOM-generated ideas were implemented. This finding only confirms the fact that 'the use of ICT alone cannot accelerate the democratic process because the process itself has to be thought through so that the use of ICT is designed to promote and nurture it' (UN, 2007: 121).

Hence the greatest challenge to e-participation is the threat of unmet expectations. When conceptualized according to Hirschman's model of the interrelation between exit, voice and loyalty, it appears that the addition of a new outlet for voice, in the form of e-participation, is no instant remedy for the problem of public distrust of political institutions. Voice only succeeds in promoting loyalty if the use of voice leads to reform; when voice becomes futile, the result is exit, in the sense of disengagement (Hirschman, 1970). From this perspective, governments seeking to implement e-participation appear not to have the option of doing so half-heartedly. Citizens' willingness to trust



the e-participation process can only be sustained if the system has notable effects on the legislative decision-making process.

To a certain extent, as argued in section three, being earnest about e-participation is a product of offering the appropriate functionalities to users. As the Estonian case shows, the lack of certain functionalities hampered both the ability to create inter-citizen debate within the e-participation community and the ease with which citizens could be mobilized to join the community. Yet the evidence also points to the crucial importance of political will in fulfilling the potential of e-participation. The irony is, as revealed by the TOM case, that this novel mechanism for bottom-up political participation cannot rely solely on bottom-up citizen engagement in order to be effective. Rather, top-down coordination by government is required to place e-participation at the heart of public debate. Only in this way can e-participation begin to meet the expectations it has already engendered.

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