

RECOMMENDATIONS ON ENHANCING THE PARTICIPATION OF ASSOCIATIONS IN PUBLIC DECISION-MAKING PROCESSES

FROM THE PARTICIPANTS TO THE CIVIL SOCIETY FORUM TO BE PRESENTED AT THE SUPPLEMENTARY
HUMAN DIMENSION MEETING

Vienna, 15-16 (morning) April 2015

The right to participate in the conduct of public affairs has been recognized globally and in domestic settings, and regional standards and models have been developed to support public participation, including that of associations, in decision-making processes. Reaffirming the vital role that associations, NGOs, groups and individuals play in promoting democracy, human rights and the rule of law, as set out in a number of OSCE commitments, OSCE participating States have committed to the aim of “strengthening modalities for contact and exchanges of views between NGOs and relevant national authorities and governmental institutions” (Moscow 1991, para. 43.1). To that end, OSCE participating States should ensure that appropriate mechanisms and procedures are in place for the participation of associations, as representatives of civil society, in public affairs providing for regular, ongoing, institutionalized and open dialogue to facilitate their effective participation. The key role that associations, as representative bodies of the people, are playing in democratic societies is a cornerstone of the recently adopted joint OSCE-ODIHR – Venice Commission Guidelines on Freedom of Association.

Participation in decision-making processes means that the public and civil society in particular, as well as other interested parties and stakeholders, should be able to contribute to the development of policies and legislation which affect or may affect them. Effective public participation and transparent processes of decision-making help improve the quality of policy and legislative decisions, enhance the potential for their successful implementation and ultimately serve to increase public trust in state institutions. A participatory democracy and an open and transparent public decision-making process should provide for effective and regular consultation and participation of associations in the development and review of policies and practices of public authorities as well as of laws and legislative amendments. In particular, open and transparent public decision-making processes should lead to the effective and genuine involvement of those associations of persons most directly affected by the policy and legislative decisions under consideration.

The right to participation in the conduct of public affairs also implies the right to submit authorities to criticism and proposals to improve their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms. State authorities should also actively involve associations in the oversight of public institutions and offices.

The necessity for inclusive and open dialogue by OSCE participating States with civil society requires that the participation of associations in public decision-making processes should be facilitated in a transparent, impartial and non-discriminatory manner. They can also provide decision-makers in the government with the information required to assess policy impacts and performance.

In an effort to enhance the participation of associations in public decision-making processes, a Civil Society Forum on this topic was organized in Vienna on 15 and 16 (am) April 2015 and was attended by 33 experts on civil society issues from 25 OSCE participating States. The main purpose of the Forum was to identify and/or define and endorse concrete recommendations and practical tools in order to enhance the participation of associations in public decision-making processes, in an effective, transparent, impartial and non-discriminatory manner to be presented and discussed at the Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association (16-17 April 2015).

The OSCE participating States are invited by the Participants to the Civil Society Forum to review the ideas contained in the set of draft recommendations, which will be further refined and

supplemented into a final set of recommendations that will be presented at the Human Dimension Implementation Meeting in September 2015 in Warsaw, Poland.

Basic conditions for enhancing the participation of associations¹ in public decision-making processes:

1. The existence of a true enabling environment, free from corruption, allowing civil society to operate and participate freely and actively in public decision-making processes, including policy and law-making;
2. Respect for the rule of law and the fulfilment of other human rights and fundamental freedoms, including economic rights, particularly the full and equal guarantee of the rights to freedom of association and of peaceful assembly, freedom of expression, the right of access to information, and the freedom and independence of the media;
3. The political will to facilitate the participation of associations in public decision-making processes and to encourage, support, and value civil society contributions;
4. A positive attitude of public authorities to including critical voices and dissenting views in public debate;
5. A culture of dialogue between decision-makers/public authorities and civil society which should ultimately lead to building mutual trust;
6. The capacity of both the state administration/government and of associations to engage in meaningful debate, with the caveat that lack of capacity should not pose a barrier or be used as an excuse for not opening public decision-making processes to associations;
7. A free, independent, and active civil society with the capacity to develop and grow, particularly through the provision of and access to resources (financial, human and technological), which includes access to foreign funding;
8. Associations should be provided with opportunities to participate in public decision-making processes at all levels (local, national, regional and international) and at all stages, from the planning and policy stage until the time when decisions are implemented, monitored and evaluated;
9. All associations and individuals shall have access to justice and to regional and international human rights mechanisms, and shall be able to freely co-operate and communicate with such mechanisms, without fear of reprisals.

Recommended tools and reference documents:

- The UN Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention") of 25 June 1998;²
- The UN Declaration on Human Rights Defenders of 8 March 1999;³ and UN Human Rights Council Resolution "Protecting human rights defenders" of 21 March 2013;⁴
- The UN Human Rights Council Resolution "Civil society space: creating and maintaining, in

¹ For the purpose of this document, the term "association" should be understood as it is defined in the joint OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2014) and shall thus include non-governmental organizations (NGOs) which are membership-based and have more than one founder.

² Available at <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

³ A/RES/53/144, available at <http://www.ohchr.org/Documents/Issues/Defenders/>.

⁴ A/HRC/RES/22/6, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Translation.aspx>.

law and in practice, a safe and enabling environment” of 23 September 2013;⁵

- The Council of Europe Convention on Access to Official Documents of 18 June 2009 (CETS No. 205);⁶
- The Council of Europe’s Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe;⁷
- The Council of Europe’s Code of Good Practices for Civil Participation in the Decision-Making Process (2009);⁸
- The Guidelines for EU support to civil society in enlargement countries (2014-2020);⁹

I - PRINCIPLES OF PARTICIPATION OF ASSOCIATIONS IN DECISION-MAKING PROCESSES, INCLUDING POLICY AND LAW MAKING

1. Transparency, openness and accessibility, accountability and efficiency

10. The transparency of public-decision making processes should be ensured, e.g.
 - a. decisions should be taken and enforced in accordance with established rules;
 - b. there should be public access, in a timely fashion, to information to allow for informed contributions from civil society that can meaningfully affect decision-making (see also Recommendation No. 31);
 - c. decisions and other public documents adopted by public authorities shall be made available to the public;
 - d. timely feedback mechanisms on the results of public consultations should be in place (see also Recommendation No. 31).
11. Governments and other state institutions should be accountable to the public with respect to consultation processes on policies and legislation and should have an obligation to report on the status of participation of associations and individuals in public decision-making processes and on the implementation of legislation on public participation (if it exists);
12. Designated independent bodies, such as national human rights institutions and/or information commissioners, should monitor and report on compliance with binding standards on public participation and should actively support and advocate for effective participation.

2. Non-discrimination, equal treatment and inclusiveness

13. All associations wishing to participate should have equal access to public decision-making processes.
14. Associations should not be discriminated in terms of participation in public decision-making processes based, amongst others, on:

⁵ A/HRC/24/L.24, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/L.24.

⁶ Available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>.

⁷ Available at <https://wcd.coe.int/ViewDoc.jsp?id=1194609>.

⁸ English version available at http://www.coe.int/t/ngo/Source/Code_English_final.pdf and Russian version available at http://www.coe.int/t/ngo/Source/Code_brochure_ru.pdf.

⁹ Available at http://www.tacso.org/doc/doc_guidelines_cs_support.pdf.

- whether they are international associations (including international NGOs and their respective branches) or national associations;
 - whether activities are carried out at the international, domestic or local level,
 - their sources of funding (whether public, domestic, foreign or international); or
 - the fact that they are critical of the government and/or of the proposals being made;
15. State authorities shall not exclude certain persons, groups or associations from participation in public decision-making processes without a well-founded, reasonable and objective justification and should be responsive to requests to explain the reasons for such exclusion;
16. Anti-discrimination legislation should include or make reference to the need for equal access to public participation;
17. States should have clear and binding regulations ensuring equal participation in decision-making processes of all those associations and individuals who are interested in the issue under discussion – irrespective of whether the associations are considered “representative” or actually represent a large number of people, or of their relations with the government or governing parties;
18. The states should take positive measures to ensure the equal participation of women and men in public affairs, including providing support to associations furthering equality between women and men in public decision-making processes;
19. The states should address the needs and overcome specific challenges confronting disadvantaged, vulnerable or marginalized persons or groups to participate in public-decision making processes and should put in place legal guarantees and organizational mechanisms to ensure more inclusiveness of public decision-making processes, while taking care to:
- diversify the structures, methods, mechanisms, tools and types of public participation (these could include, among others, public announcements regarding draft policies and laws, consultation meetings, the posting of information on official websites, use of the Internet and of new technologies, civil society networks and social media, with the particular aim to enhance youth participation);
 - support associations which aim to enhance the capacities of disadvantaged, vulnerable or marginalized persons to take part effectively in public decision-making processes;
 - adopt and implement the World-wide Web Consortium’s guidelines on web content accessibility (1999)¹⁰ for persons with disabilities.

When putting in place such mechanisms, it is essential to avoid the risk of a digital divide (i.e. the exclusion of certain categories of the population which may not have access to the Internet and new technologies).

20. In cases where expert working groups are formed, similar selection criteria and requirements in terms of competence and expertise should be applied to government representatives and civil society representatives and all members of the working group should be subject to the same conditions;

¹⁰ Available at <http://www.w3.org/WAI/intro/wcag>.

21. States should ensure that all comments received from civil society are given equal consideration, regardless of whether they are in favour or against the proposals under discussion.

3. Independence of associations

22. The definition of “independence” of associations should be in line with international standards and principles;

23. The participation of associations in public decision-making processes should be secured through a public, transparent and open selection process and shall be based on clear and predefined criteria; associations should be able to choose their representatives to take part in public decision-making processes; basic information on associations participating in public decision-making processes should be made available to the public;

24. Safeguards should be in place to ensure that consultations are not overtaken by Government associations or associations affiliated to a ruling party or to certain public officials;

25. States should not impose on associations an obligation to engage in decision-making processes or to defend certain positions;

4. Others:

26. Participation should be result-oriented, rather than process-oriented, meaning that it should be able to have an actual impact on the content of the adopted policy, legislation, decisions or other public acts;

27. Civil society should enjoy the right to participate in public affairs, including debates, engage in advocacy for their beneficiaries and monitor public institutions and offices, including in the context of elections.¹¹

II – SUPPORTIVE POLICY AND REGULATORY FRAMEWORK FOR PUBLIC PARTICIPATION

28. States should develop binding standards on effective public participation/consultation in accordance with international standards,¹² providing for:

i. Scope: participation/consultation of any public initiative which has a potential impact on third parties, whether it is initiated by government bodies, parliament, individual MPs or other public entities;

ii. Access to information: free and timely access of the public to any document/draft law/legislation under development and related background

¹¹ 2013 Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association on “The exercise of the rights to freedom of peaceful assembly and of association in the context of elections”, A/68/299, available at http://www.ohchr.org/Documents/Issues/FAssociation/A_68_299_en.pdf.

¹² Legislation or other binding standards should reflect the minimum standards stated in the Council of Europe’s Code of Good Practice for Civil Participation in the Decision-Making Process (2009) as well as in the Aarhus Convention (*it is recommended that the application of key provisions of the Aarhus Convention should extend to all issues, not just environmental matters*).

information; and responsiveness on the side of relevant authorities to any request for additional information;

- iii. Free, or at least affordable participation;
 - iv. Timeliness: setting out a clear and reasonable minimum timeline for public participation/consultation that will provide associations with sufficient time to prepare, discuss and submit recommendations on draft policies and draft legislative acts
 - v. Feedback mechanism: a legal obligation and a mechanism whereby decision-makers shall report back to those involved in consultations, including the public, by providing, in due time, meaningful and qualitative feedback on the outcome of every public consultation, including clear justifications for including or not including certain comments/proposals;
 - vi. Sanctions for the failure to comply with laws requiring the organization of public consultations on drafts of policies, legislation, or other decisions;
 - vii. The obligation of public authorities to conduct a self-assessment on compliance with such binding standards on effective public participation/consultation and to report on the results to the public on a regular basis;
29. Early and inclusive consultations on the regulatory framework on public consultation-related matters should be organized before drafting such a framework, to avoid over-regulation in this field;
30. Regulatory frameworks should not be burdensome for the public and associations and should focus on creating opportunities for participation, not restricting them;
31. In cases where legislation, decisions or other public acts were adopted without complying with binding standards on public participation:
- Procedures should be in place whereby such legislation, decisions or public acts can be challenged before judicial bodies or other designated independent bodies, by interested individuals and associations;
 - Government officials and other representatives of the State shall be held liable for violating legal obligations to ensure participatory processes in public decision-making processes.
31. The regulatory framework shall include the right to peaceful protest into the list of modalities of participation by civil society;
32. The law should clearly define and limit the number of instances when “emergency” or “expedited” procedures for the adoption of legislation, decisions or other public acts can be applied. The fact that a piece of legislation is adopted under urgent or expedited procedures should not in itself be a valid justification for not holding public consultations.

Other aspects to be elaborated further, to be presented as part of a consolidated set of recommendations at the OSCE/ODIHR Human Dimension Implementation Meeting in September-October 2015 in Warsaw, Poland:

III - ENHANCING PARTICIPATION OF ASSOCIATIONS IN PUBLIC DECISION-MAKING PROCESSES: THE “How?”

1. Modalities of participation

2.1. Access to Information

2.2. Participation/Consultations

2.3. Partnerships/Cooperation

2. Monitoring

3. Building a culture of participation

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Specific recommendations to OSCE participating States and OSCE institutions:

- The OSCE should assess and provide an overview of consultation processes in OSCE participating States, including the legal basis/soft laws and legislation on freedom of association;
- The OSCE or another international organization should develop guidelines for the effective participation of associations in public decision-making processes that would highlight what is generally acceptable as good practice in selected OSCE participating States;
- The OSCE should develop a public participation index and put in place a respective monitoring system;
- In countries where there are OSCE field offices or where the OSCE implements certain project/programmes, the involvement of civil society actors should be a guiding principle and the OSCE should involve such actors at all stages of project/programme implementation, from planning to implementation, followed by monitoring and evaluation;
- International organizations, including the OSCE, should ensure continuity and consistency in the manner in which they provide support to and place pressure on countries in transition in order to reach sustainable results in the area of public participation in decision-making processes;
- OSCE participating States should be responsible for ensuring the participation of associations in public decision-making processes.