

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

PUBLIC
PARTICIPATION
AUDIT

BASED ON COLLECTED INPUTS
FROM A PARTNER
SEMINAR 13-14 NOVEMBER 2012





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PREFACE

Jakob Kirkemann Boesen



Everyone has the right to participate in public affairs and in shaping the decisions that affect them as an individual, their communities and the conduct of public affairs in general. According to international human rights standards, everyone should have the ability to stand for public office and all of us should have the opportunity to choose the people who should represent us. Public decisions should be taken on the basis of public consultations and with due consideration of people's opinions and concerns for the public.

Participation and the notion of public hearing processes is essential in a human rights culture and a central element of stable governance where the concerns and priorities of all are heard, debated and reflected in public decision-making. Participation by people in the governance of their countries, both as individuals and as freely organized entities, is an inalienable right and an inherent part of human dignity. Participation in society is both a right in itself and a precondition for the exercise and effective enjoyment of all other rights. Being excluded from participation often entails being marginalized from the political, social

and economic communities to which people belong. Once excluded from participation, people are no longer able to access or demand their rights.

The classic civil and political rights are well recognized but are often subject to restrictions. In response, people have gone to the streets, or in other ways, to demand their right to participate against undemocratic or unresponsive governments. They have demanded not only the right to assemble and to express themselves, but also that their voices be heard. The rights to vote and stand for elections, freedom of expression, assembly and associations are recognized as rights in relation to participation. Increasingly, through different UN instruments, the right to be heard is also emerging. This right to participate directly in central public decision-making processes has been elaborated and expanded in recent conventions on gender, ethnicity and disability; It has been elaborated in general comments across the Convention on Economic, Social and Cultural Rights, where it is seen as an integrated element in human rights governance and a central feature of transparency,



accountability, and the ability to shape and demand the delivery of public services; And it has been elaborated in regional human rights documents, most lately the African Charter on Democracy, Elections and Governance.

From a human rights perspective, participation should be meaningful; including participation that is active, free and informed. Meaningful participation requires the right, the capability, the instruments and the opportunity to participate. It requires that information be obtainable and freely shared with others and that opinions can be formed, expressed and debated without fear of sanction or repercussions of any kind. Meaningful participation requires responsive public institutions and necessitates not just freedom of speech and the right to make a complaint, but also the right to be heard.

With the work of the Danish Institute for Human Rights we hope to be part of a movement to enhance the understanding of the right to participation and contribute towards the growing responsibilities of government to offer people the right to participation. We

hope that our work in partner countries can be part of identifying crucial barriers for public participation and facilitating conducive and constructive dialogue between state and the public on how these obstacles can be addressed.

INTRODUCTION TO PUBLIC PARTICIPATION AND HUMAN RIGHTS

Lis Dhundale

In 2010, the Danish Institute for Human Rights (DIHR) initiated a handful of international partnerships aiming at documenting the public participation situation in the partner countries. The public participation audits follow a similar structure by paying attention to three dimensions. The first is the enabling environment which includes a legal analysis of the international human rights obligation and relevant legislation establishing public participation as well as state systems and procedures conducive or hindering public participation in practice. Good examples of public participation are included in this dimension. The second dimension relates to the informed and active citizen. To enable meaningful participation people not only need to know their rights and how to pursue them, but they also need to be informed of upcoming decisions to be reached by governmental and other political bodies and who, how and when participation can be exercised. Finally, the third dimension concerns a mapping of the civil society in the concerned country. As civil society organizations provide an important opportunity for people wishing to engage actively in the conduct of public affairs, a mapping of civil

society will provide information whether civil society in fact provides an effective vehicle for engagement and participation in the country. The public participation audits carried out by partners takes into consideration the three main dimensions described above; their findings will point towards strengths and weaknesses. The documented weaknesses will point towards needed areas to address in order to improve the situation. In some partner countries, civil society organizations have created platforms to jointly advocate for changes of selected obstacles to meaningful participation.

Based on the collected experiences in several partner countries, the Institute decided to hold a partner seminar. A group of human rights defenders, experts, practitioners, researchers and project managers from a number of different countries in Africa, Middle East, Central Asia and Europe took time off from their busy schedules and got together with staff from the Institute in Copenhagen on the 13th and 14th of November 2012. On top of the seminar agenda was public participation. The main focus was on public participation audits but complemented by related topics. One



topic was to gain clarification in understanding “public participation” and develop methods and tools to apply nationally in the promotion of public participation. The second was to look further into how partners and others have worked with public participation audits, public participation platforms and related activities. The collected experiences feed into discussions about the methods applied in promoting public participation and to gain an understanding of the main obstacles to enjoy this. Below are some of the topics that were touched upon.

Defining public participation and clarification of which of the international human rights instruments are central to the enjoyment of public participation; for example, The International Covenant on Civil and Political Rights and especially article 25 (the right to participate in the conduct of public affairs), article 19 (the right to freedom of expression), article 21 (the right to peaceful assembly) and article 22 (the right to freedom of association) establish the right to participation. In addition, the interpretation by relevant UN bodies of the standards clarifies that the four rights are composite rights by jointly being essential to

meaningful participation. There are supportive examples of more recent international human rights instruments where public participation is also stated.

In the first part of this publication six papers present the public participation situation in the different countries. Although the studies and audits were not completed at the time of the seminar in November 2012, the speakers were able to present initial analysis of the situations in each of the countries.

In Tajikistan, legislation protects key civil and political rights providing a conducive environment for genuine public participation. It is pointed out, however, that several procedural challenges in practice hinder opportunities for citizens to exercise their rights. Some obstacles include the inability of the Tajik government to make use of available consultation bodies which in reality are weak and ill functioning. The limited access to information from government bodies is another obstacle. Open debates in the media on government policies are uncommon as the media does not enjoy full independency. Certain groups including women and rural populations

are marginalized from decision-making processes. Government corruption is another negative factor discouraging active participation. The legal environment for civil society in Tajikistan has improved and organizations are making valid contributions to improve areas of human rights; however, the presence of those organizations is limited to urban areas.

Following the Arab spring, in 2011 the new political authorities in Egypt began a process of participation in relation to the drafting of a constitutional declaration which was later adopted by a referendum. In this declaration, the freedom rights are protected with the crucial exception of access to information. Further legislation has not yet been elaborated to clarify how the freedom rights can be exercised. The revolution and constitutional process have broadened the understanding of participation and has led to a more active public participation in the country. The Internet and social media have been instrumental in this. Youth has taken on a leading role in this process by organizing political pressure groups and forming new political parties. However, public participation cannot yet be fully enjoyed and there is a lack of access to participation especially for those living in remote areas and for peoples with disabilities. The paper on Egypt reflects the situation in 2012 when it was presented and is therefore not describing the present situation in the country.

The paper on Zimbabwe does also not reflect recent changes as it was prepared in 2012.

The paper establishes that Zimbabwe is bound by several international and regional human rights instruments, but the national legislation does not allow for enjoyment of effective public participation. Political divisions have led to continued reduction of political and economic space for citizens to effectively participate. Poverty and deprivation is causing disempowered citizens. There is a lack of cohesion as communities are no longer able to speak with one voice when engaging in local politics and there is a lack of trust in the system as citizens do not believe that their participation can impact decisions and ultimately affect changes. In spite of the general lack of possibilities, there are good examples of effective participation where local authorities actively encourage and promote participation from citizens.

In spite of the constitutional protection of the freedom rights in Zambia, the legislation and practises are sometimes used to curtail these rights. The Public Order Act in some instances restricts freedom of assembly. A new NGO Act was passed in 2009 that places restrictions on registration of associations. Freedom of expression is limited through criminal defamation and insult laws. The Media are also subject to restrictions following adopted legislation in 2003. There are calls for passing of an access to information bill demanding transparency and access to information for the public. The government is supportive of civil society's involvement in service delivery, but not when it engages in

advocacy for good governance and human rights. The major internal challenges faced by civil society are heavy donor reliance, high staff turnover, limited scope for policy dialogue with government and the personalisation of many organizations. At the overall level, there are significant challenges relating to equality. High poverty levels erode the possibility of citizens to participate in voluntary activities.

The comparative study of Burkina Faso, Mali and Niger reveal similarities as well as unique national tendencies. In all three countries the right to public participation is established through various sources of regional and international law. The right to freedom of association is recognized by all three constitutions, while the right and freedom to create and operate political parties is restricted in the countries. In respect to legislation concerning women's participation, women in Burkina Faso, Mali and Niger are less represented in decision-making bodies and are often victims of discrimination despite gender discrimination being prohibited by the constitutions in force. Civil society in the three studied countries is most predominant in central urban areas. The majority of civil society organizations do not have the necessary capacities to question public policies and are often unable to present a joint force against state policies and provide credible alternatives. Marginalization in public or decision-making spheres is common in all three countries. Poverty, lack of income, illiteracy, lack of access to education, lack of health security and poor

living conditions affecting the majority of citizens results in political marginalization. Women, youth and some ethnic minorities are often marginalized as well.

The country study on Niger presents a comprehensive analysis on the civil society in the country. Although rather strong, the challenges for civil society in Niger are numerous. The organizations are dependent on donors and become simple operators. Their autonomy is lost and they fail to keep sight of the goal to improve the living conditions of the general public. The expertise and capacity of civil society is weak. The internal mechanisms of some organizations can be questioned. The grouping of certain types of civil society organizations has caused a narrowing of the scope of topics being addressed and civil society organizations are most prevalent in urban areas. Consequently, civil society in Niger does not provide an effective platform for influencing the conduct of public affairs because of these challenges. To address the mentioned challenges the proposed actions include: i) initiatives enabling the civil society organizations to build capacities and hereby enhance the effectiveness of their action; ii) civil society organizations should develop in-house ethical approaches that promote internal values and practices of good governance; iii) developing civil society charters; and iv) the civil society should focus its actions in rural areas where there are many challenges and where change is hardest to promote.



The second part of the seminar publication point toward ways forward. The two contributions are quite different in nature but both deal with the question of pointing to methods and approaches leading to enhanced public participation.

A case from Iraq serves as the first example where civil society through joint advocacy efforts influenced the Iraqi parliament in 2010 to adopt a new NGO law that is in conformity with international human rights standards. The initiating civil society organizations engaged in capacity building themselves as a first step; this involved becoming familiar with the relevant international human rights standards on freedom of association and to learn best practices. Through collaboration with relevant international organizations this was achieved as well as an initiative to disseminate information about the discrepancy of the NGO law at the time with the relevant international standards to the broad civil society and public. The call for change and legal reform was the next step. The initiating organizations reached out to individuals and organizations from across the political, ethnic and geographic spectrum to

build a coalition. The coalition was established and a nationwide campaign was launched including workshops, conferences, e-mailing lists etc. Religious and clan leaders as well as the media in Iraq were also involved. The strategy included approaching the Minister of State for Civil Society Affairs to advocate for the drafting of a new NGO law and to highlight the specific conditions needed to conform to the international standards. In 2008, a draft law was tabled which met the expectations. Members of parliament were approached to sensitize them to the new NGO draft law. A major public campaign was launched. The efforts bore fruits as the law was passed in 2010.

In the second example, the Code of Good Practice for Civil Participation in the Decision-making process is presented. The aim of the Code is to facilitate NGO participation in the political decision-making process. The Code is not a legally binding document but it is adopted by consensus by 47 member countries of the Council of Europe. The objective of the Code is 'to contribute to the creation of an enabling environment for NGOs in Council of Europe member States'. The Code can be



considered as a set of principles, guidelines, tools and mechanisms for civil participation in the political decision-making process. The Code can also be applied as a tool for NGOs in their dialogue with parliament, government and public authorities. The Code outlines six different steps of decision-making process including i) agenda setting, ii) drafting of policy, iii) decision-making, iv) implementation of policy, v) monitoring and vi) reformulation of policy. The nature of NGO participation can include information, consultation, dialogue or partnership.

In annex I the Danish Institute for Human Rights present an example of a public participation checklist. The checklist has three dimensions where the first is divided into the four composite civil and political rights from the International Covenant on Civil and Political Rights constituting public participation; namely, the right to participate in the conduct of public affairs, freedom of expression, freedom of assembly and freedom of association. The second dimension, “enabling environment”, is referring to state responsibilities which again is subdivided into direct and indirect

participation. The third column is entitled “voices and representation”, pointing toward non-state actors referring to national human rights institutions, civil society, political parties and media.

The filled in text are “proposed” responsibilities and actions within each of the four rights. The recommendations are formulated or inspired by international human rights instruments or interpretations of those. The checklist is not final but should be seen as an initial attempt to identify the most urgent responsibilities and actions needed to establish public participation at the national level.



PART 1
COUNTRY CONTEXTS

PUBLIC PARTICIPATION AND DECISION-MAKING IN TAJIKISTAN

Muatar Khaydarova

BACKGROUND

With the collapse of the Soviet Union, Tajikistan obtained its independence in 1991. The country of more than seven million people collapsed into a five-year civil war which largely determined the post-war development of contemporary Tajikistan. Despite many reforms having taken place over the last twenty years, Tajikistan is still very much characterised by wide-spread poverty due in part to poor access to income, low wages and limited access to productive assets and public services such as education, healthcare and water supplies.

PUBLIC PARTICIPATION IN LEGISLATION

The Republic of Tajikistan (RT) has ratified and/or recognised the main international treaties on human rights and the standards relating to public participation are regulated through several laws at the national level. The adoption of these normative legal acts can be regarded as an attempt to create and regulate a democratic and secular state based on rule of law and a strong civil society where citizens can directly and indirectly participate in decision-making processes.

The right to freedom of association is protected under Tajik Law Article 4 “On Public Associations.” This law establishes the right of citizens to found associations for the protection of common interests and the achievement of common goals. The law also outlines the voluntary nature of associations and provides the right for citizens to restrain from joining and withdrawing from an organisation.

Several Tajikistan laws, such as the Law “On Political Parties” or the Law “On Freedom of Conscience and Religious Organisations”, determine the order of state registration of political parties, religious organisations, the media as well as legal persons. The Law “On State Registration of Legal Entities and Individual Entrepreneurs” regulates the creation of other forms of NCOs¹.

Tajik Law “On Press and Other Mass Media”, “On Television and Radio Broadcasting” and “On Publishing” constitutionally protect the right to freedom of expression and the right to use mass media. These laws guarantee the freedom of mass media and ensure that state bodies, public associations, citizens’



associations and all individuals including those younger than eighteen years of age have the right to establish mass media. Amendments were made, and over past several years, new laws as late as 2012-2013 have been adopted to restrict state policy in the field of mass media. Implementing these rights, however, is faced with several challenges. A few examples of this include bureaucratic delays in regards to the registration of independent radio and television stations; varying degrees of mass media and access to information in cities and rural areas; the questionable independence of mass media; government restrictions on certain Internet websites; and the negative perception from government authorities that political criticism in the press equates attacks on state order. Consequently, media often avoids covering issues relating to government corruption, spending etc., resulting in minimal investigative journalism and independent journalism education in the country. Overall, the absence of a clear strategy for media development and the absence of a free market for mass media hinder the development of independent and pluralistic mass media in Tajikistan.

The right to freedom of assembly is provided equally to all as it is enshrined in the Constitution and other normative legal acts in the Republic of Tajikistan. The government, however, has a tendency to view 'assembly' as causing destabilization in the society and therefore limits the exercise of this right. A recent example of this relates to the events in 2012 taking place in Khorog, Eastern Tajikistan, where in the midst of a demonstration, law enforcement officials used weapons against those demonstrating against a military offensive in the region.

Rather than making threats to prevent assemblies risking to create disorder or crime, a culture should be built that is conducive to non-violent and peaceful protest. This requires institutional and procedural changes and the government must change its conception of 'assembly'. For example, the required permissions as established by law should be changed to a notification system and implemented through a regulatory policy and body. The presumption in favour of holding assemblies ought to be clearly established by the law. The requirement of legal certainty and



predictability preclude the use of unpublished regulations by those responsible for safety measures at the assemblies. This is in conflict with the terms stated by the law.

In addition, any restrictions to assembly must have a formal legal basis in the law and be sufficiently comprehensible so that anyone can assess whether his or her behaviour is expected to be unlawful and the expected legal consequences. There ought to be reasonable grounds for the imposition of restrictions or ban of assembly, and the defined body authorized to impose such restrictions should decide upon such cases.

The law of RT “On the Right of Access to Information” governs the right to access to information and the dissemination of information in Tajikistan. Under this law, citizens, organisations and associations of citizens have the right to request from authorities any official document regardless of the ownership of the document unless there are restrictions provided by law. Problems arise in respect to the overuse of the classification of ‘top secret’ information whereby there

is a tendency to abuse what is considered ‘top secret’ by misclassifying information and limiting direct access to meetings and information, especially with executive bodies of government. There is a need for public authorities and local governments to release more information to help bridge the information gap between civil society and public authorities.

PUBLIC PARTICIPATION IN PRACTICE

While Tajik legislation ensures the legal environment is conducive for real public participation to take place, in practice there are several procedural challenges and opportunities citizens encounter when making use of their rights. Some challenges or obstacles include the inability of the Tajik government to make use of its established Department of Constitutional Guarantees of Citizens’ Rights due to a lack of commitment from staff and lack of coordination between multiple state structures; the limited access to information from government bodies and ministries including the reader unfriendly small font size of official annual reports and newsletters; and there is a lack of online



information of on-going legal processes. While the government has made efforts to improve these obstacles, such as releasing more information on the Internet, this information is often not updated frequently.

Consultations are the most common form of participation in Tajikistan. The government created a consultative body to the President with the aim of maintaining dialogue between state and civil society at strategic levels of policies defining overall development strategies of the country. In addition, Public Councils are created under local governments in cities and various ministries including departments and committees of RT that include representatives from government, international organisations, NGOs, other public organisations and academic institutions, as well as academics and professional experts in the field.

During legislative processes, citizens and community groups can submit their suggestions for improving existing legislation and the adoption of new laws or draft laws to the government and parliament. Opinions,

suggestions and amendments are collected and passed to relevant parliamentary committees. The consideration of draft laws in the committees is the most important step in the legislative process and it is during these debates that members of the public have the opportunity to directly participate. Participation of citizens in the budget processes is minimal, however, due to the authorities unwillingness to communicate with citizens and the weakness of civil society to address budgetary matters.

Over the past few years, efforts have been made by the Government of Tajikistan to ensure that open debates take place. However, the institutions and mechanisms that deal with public participation matters are still weak. Parliament rarely holds public hearings and seldom organises debates in mass media. Key issues such as government spending are not openly discussed and the government's transparency in issues of state budgets etc. is poor.

Public participation requires active and informed citizens. After the collapse of the Soviet Union, educational systems in Tajikistan

underwent a period of transition whereby literacy and education declined significantly. Women's access to education is especially decreasing due in part to the strengthening of traditional conceptions of women's role in society as wives, mothers, and caregivers. There is now a significant gender gap in higher education programs, with one in four girls terminating their education at grade nine. In response to declining education for girls, the state introduced a program between 2006-2010 that undertook a series of measures to attract girls to attend school and promoted girls education through the introduction of scholarships and other forms of financial assistance programs.

Human rights education programs have successfully been implemented, showing positive developments in human rights state education programs as well as school and university programs. Progress in the development of human rights educations is due to the continued efforts of the Human Rights Commissioner, NCOs and enthusiastic educators. Despite these efforts, a lack of knowledge of human rights remains an important issue in Tajikistan as many citizens and public servants continue to have minimal knowledge of their rights and freedoms as well as limited knowledge on the corresponding national and international instruments at their disposal to protect their rights.

In respect to the civil society landscape in Tajikistan, human rights NCOs are increasing

in number and making positive contributions to society. Women focussed NCOs in particular are active and influencing the decision-making process; for example, a women focussed NCO contributed to the making of Tajikistan's draft Constitution by lobbying for amendments to be made to Article 17 on equality between men and women. NCOs still have a significantly stronger presence in the larger cities, and little presence in rural areas.

Over all, the Sustainability Index of Civil Society Organisations (CSO SI) points out that the legal environment in Tajikistan has improved over the last fifteen years². The adoption of the Law "On State Social Order" has contributed to this improvement. Given the ability of NCOs to provide social services to the population, the law established a relative priority to non-governmental and non-commercial organisations in the competition for placement of social order.

CONCLUSION

Although Tajikistan legislation protects rights, such as the rights to freedom of association, expression, media, assembly, access to information etc., several obstacles exist for full implementation of public participation rights.

Bureaucracy as well as corruption negatively impact the implementation of rights and discourage active participation.

The media do not enjoy independency and are unable to address critical questions of



governance. Similarly, the government often restricts the right to assembly by referring to protection of law and order.

There is a need to create conducive ways to exercise non-violent protests through peaceful assembly. Systems and regulations should be established by law to ensure this and restrictions should also have a formal basis in the law.

Citizens requesting access to information from government institutions are often denied this. There is an unnecessary overuse of state secrecy.

Consultation is the most used form of participation in Tajikistan. A consultative body to the President is established to create dialogue between state and civil society at the levels of overall policies. Public Councils are created under local governments in cities and various ministries with representatives from government, international organisations, NGOs and other stakeholders. Another form of consultation is through legislative processes where citizens can submit suggestions to

change legislation to relevant parliamentary committees.

Institutions and mechanisms that deal with public participation matters are weak. Parliament rarely holds public hearings and seldom organises debates in mass media.

In spite of general positive efforts to increase the level of education there is a widespread lack of knowledge of human rights and how to pursue the rights.

Women and citizens who live in rural areas of Tajikistan continue to be marginalized from decision-making processes and experience bureaucratic delays.

The legal environment for the civil society in Tajikistan has improved during the past 15 years. NCOs in particular are making valid contributions to improve areas of human rights. However, the presence of those organisations is limited to urban areas.

IDENTIFIED OBSTACLES TO FULL ENJOYMENT OF PUBLIC PARTICIPATION IN TAJIKISTAN

- The mass media has faced legal restrictions since 2002; however, the adoption of a new Law on Mass Media in 2013 formally provides more rights than before.
- The independence of media needs to be secured and restrictions on journalism need to be improved.
- Public mechanisms and institutions set up to provide public participation are weak or dysfunctional.
- Bureaucracy and corruption are obstacles to active participation.
- Protection of law and order and state stability are used as excuses to restrict freedom of assembly, critical media and citizens requesting access to information by public authorities.
- Citizens' knowledge of human rights and instruments to obtain them are in general weak.
- Presence of NCOs (NGOs) is concentrated in cities and their outreach to rural areas of Tajikistan needs to be improved.
- There is a general lack of knowledge of human rights and instruments to protect them.
- Particularly women and the rural population are excluded from the political decision-making process.

PUBLIC PARTICIPATION STUDY IN TAJIKISTAN

The author, with the help of an expert group, conducted a public participation study of Tajikistan in 2011-12.

A Tajik team conducted a desk study involving an examination of documents, publications and other studies on public participation in Tajikistan that have been prepared by government bodies, public associations and international organisations. The study involved data collection methods accessing official statistics provided by the State Statistics Committee of the RT, the information received in response to requests from national government agencies and public associations as well as materials, print and electronic media and surveys, as well as telephone surveys and interviews with NCO representatives, local community employees and experts. The study team conducted on-site visits and held meetings with NCOs and local communities during workshops in five cities in Tajikistan (Dushanbe, Khujand and Kurgan-Tube, Kulyab and Khorog). The draft study was presented and discussed at a NGO National Forum meeting in 2012.

One of the purposes of the data collection was to collect as much information as possible from the regions of Tajikistan, however, access to information was limited due to a lack of knowledge or unwillingness to answer some questions on the survey.

PUBLIC PARTICIPATION IN EGYPT³

Rowida Omar

BACKGROUND

From 1952-2002, citizens of Egypt faced several obstacles to public participation and had limited opportunities to be involved in decision-making processes. During this period, the concept of public participation was narrowly understood as 'political party' participation and access was limited to politicians and the well-educated in society. A number of socioeconomic and political factors contributed to low rates of public participation such as a lack of government transparency and accountability, limited access to information, lack of confidence in the efficiency or importance of participation, low literacy rates and the limited outreach of civil society organisations to the public.

From 2002-2010, the understanding of public participation broadened and public participation rates began to increase. The Internet and social media have played a large role in the increasing rates of public participation in Egypt with blogs becoming a popular avenue for activists. Activists and bloggers began to criticise domestic politics by focussing on governmental corruption, police brutality and expressed

desires for active citizenship and democratic elections.

Public participation in elections began to take on a new face in Egypt. A marking point for public participation occurred in 2008 when a group of 71,000 people collaborated on Facebook, a social networking service, calling for a strike on the 6th of April against the sudden rise in prices of textiles and the subsequent low wages for textile factory workers. From this point forward, efforts increased to encourage people to be aware of their rights as well as their right to be informed and their right to be involved in decision-making processes.

The Egyptian Revolution that began in January of 2011 created debates among citizens and increased enthusiasm to participate in the event and get involved in decision-making processes. As a direct result from the revolution and the work of civil society and pressure from international organisations, the limited space for freedom for private media, rates of public participation have risen in Egypt.

PUBLIC PARTICIPATION IN LEGISLATION

Pre-Revolution, the Egyptian parliament paid little attention to laws enabling public participation and did not allow the right to freedom of association, access to information, etc. After the Revolution, the new ruling authorities and the Supreme Council of the Armed Forces (SCAF) formed a committee of experts to draft a constitutional declaration. Although no law obliged the Parliamentary Assembly to consider citizens' opinions in the drafting process, the Assembly was keen to include their opinions before, during and after the constitutional drafting process. The Assembly formed more than forty-seven public hearing sessions for all sectors in society and launched a campaign entitled 'Participate in Drafting Your Constitution' encouraging citizens, pressure groups, youth movements, NGOs and activists to be involved in the process.

The constitutional declaration passed after a public referendum providing a range of articles protecting freedom of religion, expression, speech, assembly, association and media.

The establishment of the new political rights law allows citizens to vote using their national ID rather than electoral ID and it also allows expatriates, or Egyptian's abroad, to vote in both the parliamentary and presidential elections, easing the overall access to vote. However, voting also became mandatory, as the new election law imposes a fine of 500 Egyptian Pounds on all citizens over eighteen who abstain from voting.

While the right to access to information is not protected in the declaration, the government has taken further steps to help facilitate public participation. Information was provided on the Internet to inform voters of where their poll station was located and also provided information on the candidates' background, full names, and his or her electoral code and number. State and private media played an important role in the sharing of information by interviewing the candidates and broadcasting advertisements explaining to citizens how to vote and the importance of well-informed participation.

Despite these legislative advancements, several obstacles still remain. After the Revolution, municipalities were dissolved yet elections have yet to take place at this level of government; more legislation is needed to elaborate public participation and the rights to freedom of expression, assembly and free access to information; and on-going smear campaigns in the media against civil society organisations and pressure groups need to terminate.

PUBLIC PARTICIPATION IN PRACTICE

The persistence of civil society organisations to raise public awareness and the open nature of the Internet and new media tools, such as Facebook and YouTube, have contributed significantly to the rise of citizens' interest in public affairs, creating active civic participation in Egypt.



Immediately after the toppling of Mubarak, awareness raising campaigns were organised to raise citizens' awareness of their political and civil rights which led to public calls for effective citizenship, freedom of expression, free access to information and the right to assembly and association.

Youth took on many initiatives and organised youth groups, political pressure groups and formed or joined new political parties. As a result, approximately thirty-two new political parties were established,⁴ more than 140 pressure groups were formed and youth coalitions, or 'popular committees', were organised in every district. The pressure groups, youth coalitions and popular committees focus on raising public awareness, promote public participation and citizen monitoring of service delivery, elections and a broad range of governance processes.

The understanding and definition of public participation is now broadened to include economic, domestic and international issues. Not only has the concept changed, but so too has citizens' mentalities towards public participation and citizens can now

feel the importance and effectiveness of their participation. In certain circumstances, practicing public participation goes beyond all known concepts. Citizens are not only involved in the decision-making process, but they sometimes also take on the duties of the government when necessary. For example, 'popular committees' organised themselves to act as policemen to catch thugs and thieves and protect people and their homes.

CONCLUSION

After the revolution, the interim political authorities were invited to a broad and inclusive process of participation in relation to the drafting of a constitutional declaration which was adopted by a referendum. The freedom rights are protected in the declaration except for access to information.

More legislation is needed to elaborate public participation and the rights to freedom of expression, assembly and free access to information.

The continuous campaigns in the media against civil society organisations and pressure groups should terminate.

The government has taken positive steps to help facilitate public participation in election. The internet as well as state and private media have provided voters education and awareness about election, information about candidates, broadcasting advertisements, etc. and encouraged participation in elections.

The Internet and new media tools such as Facebook, YouTube and blogs have contributed positively to the rise of citizens' interest in public affairs. They provide information

and broad awareness about what public participation is and have been instruments for free and open debate. In addition, social media has acted as a vehicle for exercising public participation by organising and calling for events such as protests, strikes etc.

The Egyptian youth was behind many participation initiatives including organised youth groups, political pressure groups and new political parties enabling people to join in active participation.

IDENTIFIED OBSTACLES TO FULL ENJOYMENT OF PUBLIC PARTICIPATION IN EGYPT

- All freedom rights protected in the constitution should be elaborated further in the specific laws.
- The right to free access to information needs to be protected in the constitution and other legislation.
- Elections at local levels should take place and local governance structure should be re-established.
- Campaigns against the civil society in the media should terminate.

PUBLIC PARTICIPATION STUDY IN EGYPT

A study team established in 2012 is composed of 2 researchers, a lawyer and a human rights defender.

Methodologically, the study will collect data, analyze these and define obstacles and opportunities for real public participation in Egypt. The study team will collect data from existing documents and statistics as well as conduct interviews, field surveys and questionnaires. The team will review the findings, draw conclusions and formulate recommendations.

The Egyptian Network for Public Participation (ENPP) will act as a reference group and provide comments on the report and its recommendations. ENPP will also act as a driving force during the follow-up stages of the report.

PUBLIC PARTICIPATION IN ZIMBABWE⁵

Munyaradzi Mataruse

BACKGROUND

The space for freedom and public participation in Zimbabwe is closely related to the socio-economic and political context of the state. At the height of the Zimbabwean crisis, the economy had experienced negative growth in every year between 1998 and 2008. At the time of signing the Global Political Agreement (GPA) in 2008, the economy was on the verge of total collapse with inflation having reached 231 million per cent; a figure that economic analysts suggested was under-estimated. Estimates showed that nearly half the population was dependent on food relief and social services in health, sanitation and education and the collapse of infrastructure in the energy sector had significant impacts on the population⁶.

Official economic data indicates that eight out of ten Zimbabweans are outside the formal employment system; a significant majority of which are youth. The absence of formal job opportunities has shrunk the taxation base and has negatively affected citizen participation⁷. Research from several sources show that citizens are likely to demand more accountability from their government when

they pay taxes as citizens that do not pay taxes may feel less obliged to question the state and to contribute to government policy. The high levels of poverty and economic deprivation have also left citizens without a voice as they have become predominantly preoccupied with issues of basic survival.

PUBLIC PARTICIPATION IN LEGISLATION

The Zimbabwe government is bound by various international and regional human rights instruments that protect fundamental rights and liberties; including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the African Charter on Human and Peoples' Rights. In addition, the Zimbabwean constitution guarantees certain fundamental freedoms that include liberty of speech, movement, association, etc. In reality, however, the government of Zimbabwe has not upheld these freedoms.



Recent submissions on the Universal Periodic Review (UPR) on Zimbabwe have raised grave concerns about the human rights situation as the government has been criticized of failing to protect citizens against rights violations including arbitrary arrests, torture, and forced disappearances, etc.

The laws that are mainly cited as impinging on effective participation of citizens and the closing of political space include the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act and the Local Government Act. The POSA is currently undergoing legislative review and members of parliament have argued that it impinges on free participation as it bans public gatherings and demonstrations without police clearance.

The signing of the Global Political Agreement (GPA) in 2008, bringing about a power sharing government in 2009, resulted in improvements on both political and economic fronts. The new government quickly brought inflation under control by abolishing the use of the Zimbabwean dollar and replacing it with a

multi-currency system. This restored some confidence in the markets and a semblance of order. The economic stability that was brought by the dollarization of the economy also led to modest improvements in the delivery of social services such as education, health, sanitation, electricity and water. However, the dollarization also left many citizens excluded from economic activity. Only those in formal employment, informal trade, productive farming and those with relatives in the Diaspora had access to regular income in foreign currency. Even those in formal employment, including government workers, continue to live below the poverty datum line.

The Government of National Unity has not managed to reform state institutions and guarantee free and open political discourse as disagreements over implementation of the GPA are stalling progress. In addition, the election road map developed by the parties under the guidance of the Southern African Development Community (SADC) was designed to guarantee free and fair elections. However, implementing the road map has stalled as parties disagree on several fundamental issues including



reform of the security sector and the electoral management framework.

The result of these disagreements is the continued reduction of political and economic space for citizens to effectively participate in development initiatives also at the local level. Poverty and deprivation persist despite the formation of the inclusive government and as a result, citizens have remained disempowered to become effective economic and political participants at the community level. Most communities still live in fear as political processes, including national healing, have not been effective in eliminating the culture of fear entrenched as a result of present political polarization.

PUBLIC PARTICIPATION IN PRACTICE

While public participation is both a principle and a practice, it is understood that participation itself is an intrinsic motivation that when practiced over time becomes absorbed into a culture of public participation. In view of this, the following conditions, although appearing external, have a significant bearing on the individual participant.

Community connectedness is not a theory but refers to the extent to which community members are connected to each other.

The extent or the condition of community connectedness can determine the level of participation in that community. Community connectedness holds that citizens are driven by a common purpose to participate in public life in order to achieve a common goal. Their participation in public life will include thinking, planning and making decisions on issues that affect them. Community connectedness also connotes a community's ability to self mobilise and organise.

In Zimbabwe, community connectedness is not very strong as citizens are more concerned with bread and butter issues. According to research conducted by NANGO and DIHR in 2011, citizens are more willing to participate in some community initiatives that give them direct financial benefits, such as self-help projects, but will shy away from participation in political life largely because the immediate results of that kind of participation do not speak directly to issues of poverty and hunger, which citizens are confronted with on a daily basis⁸.

The same research also revealed that one of the limitations to participation was the lack of community cohesion as communities are no longer able to speak with one voice when they engage with their local level leadership, including councillors and council officials. Because of these and other similar reasons, citizens' view of participation remains to a large extent, individualistic in nature and limits the cohesion that facilitates effective public participation.

Additionally, public participation in practice implies that citizens must have trust in the system believing their participation can impact decisions and ultimately affect change where deemed necessary. In Zimbabwe, there is a general lack of trust in the political system; trust in the sense that if citizens meaningfully participate in public and political life, the system would reflect citizens' views, opinions and aspirations. There is a sense in Zimbabwe that “the system has let the citizens down.”

A case in point stems from a survey NANGO conducted in 2011 on service delivery in a particular area⁹. The survey established that most citizens did not participate in local government because the local authorities did not react to residents' concerns and complaints where service delivery was concerned. They found that over time, the delivery of basic social services by the local authority had deteriorated regardless of whether citizens participated or not. In light of these dynamics, it would seem

reasonable for citizens to consciously reject participation in public affairs.

There is wide spread consultation with citizens, especially during the formulation of both local and national budgets. While budget consultations are a critical entry point to citizen participation, as budgets are the surest way to ensure that citizens' basic human rights are met through adequate resource mobilization, participation rarely goes beyond consulting. Consultations alone do not guarantee that citizens' participation has an influence or bearing on final decisions made.

There are places/ areas in the country where participation can be viewed positively, where local authorities actively encourage and promote participation from citizens. The paper will cite two specific examples.

The Mutoko Rural District Council is located in the North Western parts of the country with a relatively modest rural population. Overtime, the local authority has fostered a culture of participatory budgeting to an extent where it has community structures that feed into the entire budgetary process of that local authority. Public participation in the Mutoko Rural District Council has gone beyond most country councils and has moved from consultative participation to form a partnership where the community has considerable influence on the decision-making process regarding the budget.

Another good example of effective participation stems from the Chipinge Rural District Council in the Eastern part of the country where the Council has also created partnerships with citizens to work together to improve social service delivery. In Chipinge, the rural district council works closely with its citizens and has established community structures whereby citizens meet regularly and contributes to the improvement of basic social services such as water supply, health care services and road networks.

These two examples could highlight that citizens in rural areas more readily participate in public affairs due to a communalism culture that exists in rural areas, compared to the more individualistic culture one would find in the urban areas.

CONCLUSION

Zimbabwe is bound by key international and regional human rights instruments protecting fundamental rights. These are also protected in the constitution but other national legislation does not allow for full enjoyment of public participation.

The new system of a power sharing government taking effect in 2009 resulted in some improvements on both the political and economic areas but due to internal political disagreements improvements on the fundamental freedom and rights have not been affected. This also includes new legislation on the election system.

The result of these disagreements reduce political and economic space for citizens to effectively participate in development initiatives. Poverty and deprivation persist despite the formation of the more inclusive government and citizens remain disempowered. Most communities still live in fear as political processes, including national healing, have not been effective in eliminating the culture of fear. Another obstacle is that citizens do not expect their participation to affect the political decisions and this refrains citizens from engaging.

There is wide spread consultation with citizens, especially during the formulation of both local and national budgets. There are in fact good examples of effective participation especially where local authorities actively encourage and promote participation from citizens in local budgeting and delivering of social services.

IDENTIFIED OBSTACLES TO FULL ENJOYMENT OF PUBLIC PARTICIPATION IN ZIMBABWE

- The absence of political will is a barrier to participation. The Government needs to create trust in the government and political system.
- Political polarization and repressive legislation have not had any positive effects on the alienated citizens to actively participate in socio-economic and political processes.
- Communities still live in fear since national healing has not been effective in eliminating the culture of fear caused by political polarization.
- People lack a sense of connectedness and to speak with one voice.
- Due to poverty, people are concerned with issues of their own economic survival.
- People lack trust in the political system and their ability to affect changes through participation.

PUBLIC PARTICIPATION STUDY IN ZIMBABWE

The study was conducted by the National Association of Non-Governmental Organizations (NANGO) in partnership with the Danish Institute for Human Rights.

The study conducted pilot research to uncover or identify the key barriers to participation at the community level and gauge the level of awareness from citizens on issues of citizen/ public participation. Research was conducted in 3 of the 5 administrative regions where NANGO is represented (Masvingo, Matebeleland and Manicaland).

The pilot research involved a literature review on public participation in Zimbabwe and a field study that involved conducting focus group discussions and key informant interviews. The findings of this research were critical to the project because they formed the basis and informed the next steps of the project moving forward.

The findings of this research formed the basis of a NANGO and DIHR project to establish a Public Participation Platform which is composed of twenty-two civic organizations that already work to promote public participation at different levels. Having identified the gaps and limitations to public participation, the platform was established with the responsibility of mobilising communities to engender the culture and practice of public participation through coordinated programmatic interventions.

PUBLIC PARTICIPATION IN ZAMBIA

Marie Villumsen

BACKGROUND

Zambia has been a multi-party democracy since 1991 and has a history of relatively free and fair elections. In August 2011, peaceful elections led to the handover of power from the Movement for Multi-Party Democracy to the Patriotic Front.

The new government has initiated different reform initiatives including an Access to Information Bill to be tabled in Parliament in June 2013; a decentralisation policy approved in April 2013; establishment of a new Ministry of Chiefs and Traditional Affairs; and revival of the process of drafting a new constitution.

Since 1991, Zambia has been implementing different versions of neoliberal economic policies. Although the country's gross domestic product per capita has quadrupled from 2002-2011 from USD 348 to USD 1,425, poverty and inequality has also been increasing in recent years, indicating that the economic growth is not benefiting the poorer segments of society¹⁰.

PUBLIC PARTICIPATION IN LEGISLATION

Parliament has recently initiated reforms that aim at increasing participation of interest groups in the law making process. It allows civil society organisations (CSO's) and even individuals to attend parliamentary debates and submit comments on potential legislation.

The government has adopted a consultative process for national planning and programming and the constitution making process. However, long distances, lack of translation and other barriers are likely to limit the active participation of rural and marginalised groups.

The Local Government Act provides for access to information and all documents produced by local governments must be made available to the public without any fee. Council Committees must be open to the public, but there is no provision for open Local Council Meetings.

The current Constitution of Zambia encompasses freedoms of expression, assembly and association but also places limitations to these freedoms; e.g. in relation to public order, safety and health. The Constitution



also prohibits discrimination in law, although there are a number of limitations relating to laws with provisions for e.g. adoption, marriage, divorce, burial, and devolution of property on death. The recent Anti Gender Based Violence Act is an example of specific legislation aiming to combat discrimination.

In spite of the constitutional protection of the freedom rights, legislation and practises are sometimes used to curtail these rights. The Public Order Act (POA) in some instances restricts freedom of assembly. The Act requires that one-week notice be given to the police prior to a public meeting. However, there have been numerous examples of public gatherings, demonstrations and rallies being denied or disrupted by the police.

A new NGO Act was passed in 2009, but vests too much power in a government-dominated NGO registration board. Furthermore, the Act places stringent requirements on NGOs, including the obligation to report on their funding, activities and the assets of their personnel. This could deter smaller organisations from registering as NGOs. For

example, it allows government powers to reject or not renew the registration of any society, and stipulates government approval for receipt of foreign funding. The act does not cover churches and other religious organisations, clubs, professional groups and trade unions. These are regulated by the colonial era Societies Act of 1958, which is also criticised for giving too much power to the state.

Freedom of expression is limited through criminal defamation and insult laws. The Independent Broadcasting Authority (IBA) and the Zambia National Broadcasting Corporation (ZNBC) Acts came into effect in December 2003 to set up independent boards for the regulator and national broadcaster; unfortunately, they have not yet been fully implemented. Consequently, to date the regulation of broadcasting and the national broadcaster are still under the control and influence of the Minister of Information. The government controls the powerful state radio and television, although Zambia has several independent newspapers. While there is no direct interference from the state, journalists practice self-censorship which affects freedom



of expression. There are increasing calls for passing of an access to information bill, which will provide more transparency and access to information for the public.

The Government of the Republic of Zambia Act No. 4 of 2010 promotes whistleblowing and public participation in the disclosure of conduct adverse to the public interest. It sets out a framework for independent dealing with disclosure of unlawful or irregular conduct by the private and public sector. The Act has provisions for protection of individuals who make public interest disclosure.

PUBLIC PARTICIPATION IN PRACTICE

Zambia's civil society, in particular trade unions, students unions and churches, played an important role in the transition to multi-party democracy in 1991. Civil society in Zambia has contributed to increasing pluralism, accountability and diversity but the emergence of a centre of power outside party politics has also led to conflict between political and civic actors. The government is supportive of civil society's involvement in service delivery, but NGOs working with advocacy for good governance and

human rights are faced with threats of bans and hostility from the government.

Some of the key priorities for civil society are poverty, gender equality, human rights and governance. The major internal challenges faced by civil society are heavy donor reliance, high staff turnover, limited scope for policy dialogue with government and the personalisation of many organisations.

In spite of the opening of democratic space during the multi-party era, there are significant challenges relating to equality, respect for individual rights and public participation. High poverty levels erode the time available for citizens to participate in voluntary activities.

The Zambia Human Rights Commission, Zambia Council for Social Development, a legal expert and DIHR recently coordinated a study to unpack the challenges and opportunities for public participation in Zambia. The study provides a detailed analysis of public participation in practice, with a particular focus on public participation in natural resources management. The study:

- Reviews laws, policies and practices and determine their impact on civic participation.
- Analyses civil society's role as facilitator of participation in public affairs.
- Analyses how active and informed individuals are on public issues.

CONCLUSION

There is constitutional protection of the freedom rights in Zambia but the legislation and practises sometimes curtail these rights. Freedom of expression is limited through criminal defamation and insult laws as well as limitations made to secure public order, safety and health.

Recent parliamentary initiatives aim at increasing participation of interest groups in the law making process. Long distances, lack of translation and other barriers are likely to reduce participation of the rural population.

The Local Government Act provides for access to information. Council Committees must be open to the public, but there is no provision for open Local Council Meetings.

The Constitution prohibits discrimination in law, although there are a number of exceptions relating to laws with provisions for e.g. adoption, marriage, divorce, burial, and devolution of property on death.

A new NGO Act was passed in 2009 but is restrictive in terms of registration, reporting, activities and assets of personnel.

The government controls state radio and television, although Zambia has several independent newspapers. There are increasing calls for the passing of an access to information bill to provide more transparency and access to information for the public.

Legislation adopted in 2010 promotes whistleblowing and public participation in the disclosure of conduct adverse to the public interest. The Act has provisions for protection of individuals who make public interest disclosure.

Civil society in Zambia has contributed to increasing pluralism, accountability and diversity, but the centre of power outside party politics has also led to conflict between political and civic actors.

The government is supportive of civil society's involvement in service delivery, but NGOs advocacy for good governance and human rights are faced with threats and hostility from the government.

Key priorities for civil society are poverty, gender equality, human rights and governance. Challenges faced by civil society are donor reliance, high staff turnover, limited scope for policy dialogue with government and the personalisation of many organisations.

At the overall level, high poverty levels counteract the available for citizens to participate in voluntary activities.

IDENTIFIED OBSTACLES TO EFFECTIVE PUBLIC PARTICIPATION IN ZAMBIA

- Although protected by the constitution, the freedom rights are not observed in other legislation and practice.
- Long distances, lack of translation and other barriers are likely to reduce participation of the rural population.
- The constitution prohibits discriminations but there are a number of exceptions.
- A new NGO Act was passed in 2009 but is restrictive in terms of registration, reporting, activities and assets of personnel.
- The government controls state radio and television.
- NGOs advocacy for good governance and human rights are faced with threats and hostility from the government.
- Civil society is faced with several challenges such as donor reliance, high staff turnover, limited scope for policy dialogue with government and the personalisation of many organizations.
- Poverty is an obstacle to public participation

PUBLIC PARTICIPATION IN BURKINA FASO, MALI AND NIGER: A COMPARATIVE SYNTHESIS

Augustin Loada

BACKGROUND

The right to citizen participation was introduced in Francophone Africa after the establishment of the Colonial State. During this time, participation was restricted based on distinctions between citizens and natives, the latter being denied the right to participate. It was only during the beginning of the decolonization process in Francophone Africa that citizenship and its corollary, the right to participate in public affairs, was progressively recognized to the native populations. These changes led to the creation of the first political parties in 1945 and to the organisation of elections within the framework of a separated electoral college.

After independence movements of the 1960s, the newly ruling elites emptied the right to participate of its content by questioning political pluralism and public liberties. In various African countries, these democratic declines led to the establishment of unique party and/or military regimes. With the rise of authoritarianism, public participation was strictly controlled.

At the end of the 1980s, Africa resumed with pluralism and established public liberties. With political liberalization and the return of political pluralism, the right to public participation would henceforth have new political significance, despite the survival of authoritarian reflexes.

However, the populations' aspirations for democratic change and well-being became disillusioned in many countries. The democratization wave did not seem to have met social expectations for "democratic governance" and economic and social development. The general disillusion that followed the democratization euphoria in the 1990s is reflected mainly through citizens' disaffection with conventional modes of public participation and the attempt to turn back to alternative forms, such as violent protests, which are not necessarily congruent with modern democracy principles and values.

PUBLIC PARTICIPATION IN LEGISLATION

In Burkina Faso, Mali and Niger, the right to public participation is established through various sources of regional and international

law. At the international level, the right to public participation is expressed in the Universal Declaration of Human Rights, as well as expressed and protected in the International Covenant on Civil and Political Rights (ICCPR). All three countries have signed and ratified the ICCPR.

At the regional level, the African Charter on Human and Peoples' Rights of 1981 declares the right to participate in public affairs but does not explicitly recognize the importance of periodical, fair and authentic elections as a means to ensure the respect of political rights. The July 2003 Protocol to the African Charter on Human and Peoples' Rights enhances the rights of women, granting women the right to participate in political and decision-making processes. In this regard, states should undertake positive action to promote women's equal participation in political life through "affirmative action", aiming to ensure that i) women participate in all elections without discrimination; ii) women be represented equally as men and at all levels in electoral processes; iii) women are men's equal partners at all levels of the development and implementation policies and programs of the state development.

The African Charter on Democracy, Elections and Governance of 2007 is another instrument that encourages public participation. In West Africa, the Economic Community of West African States (ECOWAS) adopted provisions likely to influence the constitutional order of

the member States. For example, it has ratified, among other things, the Additional Protocol on Democracy and Good Governance in Dakar on 21 December 2001, a Protocol that aims to strengthen peace, democracy and stability in the region.

While the three studied countries have ratified most of the above international and regional instruments, it should be highlighted that Niger has not yet ratified the protocol on Women's Rights and Mali is yet to ratify the African Charter on Democracy, Elections and Governance.

The following rights are recognized in Burkina Faso, Mali and Niger's national constitutions: The right to freedom of expression; freedom of assembly; freedom of association; access to information; freedom of press or media; freedom to create and operate political parties; right of access and to participate in the management of public services; the right to vote; the right to women's participation; and the right to petition.

While the right to freedom of association is recognized by all three constitutions, the exponential increase in registered associations has led to questions concerning the adequacy of the associations' legal statuses, which some argue is too permissive. Many of these organisations and associations now make up the 'Civil Society' in which there is no explicit legislation concerning civil society organisations in Burkina Faso, Mali and Niger.



The right to freedom to create and operate political parties is restricted in the countries. For example, in Burkina Faso, political parties qualified as tribal, regionalist, denominational or racist are not authorized to form groups. In Mali, the constitution compels political parties “to respect the principles of national sovereignty, democracy, territorial integrity, national unity and State secularity”¹¹. And in Niger, political parties of ethnic, regionalist or religious nature are prohibited and no party can be created with the aim of promoting an ethnic group, a region or a religion. Despite these restrictions, approximately one hundred political parties have been formed in each of the studied countries. The high numbers, however, do not result in consolidating democracy but rather weaken it by favoring the fragmentation of the party system and contribute to the lack of institutionalization of parties. Among the hundred recognized political parties, very few have a national scope, solid roots in civil society, solid organisational structure and cohesion and often experience lethargy between elections. To cope with such weaknesses, reflections are taking place in countries like Burkina Faso by reviewing the

legal texts in force and to make conditions for the creation of political parties more demanding and strengthen the regulatory capacities of the ministry in charge.

In respect to legislation concerning women’s participation, women in Burkina Faso, Mali and Niger are less represented in decision-making bodies and are often victims of discrimination despite gender discrimination being prohibited by the constitutions in force.

PUBLIC PARTICIPATION IN PRACTICE

Various state and non-state apparatuses have been established in the three studied countries to help facilitate public participation. At the national level, the countries’ constitutions instituted one or more consultative bodies. In Burkina Faso for instance, the Economic and Social Council is in charge of expressing its opinion on issues of economic, social or cultural nature that are submitted to its examination by the president of Faso or the Government. These institutions have a purely advisory nature and are in charge of providing opinions, presenting complaints and sometimes play a mediating and consolidating



role in society. While the councils are representative of the population, they do suffer from several inadequacies including a lack of visibility, low number of submissions before the councils, and in case of submission, there is often a lack of monitoring and evaluation with recommendations often being ineffective.

Civil society in the three studied countries is most predominant in central urban areas. The majority of civil society organisations do not have the necessary capacities to question public policies and are often unable to present a joint force against state policies and provide credible alternatives or proposals. Moreover, civil society organisations are sometimes accused of preaching good governance without necessarily implementing good governance within their own organisation.

Citizen participation in public policies and budgetary processes is often limited at the national level. Despite the preponderance of the state's participatory dialogue, civil society has limited opportunity to influence the decision-making process and the allocation of resources for the promotion of its interests.

Despite efforts to involve civil society, the policy process does not in reality rely on the participatory system releasing creative energies and creating conditions for synergy among social stakeholders.

Programs at the local level have been initiated to help facilitate public participation. For example, in the early 1990s, African states undertook processes of administrative devolution as a means of involving local populations in public affairs management. However, participation rates in local elections remain low with turnout rates below fifty per cent in all three countries. These low rates can be credited to voters' disenchantment due to a lack of fulfillment of electoral promises and an incapacity for political parties to bring credible responses to social expectations.

Authoritarian reflexes in the countries can create obstacles in protecting and promoting the right of access to information and the right to freedom of press or media. Despite democratization processes, some political leaders do not support media criticisms and try to intimidate the media or bring them 'into

line' using methods of intimidation. Examples of such cases include the assassination of journalist Norbert Zongo on 13 December 1998 in Burkina Faso, and the one-year imprisonment of journalist Moussa Kaka between 2008 and 2009 in Niger.

While some media or journalists continue to defend their independence, others surrender to intimidations from public officials. For example, corrupt politicians are known to bribe the press to help flatter politicians' remarks rather than challenge their accounts. The press is often used to beguile public opinion as opposed to educating them. Fearing reprisals, media continue to prefer not to offend local authorities. In addition, some citizens censor themselves for fear of reprisals¹², and prefer to not use their freedom of expression and hold public authorities accountable.

An existing culture of secrecy can also contribute to limiting the right to access information. A culture of secrecy remains deeply rooted in the authorities minds making access to information difficult for both professionals (media organisations, etc.) and ordinary citizens.

Electoral dissatisfaction can negatively impact voter turn out in the three studied countries. While the law may stipulate no exclusion or discrimination towards a particular category of voters, in reality the organisation of elections in the three countries gives rise to many grievances as regards the sincerity of these

elections in representing the population. These grievances partly sustain the phenomenon of electoral abstention which is rather high in the three countries (on average, more than one out every two voters abstains from voting)¹³.

Several additional factors contribute to voter disenchantment: a lack of social integration of voters from underprivileged social layers and classes; voters being disillusioned, disorientated or dissatisfied with political offers; and politicians powerlessness or their incapacity to find effective answers to social expectations. The deficit of voters' turnout has negative consequences on the consolidation process of democracy and impacts the way democratic institutions and rulers view their own legitimacy.

This crisis of representation gives rise to other forms of alternative, less peaceful forms of participation. For example, the advent of the military and political crises at the beginning of 2012 in Mali has led civil society organisations to new forms of political mobilization in the struggle against the terrorist movements who control the northern part of the country. Youth, primarily coming from the northern regions, are trained politically and even militarily in the capital with the support of the national army and implicitly the Malian government. Civil society organisations and political parties supporting leftist ideas are the main actors in this new kind of political mobilization.

The problem with this new type of participation in the public sphere is the tendency to promote



violence among youth and sometimes encourage racism. In general, this particular mode of public participation can have negative effects on democratization on the one hand and regional integration on the other. Even though the struggle to liberate the northern part of the country is a legitimate action, socialization based on violence can have negative impacts on the future of democracy and peace in a country.

A degree of marginalization in public or decision-making spheres is apparent in all three countries. Poverty, lack of income, illiteracy, lack of access to education, lack of health security and poor living conditions affecting the majority of citizens results in political marginalization. Women, youth and some ethnic minorities are often marginalized as well. In response to these social inequalities, constitutions prohibit all forms of discrimination. In practice, however, youth continue to be marginalized and the traditional understanding of a woman's role in the domestic sphere, as opposed to the public sphere, remains strong. Regardless of the level of government, available statistics show that women are underrepresented and seldom

occupy decision-making positions. For example, women's representation in Parliament is 15,7% in Burkina Faso (in 2012), 13,3% in Niger (in 2011) and 10,2% in Mali (in 2007)¹⁴.

To address the imbalance in favor of women, Niger and Burkina Faso have adopted laws that set a quota for women's representation. In Niger, legislation was installed in 2002 compelling parties to present a list of candidates with women comprising at least 10 per cent. As a result, a rate of 13 per cent female representation in Parliament was reached in 2011. In Burkina Faso, the combined legislative and municipal elections of December 2012 will shed light on lessons from their newly established law in 2009, which introduces a quota of 30 per cent for one or the other gender on the lists of candidates. In Mali, however, the government had proposed a quota of 30 per cent women on the parties' lists but Parliament did not include any provisions in the adopted law.

CONCLUSION

The comparative study of Burkina Faso, Mali and Niger reveal strong similarities as well as

some unique national tendencies. In all three countries the right to public participation is established through various sources of regional and international law.

The right to freedom of association is recognized by all three constitutions. The right to freedom to create and operate political parties is restricted in the countries. In respect to legislation concerning women's participation, women in Burkina Faso, Mali and Niger are less represented in decision-making bodies than men and are often victims of discrimination despite gender discrimination being prohibited by the constitutions in force.

In the studied countries there are some tendencies to curb access to information and freedom of the media. The rather common electoral dissatisfaction leads to a low voter turnout.

In practice, there are signs of “authoritarian reflexes” from the past in the countries which create obstacles in protecting and promoting the right of access to information and the right to freedom of press or media. The culture of secrecy contributes to limiting the right to access information.

There is a gap in the implementation of the rights. Several factors block the proper operation of legal and institutional mechanisms set up by state and non-state stakeholders to help citizens influence the decision-making processes at national and local levels.

The consultative bodies set up as instruments for public participation suffer from a number of inadequacies. Civil society, being a vehicle of representation, are often urban based, are not capable of questioning policies, national budgetary processes, etc. and are unable to act in coordination.

Marginalization in public or decision-making spheres is common in all three countries. Poverty, lack of income, illiteracy, lack of access to education, lack of health, security and poor living conditions affecting the majority of citizens results in political marginalization. Women, youth and some ethnic minorities are often marginalized as well. In some of the studied countries, discrimination against women has led to adoption of laws on quota for women's participation. This has resulted in raised female representation in Parliaments in recent years

IDENTIFIED OBSTACLES TO EFFECTIVE PUBLIC PARTICIPATION IN MALI, BURKINA FASO AND NIGER

- Ratification of a number of legal instruments of the African Union need to take place and a follow-up mechanism should be established to ensure respect of legal provisions from international and regional human rights instruments.
- Freedom of the media, access to information and the right to form/operate political parties are subject to non-explicit legislation or restrictions in practice.
- In the studied countries there are some tendencies to curb access to information and freedom of the media. The rather common electoral dissatisfaction leads to a low voter turnout. The culture of secrecy contributes to limiting the right to access information.
- There is a gap in the implementation of the rights and several factors block the operation of legal and institutional mechanisms set up by state and non-state stakeholders to help citizens influence the decision-making processes at national and local levels.
- Consultative bodies set up as instruments for public participation suffer from a number of inadequacies. Civil society, being a vehicle of representation, are often urban based, are not capable of questioning policies, national budgetary processes, etc. and are unable to act in coordination.
- Obstacles to public participation are linked, among other things, to poverty, social inequality, a lack of information or education.
- Discrimination of women, youth and ethnic minorities is effecting marginalization in political participation.

PUBLIC PARTICIPATION STUDY IN WEST AFRICA

The study was conducted in West Africa (Burkina Faso, Mali and Niger) through a partnership with the Center for Democratic Governance (CDG) and the Danish Institute for Human Rights (DIHR).

The study involved three research teams from Burkina Faso, Mali and Niger coordinated by the CDG. In each country, the research was coordinated by top researchers: Prof. Augustin Loada from the CDG in Burkina Faso, Dr. Sidibe Nouhoun from University of Law and Political Sciences of Bamako (ISFRA), Prof. Mahaman Tidjani Alou from Abdou Moumouni from the University of Niger. The study was conducted on the basis of desk research, interviews and focus groups. In each country, a validation workshop was organized. The conclusions and recommendations of the three studies were synthesized, and submitted to a regional workshop organized by the CDG and the DIHR. The workshop brought together researchers and representatives of civil society of the three countries in Ouagadougou (Burkina Faso) on 12-13 December 2012.

CITIZEN PARTICIPATION IN NIGER¹⁵

Mahaman Tidjani Alou

BACKGROUND

The on-going democratization process in Niger is seeking tools or strong mechanisms in view of its anchorage, enhancement and ownership by stakeholders at the national and local levels. Over the years, there is clearly a growing demand for citizen participation in the conduct of public affairs. This demand for participation goes far beyond the typical scenarios, which were limited mainly to the election of representatives within the framework of the classic republican tradition. In fact, what we are witnessing is a broadening of the framework of citizen participation. This change calls for a clarification of the role of the citizen in the conduct of public affairs.

Such a dynamic opens the democratic practices to new institutions. We may therefore speak of a “participatory democracy”, or a “proximity democracy”, through which citizens may become the masters of their own destiny and fulfil their basic needs in the framework in terms of a society engaged in a process of change. This democratic process would assist the government in its service of the general interest. As a result, it emerges as increasingly important

to address the issue of the “right of citizen participation” in the shaping of public policies in the context of democratic governance and the full expression of the rule of law.

Niger, like the majority of the states in the world, is more engaged than ever in a process whereby rights, freedoms and their continuation are enshrined in the quest for effective citizenship. In this regard, Niger has committed itself to the establishment of a fundamental legal corpus and making it conducive to the protection of human rights. It also recognizes the main human rights instruments put in place at the regional and international levels.

Yet, not so long ago, so-called “citizen participation” was used by the existing regimes. Admittedly, during colonization, and, in the framework of the French Union (1946 constitution), the political space opened itself up to political pluralism, with the creation of several parties¹⁶. This tendency to openness quickly faded as Niger became independent on August 3, 1960. In effect, very quickly, the fledgling pluralistic democracy was replaced

by a series of changing single-party or military regimes¹⁷. It must be noted that throughout these regimes, the civil liberties have been largely bracketed. Only those organizations close to the regimes were authorized or tolerated. Hence the authorities exercised a strict control of citizen participation. Subsequently, a new constitution was adopted. This constitution enshrined a second republic (November 1989- November 1990). The latter is characterized by the institutionalization of a one party-State, the Mouvement National pour la Société de Développement (MNSD).

PUBLIC PARTICIPATION IN LEGISLATION

The initiation of the democratic process did not take off until the end of the 1980s when the current progressive framework of citizen participation in Niger was put in place. The framework, despite its limitations, takes into account the substantial prescriptive rules of human rights necessary for the enjoyment of individual rights and freedoms. The legal and organizational architecture allow us to effectively increase, at all levels, the mobilization and involvement of citizens in the management of public affairs. The overall perspective is to evolve common interests.

There is a multiplicity of legal texts that provide a framework for citizen participation. In spite of the efforts made to consider the rights enshrined in the legal instruments on human rights, Niger does not have a specific instrument for the participation of citizens in public action, unlike others countries like

France. If the right to citizen participation in the conduct of public affairs is somehow met in the choice of persons entrusted to conduct the affairs of the state through presidential, parliamentary and local elections, we must recognize that its achievement in other areas remains questionable.

It is true that in many respects, Niger distinguishes itself as a country marked by the hyper activism of its civil society. On many occasions, this civil society has firmly established itself as an important actor and stakeholder to be reckoned with. Recently, its action surrounding the “Quality Equity Coalition against the High Cost of Living” in February 2005 successfully opposed the amendment of finance law despite its adoption by the national assembly¹⁸. We may also mention the numerous collective actions (strikes, demonstrations and other events) and the involvement in the design and implementation of many public policies in which associations and NGOs have emerged as important actors.

This positive development was made possible by several factors, among which is the democratization of the political system, the favourable legal framework and the attitude of the donors who have become development partners.

THE DEMOCRATIZATION OF THE POLITICAL SYSTEM

This is probably the most important factor¹⁹. This democratization has promoted a

genuine openness of the arenas by creating the conditions for a real proliferation of associations²⁰. In Niger the exercise of public freedom is recognized by the laws of the Republic. Although the text on the legislation governing associations was adopted in 1984 under the state of emergency, the regimes that came out of the national conference quickly liberalized the legal framework in order to adapt it to the new political realities of the country. Since then, the number of associations has been growing, virtually covering all sectors of economic, social and political life. Today these organizations are identifiable alongside political parties. They have become genuine stakeholders in the social-political life.

A FAVOURABLE LEGAL FRAMEWORK

Democratization is a fertile soil for the development of the civil society in Niger and is conducive to the adoption of a body of texts that give support to the involvement of civil society in public affairs at all levels²¹. In some texts citizen participation is clearly defined as an important condition for the enjoyment of rights by the people, a condition for the strengthening of democracy, the rule of law and human rights and a fundamental pillar of governance. Other examples of similar legislation is the general civil service regulations, the electoral code, the charter on access to public information and administrative documents, the freedom of the press system, the general code of local government, the rural code and the environment code.

Finally, it may be noted that several international and regional instruments are ratified by Niger such as the African Charter on Human and Peoples Rights (African Charter/ ACHPR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). To all that should be added the Declaration on the Right to Development of the United Nations and the Vienna Declaration and Program of Action.

THE REPOSITIONING OF DONORS

In recent years, development cooperation has changed considerably. It now includes among its partners civil society organizations. Niger is no exception to this new dynamic. The successive coups, but also the poor economic performances of the state have encouraged the repositioning of donors toward the civil society. Thus, many civil society organizations have seized this opportunity to establish themselves permanently in the development arenas. An NGO, like Karkara for example, has become a real actor in the rural sector because of the many projects it has implemented. In the area of human rights, the Association for Defence of Human Rights (ANDDH) holds the same position. This change in international cooperation has undeniably become a factor favourable to the development of civil society organizations. These organizations now have many opportunities for action in their area of intervention, which makes them compete de



facto with the state services which have lost their monopoly in that respect. For example, the European Union which, since the Cotonou convention has, continuously supported the civil society. In Niger, this support has taken shape through the Program of Support to Civil Society in Niger (PASOC), now in its second phase. Other donors, like UNDP, have intervention programs which support these organizations in various ways (capacity-building, command of various services).

PUBLIC PARTICIPATION IN PRACTICE

SOME CHARACTERISTICS OF THE CIVIL SOCIETY IN NIGER

The concept of civil society is pervasive in political discourse. It appeared with the generalization of democratic processes. In Niger, it has become a powerful emblem of democracy. Indeed, trade unions (both student and worker) have played a leading role in its emergence. Subsequently, at specified historic times, several associations and trade unions have distinguished themselves in the public arena through the activism of their members in the defence of democracy or the fight against

the high cost of living. Such episodes have consolidated the civil society's visibility as a full-fledged actor of public life in Niger.

The civil society in Niger has been equated with a set of disparate organizations aiming to achieve different purposes grouped together under a common term.

The image of the civil society in Niger has, nonetheless, remained quite ambivalent. I have often denounced the tendency among some of its the leaders members to corrupt practices or engagement in the hunt for *per diems*. This propensity has encouraged a negative image of the civil society which many see as organizations whose work is not in the general interest but based on the self-promotion of such leaders. But this is just one facet of the civil society. Civil society can also be perceived as a virtuous space for selfless activists working towards collective goals, the promotion of general interest and who have been particularly prominent in the fight for democracy.

Six major features of the civil society in Niger will be identified: (1) proliferation,



(2) professionalization, (3) clustering, (4) involvement in the political sphere, (5) personalization and (6) urban anchorage.

THE ISSUE OF PROLIFERATION

Over the last twenty years, the number of civil society organizations has grown and currently cover a wide variety of fields. Hundreds of these organizations exist in the country in which, not so long ago, non-official “associations” were suspect. The boom in the number of associations is a reality in Niger. In a recent report figures vary, due to unreliable data, from 871 to 1085 organizations²². Many civil society organizations remain or have become informal.

THE ISSUE OF PROFESSIONALIZATION

This trend remains a legitimate ambition of civil society organizations in Niger, which are seeking to promote activities based on competences. An important part of their activity is devoted to fundraising in a context where activists and members do not pay dues. This professionalization has resulted in their dependence on donors and has reduced their autonomy, of freedoms and capacity to interpellate. They thus become simple

operators more busy fulfilling contracts than playing their traditional role as independent and committed activists.

THE ISSUE OF CLUSTERING

It must be acknowledged, however, that the main trend of civil society is the setting up of large groups or unions of associations organized around specific themes. These groups emerged during the 2000s. Initially, such unions which came together to form larger confederations of trade unions. While the labour movement has been marked by the emergence of a large number of confederations of trade unions, the associations, for their part, have clustered into groups to strengthen their capacity for action and reduce their fragmentation.

THE TREND TO GET INVOLVED IN THE POLITICAL SPHERE

In Niger the civil society organizations may be characterized by their progressive action in the political sphere. This trend is linked to their role in the initiation of the democratic process. Since the early sixties they have been at the forefront of the multifaceted struggles that defeated the

authoritarian regimes. Their involvement in the political arenas is therefore celebrated due to the actions they have taken on major issues that have marked political life in Niger.

In this regard, we may mention the example of their role in the “Quality Equity Coalition Against the High Cost of Living” in 2005 through engaging activism against certain aspects of the national budget that raised the VAT on products of basic necessity²³. The united civil society organizations drove strong mobilizations in the large cities resulting in the government’s change in decision.

THE TREND TOWARDS PERSONALIZATION: “THE ASSOCIATIVE ACTIVITY” IN QUESTION

It should be noted that there has been a trend in the civil society organizations towards personalization because of identification with strong leaders. The associations also keep the same leaders for long periods of time. In the long term, this trend calls into question the entire range of associative dynamics that characterizes these organizations.

URBAN ASSOCIATIONS

Finally, we need to recognize that the Nigerian civil society organizations are strongly anchored in urban areas in particular. The most visible among these organizations enjoy only a limited presence in the rural areas where the only organizations present on the ground are organizations of women or producers often put in place by development projects.

Several factors which weaken citizen participation in Niger may be identified.

THE ROLE OF MONEY IN ASSOCIATIVE ACTIVISM

Money has taken an important place in associative activism and selfless commitment is rapidly on the decline. It must be recognized that big money is flowing in the various activities occurring in associative life. The organization of workshops or seminars is often seen as a space allowing the distribution of money rather than a framework for learning or knowledge. **Per diem** payments has never been more prevalent. As a consequence, associative life has become something of a marketplace, a place of income hunting leading to the side-lining of activism. Commitment therefore occupies very little room in the activities of the associations.

WEAK CAPACITIES

Activists in associations are typically lacking in technical competence. Their associative activities are merely a temporary space before they obtain stable salaried work. Such a position predisposes them to be only marginally involved in the design or monitoring of public policies. They are therefore unable to act as an effective counterbalance to public authorities or even to be valid interlocutors. It must be recognized that in Niger, the associative field has remained paradoxically marked by the weakness of its capabilities.

STRONG DEPENDENCIES

Associations of citizen participation in a country such as Niger remains largely dependent on financial aid. Their capacity to contribute is either limited or non-existent. Donor funds are the only means of implementing their activities, ensuring their existence and supporting their activities. This dependency is an obstacle limiting their autonomy and leeway for action.

CONCLUSION

The on-going democratization of Niger's political system has provided fertile ground for the development of the civil society and for the adoption of legislation supporting the involvement of civil society organizations in the conduct of public affairs. Many donors have redirected their assistance to the civil society and this consolidates the development. With a growing demand for citizen participation in public affairs, Niger is witnessing the broadening of its framework of citizen participation.

Challenges to the civil society emerge, however, in multiple areas. Professionalization is a concern whereby organizations are dependent on their donors, become simple operators thus reducing autonomy of action and obstructing engagement in the kind of activism driven by the will to improve the living conditions of the general public. At the same time the expertise and capacity of the civil society remains quite weak. The corrupt practices and self-promotion of activists and the emergence of strong leaders have led to an ambiguous

view of the civil society. The involvement in the political sphere has been strong traditionally as the civil society have taken on a leading role in initiating the democratic process. The internal mechanisms of some organizations may be questioned. Clusters of certain types of civil society organizations has occurred and a broadening of focus areas is needed. Moreover, civil society organizations are most prevalent in urban areas. Due to these shortcomings the civil society in Niger does not provide an effective platform for influencing the conduct of public affairs.

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IDENTIFIED OBSTACLES TO EFFECTIVE PUBLIC PARTICIPATION IN NIGER AND GUIDELINES FOR ACTION

- Capacity building initiatives are carried out to enable the Nigerian civil society organizations to build their capacities and enhance the effectiveness of their action. A lot of efforts have already been made in this respect but they remain insufficient.
- Concerns of civic commitment of these organizations are secondary as they are driven by donors and their development agendas. The civil society organizations should develop in-house ethical approaches that promote internal values and practices of good governance.
- In some countries there is interest in developing civil society charters. In Niger, this trend has never been successful due to the concerns of the civil society and their potential instrumentalization and imposition of limitations as a result on their independence of the state.
- The civil society should focus its actions in rural areas where there are many challenges and where change is hardest to promote. This approach is premised on the fact mentioned earlier, namely that these organizations are urban in nature.



PART 2
WAY FORWARD

APPROACHES TO PROMOTE THE RIGHT TO FREEDOM OF ASSOCIATION: LESSONS LEARNED

Kareem Elbayar

On January 25, 2010, the final day of the first post-war session of the elected parliament of Iraq, the Council of Representatives approved a new **Law on Non-Governmental Organisations** (Law 12 of 2010). The new NGO law, hailed as a “rare victory for Arab civil society,” represented a decisive break in the modern history of Iraq²⁴. For the first time since the rise of the Ba’ath Party, Iraq’s civil society was freed to contribute to the economic, social, and political development of the country. NGOs were allowed to register to pursue any goals that did not “violate the Constitution or other Iraqi laws.” The registration process was vastly simplified and streamlined, and for the first time Iraqi NGOs could affiliate with international organisations and raise funds domestically and internationally without prior government authorization. Criminal penalties for violations of the NGO law were deleted, and the government was no longer authorized to interfere with an NGO’s internal operations, seize its assets, or seek its dissolution without a court order based on a limited set of conditions.

Less than one year later, the Kurdistan Regional Government of Iraq followed suit,

adopting a new **Law on Non-Governmental Organisations in the Kurdistan Region of Iraq** (KRG Law 1 of 2011) that went even further. This law set a new standard for enabling civil society laws in the Middle East and North Africa, giving equal treatment to foreign NGOs and foreign founders of NGOs, establishing a government fund for the support of civil society, and otherwise embracing international best practices in NGO law.

Though both the Kurdish and federal NGO laws have been beset with implementation problems, the passage of both laws was a significant accomplishment for Iraqi, Kurdish, and Arab civil society. The successful advocacy campaign waged by Iraqi civil society leaders for these two laws provides a number of important lessons learned for democratic activists working to promote the freedom of association in the Arab region and around the world.

IS IRAQ AN APPROPRIATE MODEL TO INSTITUTE CHANGE?

Without doubt, civil society law reform in Iraq took place amidst a highly unique set of

circumstances. Decades of Ba'ath repression and war were followed by the US-led invasion and occupation of the country and the rise of bloody and ongoing sectarian violence. When Iraqi civil society leaders attempt to share the lessons of their NGO law advocacy campaign, they are almost always told that what took place in Iraq is not an appropriate model for the rest of the Arab region. Arab activists typically view the federal and Kurdish NGO laws as products of the American invasion and occupation, and argue that such reform is not possible in countries making an independent transition to democracy without foreign interference or occupation. However, this argument reflects a fundamental lack of knowledge of the circumstances surrounding NGO law reform in Iraq.

Adoption of enabling NGO legislation was not only a purely Iraqi accomplishment; it required Iraqi civil society leaders to overcome the objections of American and Iraqi government officials. Indeed, the NGO law in force in Iraq at the time of the NGO law reform campaign was **Coalition Provisional Authority Order 45**, a United States-authored law which sacrificed international best practices for the sake of concerns about the deteriorating security environment. Under the Coalition Provisional Authority (CPA) law, for example, registration of all NGOs was absolutely mandatory – a clear violation of international law²⁵. Government refusal to grant registration, as well as the government's authority to suspend or revoke a registration license, could not be appealed.

The government could audit an NGO at any time, with or without cause, and NGOs could be dissolved or have their assets seized at the discretion of the government and without a court order. All of these restrictions on NGO operations were deleted in the two laws succeeding the CPA Order.

CPA Order 45 “did not facilitate or encourage the development of Iraqi civil society,” and in fact laid the groundwork for a highly repressive earlier draft NGO law put forward by the Iraqi government in March 2009²⁶. Iraqi government officials were not primed by the CPA to adopt a more enabling law; instead the government's original draft law imposed substantial restrictions and was similar in most respects to the NGO laws of undemocratic countries such as Algeria, Bahrain, and Egypt.

The education and advocacy campaign undertaken by Iraqi civil society took place in a legal and political environment that was broadly analogous to other Arab countries. As such, the lessons learned from Iraqi law reform do apply to other Arab countries, and the approach adopted by Iraqi civil society leaders can and should be considered by advocates working to achieve similar goals in other countries in the region.

BUILDING A FOUNDATION FOR COLLABORATION AND RAISING AWARENESS ON BEST PRACTICES

Civil society law reform was a key priority for the emerging leaders of post-war Iraqi civil society,

but law reform advocates recognized that after years of isolation they were unfamiliar with international law and best practices governing NGO law. Seeing their lack of expertise as a potentially fatal obstacle to effective negotiation with government, Iraqi NGO leaders began working to educate themselves and others on the current state of NGO law around the world. As early as 2004, less than one year after the US-led invasion of Iraq, the Iraqi al-Amal Association²⁷ reached out to the Arab NGO Network for Development in Lebanon and the Heinrich Böll Foundation in Germany to discuss the launch of an educational campaign for Iraqi civil society leaders. By December of 2004, these three organisations convened an initial dialogue session that included representatives from several Arab countries perceived with enabling NGO laws. The Iraqi al-Amal Association also reached out to the International Center for Not-for-Profit Law (ICNL) in Washington, DC to secure the rights to translate and publish in Arabic the publication **Guidelines for Laws Affecting Civic Organisations**, one of the only detailed guides to best practices in NGO legislation. Working with ICNL, the Iraqi al-Amal Association ultimately distributed more than 1,000 copies of this key text to civil society leaders and government officials across Iraq.

By 2006, an “initiative for freedom of association” was launched by Iraqi al-Amal and dozens of other local Iraqi NGOs to spread knowledge of best practices in NGO law. The initiative focused on educating civil

society advocates on how countries around the world regulate civil society without violating international human rights law. A special emphasis was made on spreading knowledge of Iraq’s obligations under international law, including the **International Covenant on Civil and Political Rights** and the **Universal Declaration of Human Rights**, giving powerful and relevant arguments to advocates of a more enabling legal framework.

Advocates were able to effectively evaluate government proposals by comparing them to international standards, and were empowered to argue in favor of enabling legislation by pointing to examples from around the world. By focusing on education first, Iraqi civil society leaders avoided several of the pitfalls of NGO law reform campaigns that have plagued advocates in other Arab countries.

COALITION-BUILDING FOR EFFECTIVE ADVOCACY

As with any advocacy campaign, the push for civil society law reform in Iraq was led by a handful of key individuals and organisations. However, Iraq’s advocacy campaign leaders knew that their efforts to pass an enabling NGO law would be much more effective if they were able to build a large and coordinated coalition for law reform. As a result, advocacy campaign leaders spent several months reaching out to individuals and organisations from across the political, ethnic, and geographic spectrum. Working with ICNL and the United Nations Office of Project Services (UNOPS),



Iraqi leaders established a number of email distribution lists, at least one of which had a subscriber list of more than 7,000 email addresses. Campaign leaders used the email lists to widely disseminate information about the campaign and invite other organisations and individuals to join. Crucially, the mailing lists were open to all subscribers in a two-way dialog, allowing participants to feel that they were part of the campaign rather than simply being dictated to by campaign leaders. Indeed, though the law reform campaign has long since ceased, the mailing lists continue to be used by Iraqi NGOs to distribute information and coordinate their activities.

In addition to online coordination, dozens of “real world” meetings were arranged by advocacy campaign leaders across Iraq to allow NGOs to discuss the issues, share knowledge, and coordinate their efforts and responses. Again, two-way communication and open dialog were key to the success of these initiatives. Rather than dictate to the coalition’s members, advocacy campaign leaders ensured that all participants were allowed to share their views. Even if the coalition’s leaders knew more about

a particular topic, they made sure to give an opportunity to all members to put forth ideas for discussion and negotiation. A respectful dialog between various coalition members was the norm.

Post-war Iraq was and remains the site of severe political disagreement. There is not necessarily a societal consensus in favor of liberal democratic norms. Among the thousands of NGOs that seemed to appear almost overnight, a small minority could be seen as vehicles for petty corruption or, worse still, sectarian incitement. Iraq’s NGO advocacy campaign leaders had the crucial insight that in building a coalition for law reform, it was important to put aside any hostility or suspicion between actors to single-mindedly focus on the campaign’s key issue – adoption of an enabling legal framework for civil society. Ideological, religious, and ethnic disputes between the members were quickly set aside when they arose because the group’s members agreed that the law reform campaign was not an appropriate venue for these discussions. In other words, the campaign’s leaders made an effort to demonstrate that regardless of the



relationships between various actors, all shared an interest in an enabling legal framework for civil society. Both secular and religious groups, for example, had a shared interest in being able to grow, pursue their goals, and attract new members, and this was only possible in the context of an enabling NGO law.

Finally, in building a coalition for NGO law reform, Iraq's advocacy leaders made sure to reach out to tribal and religious leaders and other stakeholders outside of the formal NGO sector to include them in discussions and demonstrate how they might benefit from enabling NGO law reform.

Efforts to build a wide and unified coalition for NGO law reform may have slowed down the process of advocating for a more enabling legal framework, but as will be seen below, the establishment of a widespread coalition was crucial in the final stages of the campaign when the parliament moved to vote on a draft law. In taking this approach, Iraq's NGO law reform advocates again avoided the pitfalls that have plagued other Arab advocates, where repressive governments have taken advantage

of ideological disputes between civil society activists to weaken law reform campaigns.

ESTABLISHING RELATIONSHIPS WITH INFLUENTIAL MEDIA ORGANISATIONS

From the outset of the Iraqi NGO law reform campaign, Iraq's advocacy leaders sought to involve media as **partners** in law reform rather than simple mechanisms for getting their messages out. Especially in the initial stages of the campaign, media organisations knew very little about NGOs and international standards in civil society regulation. To the extent that media representatives considered NGOs at all, they were usually seen as vehicles for improper foreign influence and corruption rather than contributors to the economic, social, and political development of Iraq. As a result, media reports on NGO activities were generally negative, and the media environment presented a potentially formidable obstacle to the success of the law reform campaign.

To address these views, Iraqi NGO leaders made a dedicated effort to meet with media representatives on a number of occasions to explain the value and purpose of civil

society and to demonstrate in concrete terms how NGOs in Iraq were contributing to the reconstruction and rehabilitation of the country. NGO leaders focused on the benefits of an enabling framework for NGOs over the specifics of what an enabling environment actually entailed. For example, rather than argue that NGOs had a right to receive funds from abroad, NGO leaders made a case for how foreign funds directed to Iraqi NGOs benefited Iraqi society as a whole. Media representatives were invited to take part in educational conferences and workshops as participants rather than observers.

By activating media as partners in reform, Iraqi NGO leaders ensured that media representatives were personally invested in the success of the law reform campaign. These efforts resulted in a high level of positive media engagement with Iraqi NGOs, in marked contrast to the often hostile or suspicious relationship between media and civil society in other Arab countries. Iraq's NGO leaders were invited to take part in dozens of television news and talk shows, to speak on radio programs, and even to write weekly articles in Iraqi newspapers. At a crucial moment toward the end of the NGO law reform campaign, the semi-official **As-Sabah Newspaper** even turned over space in two weekly issues to campaign leaders, giving Iraqi civil society a valuable and critical way to directly reach out to the wider public and build support for NGO law reform.

STEERING THE DRAFTING PROCESS

As Iraq's NGO leaders moved forward in their campaign, a question arose: would it be better to work within the coalition to draft a model NGO law, or to engage with government officials to influence the official government draft? While there are useful arguments on both sides, ultimately advocacy leaders felt it would be most useful **not** to prepare an alternative draft law but to instead work from to influence preparation of the official governmental draft.

At the time, Iraq had a federal Minister of State for Civil Society Affairs, and the Ministry had a mandate to prepare and draft a new Iraqi NGO law. Advocacy leaders therefore worked hard to engage with the Minister and his office to offer their assistance in preparing the draft law. Advocacy leaders made a case for their engagement by offering to facilitate meetings with international experts in NGO regulation, to provide research and other materials to the Minister, and to facilitate meetings between the Minister and Iraqi and international NGOs. In addition to offers of cooperation, advocacy leaders also subtly hinted that they would publicly and loudly object if a draft NGO law was imposed on them without consultation or feedback. Over the course of several weeks, NGO leaders thus built up a relationship with the Minister of State for Civil Society Affairs, and when they offered to organise a roundtable consultation between civil society and government found that the Minister supported the activity.

The first formal consultation between civil society and government was held in 2008 with financial support from UNOPS. A group of Iraqi civil society leaders met with the Minister of State for Civil Society Affairs, the Minister of Human Rights, Members of Parliament, and representatives from the Council of Representatives, Ministry of Interior, Council of Ministers, the office of the Speaker of Parliament, the office of the Prime Minister, and several other key government stakeholders. Rather than debate legal provisions with such a large group, the advocacy leaders sought to develop a consensus among the various stakeholders for general concepts that would govern subsequent drafting of the law. By taking this approach, advocacy leaders avoided getting bogged down in a slow and unproductive process of “drafting by committee,” and ensured that liberal principles would guide the government’s preparation of its draft law.

Despite these efforts, Iraqi NGO leaders were unpleasantly surprised when the first draft prepared by the Ministry of State for Civil Society Affairs diverged from the agreed-upon principles of the first roundtable and appeared to endorse a highly restrictive approach to NGO regulation. However, instead of wasting valuable time arguing against the Ministerial draft, advocacy campaign leaders realized that completion of the Minister’s work meant that the Iraqi Council of Representatives (parliament) would now be responsible for the draft law. A new roundtable was convened,

this time supported by ICNL and UNOPS, in which a wide range of government officials and Members of Parliament, including nearly the entire membership of the parliamentary committee responsible for the draft NGO law, met with civil society leaders to discuss the Ministry draft.

This time, the three-day roundtable focused on comparing international best practices and the principles agreed upon in 2008 to the draft law prepared by the Ministry. Iraqi NGO leaders worked hard to educate members of parliament about Iraq’s legal obligations under international law and the legal and practical effects of a restrictive NGO law. Advocacy leaders also made a clear appeal to the self-interest of MPs, warning them that civil society would take into consideration the content of the NGO law when MPs ran for re-election the following year.

The civil society organisers of the roundtable conferences made a decision to invite the Ministry of State for Civil Society Affairs to present its draft law and defend the restrictive regulations it put forward, and this proved to be key to the success of the campaign to improve the draft law. The Ministry of State for Civil Society Affairs as well as key national security officials made a number of arguments for restrictive regulation based on Iraq’s negative security environment. Rather than dismiss these positions or emphasize a “rights-based” approach, NGO leaders took the concerns seriously and attempted to demonstrate how



the Iraqi government might respond to security issues without unduly restricting the civil society sector.

The approach of advocacy campaign leaders to one of the most controversial issues is illustrative. In the Ministry's draft NGO law, foreign funding to NGOs was prohibited and punishable with imprisonment if received without prior government authorization. Representatives from the Ministry of State for Civil Society Affairs and the Ministry of the Interior argued that this approach was necessary to prevent money laundering and terrorist finance. Although international law makes clear that NGOs have a right to such funding, Iraq's NGO leaders chose not to make this argument the centerpiece of their response at the round table. Instead, NGO leaders accepted the government's premise that it was necessary to prevent money laundering and terrorist finance, and attempted to demonstrate how this goal could be achieved without restrictive NGO legislation. Iraqi NGO leaders and their international partners at ICNL and UNOPS showed how countries around the world work with the banking sector to identify

and interdict illegal sources of funding and illegal organisations. Crucially, NGO leaders were able to demonstrate that a broad rule of prior approval would have a limited effect on terrorist or criminal organisations, which are by nature illegal, while having an extremely negative effect on organisations engaged in post-war reconstruction and rehabilitation. Worse still, the government's approach would create incentives for foreign funding to be sent through illegal or "gray" channels rather than through the official banking sector, making it harder for government officials to identify problematic donors or recipients. Ultimately government officials agreed that a liberal approach to foreign funding would actually provide the Iraqi government with superior information about the origins and uses of foreign funds, and the two ministries agreed to drop their support for restrictions on NGO foreign funding.

By giving advocates of a more restrictive approach the opportunity to present their views, taking those views seriously, and working with government to identify mutually acceptable solutions, Iraqi NGO leaders built trust between



government and civil society and were better able to achieve their goals. This approach paid major dividends as key government leaders eventually accepted the arguments of civil society leaders, removing obstacles to the drafting of a more enabling NGO law by the parliamentary committee. MPs, in turn, felt more comfortable working directly with civil society leaders in the drafting of proposed legislative articles. Iraqi NGO leaders were invited to meet with MPs in their offices and were presented with draft legislation and asked to provide comments and proposed changes. ICNL, UNOPS, and Iraqi NGO leaders prepared a series of technical assistance documents to improve the parliamentary draft, and a third NGO/government round table conference was held to discuss a revised parliamentary draft.

In the wake of the third round table, NGO leaders were again invited to work directly with MPs to craft the specific provisions of the parliament's draft law. Compromises were made by both sides, as when Iraqi NGO leaders agreed to retain some restrictions on foreign NGOs operating in Iraq in exchange for the removal of most restrictions on domestic Iraqi

NGOs. Iraq's NGO law reform campaign leaders successfully steered the drafting process to ensure that the parliament's draft law was broadly in line with the goals long sought by Iraqi civil society.

THE FINAL PUSH: PRIVATE PRESSURE, PUBLIC ADVOCACY

By the end of 2009, the parliamentary committee charged with finalizing the draft NGO law had produced a proposed bill which was endorsed by Iraq's civil society leaders as the enabling legal framework they had worked so hard to achieve. However, the draft bill needed to be sent to the full parliament for a final vote, and it was up to the Prime Minister's office to schedule floor time in the parliament for a debate and vote.

Unfortunately, as Iraq's first parliamentary session wound to a close, it was clear that major political disputes on a number of bills – chief among them the preparation of the federal budget – were considered to be a higher priority than the draft NGO law. Several weeks went by without any indication from the Prime Minister's office that time for a final debate and vote on

the NGO law might be scheduled. Iraq's NGO leaders feared that after all the hard work of the preceding years, the law might fail to be voted on in the current parliamentary session. If the parliament failed to vote on the law in the current session, Iraq's civil society would be stuck with CPA Order 45 for at least another year, and there would be no guarantee that a new parliament would take up the draft law in its current form. (Indeed, Iraq's 2010 parliamentary election led to a protracted crisis when the parliament could not agree on the formation of a new government for several months).²⁸

Iraq's NGO leaders decided to respond by launching an ambitious final push for passage of the draft NGO law. Coalition members contacted political leaders across the spectrum of political parties to demand the scheduling of a final vote on the NGO law. The broad coalition that civil society advocates had built in earlier years became especially important here, as NGOs affiliated with Sunni, Shia, Kurdish, and secular parties all leveraged their relationships to demand action on the NGO law. At the same time, several key leaders arranged private advocacy meetings with top leadership in the parliament, including the offices of the Prime Minister and Speaker of Parliament. Iraqi NGO leaders also contacted the international community, and arranged for top UN, EU, US government officials to request that the Prime Minister schedule a floor vote on the NGO law.

In addition to these private advocacy meetings, NGO leaders launched a major public advocacy

campaign to ask the parliament, which was widely seen as unable to agree on or pass major legislation, to pass the NGO law and accomplish real change before the end of the term. Many NGO leaders made clear that they would only endorse and support MPs who took action on the NGO law.

These efforts bore fruit at the last possible minute. On the final day of the parliamentary session, a floor debate and vote was scheduled at the parliament. Many outside observers felt that there simply was not enough time to forge a parliamentary consensus, but thanks to the efforts of a broad coalition of NGO leaders, the NGO law was already familiar to and endorsed by the majority of political parties. Unlike almost any other law before or since, the draft NGO law was quickly approved by the vast majority of MPs from across the political, religious, and ethnic spectrum. At the last possible moment, Iraq's NGO leaders achieved their goal.

PROMOTING PUBLIC PARTICIPATION: THE EFFECTS OF CIVIL SOCIETY LAW REFORM

Passage of Law 12 of 2010 was a singular achievement for Iraqi civil society, establishing a legal framework that would support the expansion and sustainability of civil society in Iraq for perhaps the first time in modern Iraqi history. Iraqi civil society has grown at an almost astonishing rate since the 2003, and Iraq's civil society leaders are leading the way toward a better future for Iraqi society writ large.

As in other countries with an enabling legal framework, Iraqi civil society is now free to contribute to economic, social and political development; promote full implementation of human rights, including the freedoms of association, assembly, and speech; and promote tolerance, stability, democracy, and the rule of law.

In addition, and uniquely for civil society in Arab countries, Iraq's NGOs have grown increasingly assertive in expanding and protecting human rights in Iraq. The coalition of NGOs that first sought the enactment of the Law on Non-Governmental Organisations has successfully sued the Council of Representatives, forcing the parliament back into session; organised a "Day of Peace" celebration in the heart of Baghdad attended by thousands of individuals; lobbied for passage of an enabling NGO law in the Kurdistan region; and engaged with the federal parliament to halt the development of a restrictive law on public assemblies (at least temporarily).

The string of recent advocacy successes by Iraqi NGOs is truly unique in the Arab world, and demonstrates the long-term effects of the successful NGO law reform campaign launched several years ago. Many of the strategies being employed by Iraqi NGO leaders to engage in public participation were first honed as part of the campaign for passage of a new NGO law at the federal level, and the passage of that law has established a political space which makes it possible for Iraqi NGOs to engage in the political process.

CONCLUSION

The case described is from Iraq illustrating how a civil society through joint and inclusive advocacy efforts managed to influence the Iraqi parliament in 2010 to adopt a new NGO law being in conformity with the international human rights standards. The account includes in detail the different and necessary steps leading to the successful result. The initiating civil society organisations engaged in capacity building of themselves as a first step. This mainly involved becoming familiar with the relevant international human rights standards on freedom of association and to learn of best practices. Through collaboration with relevant international organisations this was achieved as well as an initiative to disseminate information about the discrepancy of the NGO law at the time with the international standards to the broad civil society and public.

The call for change and legal reform was a next step. The initiating organisations reached out to individuals and organisations from across the political, ethnic and geographic spectrum to build a coalition. The coalition was established and a nationwide campaign was launched including workshops, conference, e-mailing lists etc. The religious and clan leaders and the media in Iraq were also involved.

A next step was to build up a relationship with the Minister of State for Civil Society Affairs and the ministry to advocate for the drafting of a new NGO law and to highlight the specific conditions needed so that it would be in

conformity with the international standards. A draft law was made but it failed to meet the standards. A second was table in 2008 and this met the expectations.

Members of parliament were approached in order to sensitize them with the new NGO draft law. A major public campaign was launched to advocate for the passing of the new NGO draft law putting pressure on the members of parliament which was entering into parliamentary election campaigns. The efforts bore fruits as the law was passed in 2010.

THE CODE OF GOOD PRACTICE FOR CIVIL PARTICIPATION IN THE DECISION-MAKING PROCESS

Tina Michieli

The Code of Good Practice for Civil Participation in the Decision-making Process aims at facilitating NGO participation in the political decision-making process at local, regional and national levels. It is based on actual experience of NGOs across Europe and contains a set of general principles, guidelines, tools and mechanisms for civil participation in the political decision-making process. Although the Code does not have a mandatory character, it presents an important consensus of 47 member countries of the Council of Europe on shared responsibilities of NGOs and public authorities in promoting democratic and inclusive policy-making.

This paper offers a short overview of the development of the document, its objectives, main features and its practical use for NGOs across Europe.

BACKGROUND: DEVELOPMENT OF THE CODE

At the meeting of the Council of Europe Forum for the Future of Democracy, held in Sweden in June 2007, the Conference of INGOs of the Council of Europe was called upon to prepare

a Code of Good Practice for Civil Participation, which would focus on mechanisms for NGO participation in decision-making processes and civil society involvement in public policy.

The Conference of INGOs started the extensive participatory process of developing the Code by engaging a civil society drafting team, organising a pan-European consultation process and inviting members of national and international non-governmental organisations to test and comment on the draft document. The Conference of INGOs adopted the document on 1 October 2009, and on 21 October 2009, the Committee of Ministers endorsed the document as a Council of Europe reference document.

The document has so far been translated into 18 languages and widely promoted throughout Europe –mostly by the civil society and European NGO networks as strategic partners (including European Civic Forum, CEDAG, ECAS, Balkan Civil Society Development Network, CEE Citizens Network), but also by national authorities and the European Commission.

OBJECTIVES AND TARGET AUDIENCE OF THE CODE

The principal objective of this Code of Good Practice for Civil Participation is **‘to contribute to the creation of an enabling environment for NGOs in Council of Europe member States’**.

This is done by defining a set of general principles, guidelines, tools and mechanisms for civil participation in the political decision-making process. The Code is expected to consolidate the current trend among local, regional and national authorities to consult and cooperate with civil society in democratic governance.

Public authorities can make use of the Code:

- To refer to the possibilities of participation and interaction that exist in Europe;
- To take stock of existing procedures and relationships with NGOs and explore where there is room for improvement;
- To take necessary steps in practice to encourage increased NGO participation in the decision-making process.

An additional objective for the Code of Good Practice is to be a **relevant and effective tool for NGOs** from local to international levels in their dialogue with parliament, government and public authorities.

NGOs can make use of the Code:

- To plan their advocacy activities;
- To find ways on how to engage with public authorities;
- To assess existing cooperation;
- To identify areas of improvement of the dialogue with authorities;
- To build awareness of their work;
- To promote key principles of a good working relationship with authorities;
- To develop concrete mechanisms for engagement.

MAIN FEATURES AND CONTENT OF THE CODE

The Code defines the six different steps of decision-making process – **agenda setting, drafting of policy, decision-making, implementation of policy, monitoring and reformulation of policy** – each offering opportunities for NGOs and public authorities to interact.

The involvement of NGOs in the different steps of the decision-making process varies by the level or intensity of participation. The Code uses a model of four levels of engagement ranging from least to most participative:

- **Information** as the basis for all subsequent levels of involvement of NGOs. This level of engagement offers a relatively low level of participation, as it includes a one-way provision of information from the public

authorities and does not require or expect any interaction or involvement with NGOs;

- **Consultation**, which includes authorities informing NGOs of current policy developments and asking for comments, views and feed-back;
- **Dialogue** as a two-way communication built on mutual interests and potentially shared objectives, which can take place as a regular exchange of views or exchange explicitly linked to a current policy development process;
- **Partnership** as the highest form of participation, which implies shared responsibilities, delegation of a specific task and establishment of co-decision-making bodies.

For each step of the decision-making process, the Code specifies the **role and contribution of NGOs**, explaining how NGOs in their different capacities - as advocates, information providers, awareness raisers, innovators, experts and analysts, service providers and watchdogs - contribute throughout the process of decision-making by offering a wide range of expertise, knowledge and skills.

The Code also specifies **tools**, which can be used to achieve different levels of engagement in each of the decision-making steps, as well as **mechanisms** that can contribute to more systematic and proactive support to the process of participation. Examples of these tools and mechanisms include:

- Framework documents on cooperation between NGOs and public authorities (such as bilateral agreements, strategy documents and official programmes for cooperation, adopted by public authorities), which outline roles and responsibilities and procedures for cooperation and facilitate dialogue and mutual understanding between NGOs and public authorities;
- Structures for cooperation between NGOs and public authorities (such as coordinating and advisory bodies);
- E-participation tools, which can contribute to the transparency, accountability and responsiveness of institutions and accessibility and inclusiveness of the decision-making process;
- Capacity-building for participation, which improves the understanding of the reciprocal roles of NGOs and public authorities and equips NGOs with necessary knowledge about the policy process and skills, which allow their effective participation in it.

The Code also specifies the **responsibilities of public authorities**, which refer to access to information, transparency of procedures, responsiveness of public authorities as well as the provision of resources for active participation of civil society.

According to the Code, the Public authorities should:



- Provide up-to-date accurate and timely information in an accessible format for all interested parties on current consultation processes, on policies currently in the decision-making process, on implementation of policies, strategies, public tendering procedures, on current policy status, on possible review of a policy and their perception of changes needed in policy;
- Develop and adhere to a transparent decision-making process;
- Provide clear, open and accessible procedures for participation;
- Assure minimum consultation standards (such as clear objectives, rules for participation, timelines, contacts etc.), provide adequate timelines and means for consultation to ensure participation of different levels of civil society and organise open consultation meetings, including invitation to all potential stakeholders;
- Follow established rules and regulations for policy implementation;
- Ensure active involvement of relevant public authority representatives;
- Listen, take into consideration and respond to civil society input;

- Be available and react to specific needs arising from policy implementation;
- Enable and support the active participation of civil society through budgetary provision, in-kind support or administrative services.

PRACTICAL USE OF THE CODE

The main feature of the Code is that it is an action-oriented document, intended to enhance civil participation in the political decision-making process. It contains multiple concrete and already-tested mechanisms and tools, which can be suggested by NGOs and adopted by public authorities to support greater involvement of civil society in different steps of the decision-making process.

More specifically, NGOs can also use the Code as an **advocacy tool** by:

- Referring to the general principles of participation: accountability, transparency, openness, independence of NGOs;
- Showing how NGOs in their different capacities (in service provision, awareness-raising, advocacy etc.) enhance the quality of decision-making process and its outcomes;



- Showing what should be the responsibilities of the authorities in fostering participation.

It can also be used as a **monitoring and planning tool** for mapping the levels of engagement, assessing participation at all stages of the process and planning of future policy processes. Its content (steps of decision-making, level of engagement, roles of NGOs and public authorities, suggested tools and mechanisms of participation) can offer an invaluable aid for assessing the policy processes in a systematic way. As the Code features the MATRIX of participation – showing different levels of participation in relation to each of the steps of the decision-making process in a form of a table – it can also be used to chart the participation process in a very graphic way.

Several NGOs across Europe have already used the Code in its advocacy activities and promoted it widely among both NGOs and public authorities. Slovene CNVOS, for example, organised the international conference on The Code during the Slovene chairmanship of the CoE Council of Ministers,

implemented a series of local and national awareness-raising events for NGOs and public authorities, and was involved in two regional projects promoting the Code in Serbia and Montenegro, which were supported by the European Commission. More importantly, the project in Montenegro (implemented in 2011 and 2012 in cooperation with Montenegrin Center for development of NGOs) resulted in the government's adoption of **Regulation on the manner and procedure of cooperation of government agencies and non-governmental organisations and Regulation on procedure and methods of public consultations in preparation of legislation** – thus leading to concrete improvements of mechanisms for participation in the decision-making process.

CONCLUSION

The Code of Good Practice for Civil Participation in the Decision-making Process aims at facilitating NGO participation in the political decision-making process. The Code is not a legally binding documents but it is adopted by consensus of 47 member countries of the Council of Europe. The objective of the Code is 'to contribute to the creation of an

enabling environment for NGOs in Council of Europe member States'. The Code can be considered a set of principles, guidelines, tools and mechanisms for civil participation in the political decision-making process. In addition, the Code can be applied as a tool for NGOs in their dialogue with parliament, government and public authorities.

The Code outlines six different steps of decision-making process including i) agenda setting, ii) drafting of policy, iii) decision-making, iv) implementation of policy, v) monitoring and vi) reformulation of policy. The nature of NGO participation can include information, consultation, dialogue or partnership.

The Code establish the responsibilities of public authorities such as providing access to information, transparency of procedures, responsiveness of public authorities as well as providing resources to enable active participation of civil society. From the position of the NGOs, the Code can be applied as an advocacy tool and for monitoring and planning participation initiated by the government.

CONCLUSION

Lis Dhundale

The partner interventions at the seminar clearly demonstrated that the involved countries are facing key barriers to the enjoyment of public participation. The majority of barriers appear to be common in almost all the studied countries. At the same time the papers also bring out positive conditions and examples of practices leading to concrete modes of public participation or conditions vital to ensure public participation. Some of the papers draw attention to general observations which create insights especially into civil society and their roles and abilities to effect changes leading to enhancing public participation. This conclusion is consequently divided into these three main groupings. Finally, the country paper on Niger and the papers in the second part of this publication feed into the final sub theme of this conclusion, that being ways forward.

KEY BARRIERS

The most cited obstacle in all the studies countries refers to countries having ratified some or all the international and regional human rights instruments but lack the national implementation of articles establishing public participation. In addition, ratification

of the remaining international and regional instruments is recommended to be addressed and follow-up mechanisms should be established to ensure respect of legal provisions from international and regional human rights instruments. It is pointed out that further national legislation is often needed to establish how public participation and the rights to freedom of expression, assembly and free access to information should be understood and enjoyed.

Implementation of national legislation is sometimes hindered by bureaucracy. Bureaucratic obstacles can include trivial issues such as lack of commitment from civil servants and lack of coordination between multiple state structures, unfriendly small font size of official reports, lack of online information of on-going legal processes, releasing of information on the Internet or available information not being updated frequently.

Modes of participation are sometimes established and offer meaningful process where people can submit opinions, suggestions and amendments to bills for example.



These are collected and passed to relevant parliamentary committees who consider them in relation to draft laws. Critically, however, this excellent process is not applied in the national budgeting, for example, as the government or parliament is unwilling to debate this issue with the public. In other instances, the institutions and mechanisms acting as modes of public participation are weak and under resourced. At the decentralized level it is sometimes seen that Council Committees are open to the public, while there is no provision for open Local Council Meetings. Finally, consultative bodies are sometimes set up in ways where civil society is the vehicle of civic representation. But when civil society is urban based, not capable of questioning policies, national budgetary processes, etc. and is unable to act in coordination, this mode of participation cannot be exercised.

As expected the country studies highlight that the freedom rights are subject to various ways of restrictions. Freedom of expression including access to information and the independency of the media are brought up as main areas of concern in all country studies.

Access to information includes citizens having the right to request from authorities any official document regardless of the ownership of the document unless there are restrictions provided by law is limited. The media most often do not enjoy independency and are unable to address critical questions of governance. Freedom of expression and access to information are limited through criminal defamation and insult laws or the restrictions can be justified in reference to securing public order, safety and health. In some countries, "Authoritarian reflexes" and a culture of secrecy contribute to a historical limitation of these rights. Freedom of association can be curtailed by restrictive NGO legislation through control of registration, reporting, activities and assets of personnel. The right and freedom to create and operate political parties is another common restriction. When governments restrict the right to assembly this is often explained as efforts to protect law and order.

Another consistent cited obstacle is that marginalized groups are excluded from enjoying public participation affecting women and rural populations in particular; but youth,



persons with disabilities and ethnic minorities are also commonly mentioned. It sometimes means total exclusion and at other times it refers to delay in access compared to urban areas, for example. The studies conclude that women are less represented in decision-making bodies than men and are often victims of discrimination despite gender discrimination being prohibited in the national legislation. Poverty, lack of income, illiteracy, lack of access to education, lack of health, security and poor living conditions are mentioned as other causes of political marginalization.

In all of the country studies, the important role of civil society to act as a vehicle to public participation and to make valid contributions to address and improve human rights is emphasized, but a number of weaknesses often hinders civil society to effectively take on these roles. First of all, civil society organisations are often only present in urban areas and fail to represent the rural population. Internal weaknesses such as organisational governance, management and other similar mechanisms are questioned. The expertise and capacity of civil society is weak. Corrupt practices, self-

promotion of activists and the prevalence of strong leaders lead to an ambiguous view of civil society. Challenges faced by civil society are high staff turnover and limited scope for policy dialogue with government.

At the overall level, the cluster of certain types of civil society organisations occur and a broadening of focus areas is needed to address all issues of concern. Professionalization is another concern. Civil society organisations become dependent on their donors and start acting as professional operators. In this process they not only give up their autonomy of action but such organisations also divert their engagement from activism driven by the wish to improve the living conditions of the general public.

The governments sometimes pose direct challenges to civil societies. They are often supportive of civil society's involvement in service delivery, but NGOs advocating for good governance and human rights are faced with threats and hostility by governments. Another challenge is government controlled media launching campaigns against civil society organisations and other pressure groups.

GENERAL OBSERVATIONS

In countries particularly undergoing transitional processes, the changing contexts can impact civil society; just as civil society can have an impact on the political situation.

The democratization of the political system can provide fertile grounds for the development of the civil society, including adoption of legislation supporting the involvement of civil society organisations in the conduct of public affairs. The involvement in the political sphere is often strong as civil society takes a leading role in initiating the democratic process. Civil society contributes to increased pluralism, accountability and diversity, but this new power force outside party politics can lead to conflict between political and civic actors.

On a different note, it is observed that an important prerequisite to establish public participation is to offer education and information to the public so that they gain knowledge of human rights and how the rights can be pursued. Such educational efforts are often lacking and people are ignorant of their rights and remedies. As a result, civil society sometimes takes on this responsibility or complements state initiatives in this field.

POSITIVE CONDITIONS

Countries in transition can also provide good examples of ways to exercise public participation initiated by interim political authorities by inviting a broad and inclusive participation process in relation to the drafting

of a constitutional declaration to be adopted by a referendum. Subsequently, the interim government might take positive steps to help facilitate public participation in elections. The Internet as well as state and private media can be applied to engage voters education and awareness about elections, information about candidates, broadcasting, advertisements etc. and encourage participation in elections.

The Internet and new media tools such as Facebook, YouTube and blogs contribute positively to the rise of citizens' interest and active engagement in public affairs. They provide information and create broad awareness about what public participation is and become instrumental in creating free and open debate. There are examples of the social media acting as vehicles for exercising public participation by organising and calling for events such as protests, strikes etc. The youth are often behind these types of participation initiatives including organised youth groups, political pressure groups and new political parties enabling people to join in active participation.

Finally, there are cases where legislation has been developed to promote whistleblowing and public participation in the disclosure of conduct adverse to the public interest.

WAYS FORWARD

Civil society holds a key position in providing a vehicle for civic participation but also to advocate for improvement of the freedom



rights constituting public participation. However, this can only happen if civil society is robust in terms of internal capacity and performance as well as legitimacy through well founded representation. The internal life of individual organisations should be based on human rights principles and values. To enhance capacity and outreach of civil society the following initiatives are recommended: i) Capacity building is carried out to enable civil society organisations to build their expertise and enhance the effectiveness of their action, ii) Civil society organisations should develop in-house ethical approaches that promote internal values and practices of good governance and to sharpen their civic commitments, iii) Developing of civil society charters and iv) Civil society should focus on and expand actions in rural areas.

Empowered civil society organisations need to collaborate and address critical issues through a joint strategy driven by an agreed goal. A systematic and effective advocacy strategy can be composed by these components: i) Initiators engaged in capacity building of themselves, ii) Dissemination of information

about the discrepancy of existing critical situations and the demands conforming with the international standards, iii) Formulate the call for change, iv) The initiators reach out to invite individuals and organisations across the political, ethnic and geographic spectrum to build a joint and inclusive coalition/platform, v) Launching a nationwide campaign, vi) Build up a relationship with identified governmental/parliamentary bodies able to affect change, vii) Provide government/parliament with inputs and advocate for demands to ensure progress and quality in decision, law etc., viii) Approach decision makers (e.g. members of parliament, minister) to sensitize on proposed decision, law etc. and ix) Launching another public campaign to advocate for the passing of decisions, law etc. putting pressure on the decision makers.

A code of conduct on how civil participation can take form in political decision-making processes can be used as an instrument either by civil society, parliament or government. Participation can be activated in one or all of the following six steps of the decision-making process including i) agenda setting, ii) drafting of policy, iii) decision-making, iv)



implementation of policy, v) monitoring and vi) reformulation of policy. The nature of NGO participation can include information, consultation, dialogue or partnership. The responsibilities of public authorities can be access to information, transparency of procedures, responsiveness of public authorities as well as providing resources to enable active participation of civil society. NGOs can call for civic participation as an advocacy tool and for monitoring and planning participation initiated by the government.

Tools can assist governments and other state or non-state actors in implementing the right to public participation; Annex 1 presents an example of a public participation checklist based on interpretations of relevant international human rights standards. The checklist acts as a set of key conditions identified to be essential when implementing public participation at the national level. Four civil and political rights from the International Covenant on Civil and Political Rights (ICCPR) constitute public participation, namely, the right to participate in the conduct of public affairs (ICCPR article 25), freedom of

expression (ICCPR article 19), freedom of assembly (ICCPR article 21) and freedom of association (ICCPR article 22). Other human rights instruments also protect these rights. One dimension of the checklist consists of the rights establishing public participation. The second dimensions, "enabling environment", refers to state responsibilities which can be subdivided into direct and indirect participation. A third dimension, "voices and representation", points toward actions by non-state actors which refers to national human rights institutions, civil society, political parties and media. The filled in actions are responsibilities to be applied as guiding principles and conditions. The checklist should be seen as an attempt to develop a set of guided actions leading to enhanced public participation implementation.

NOTES

PUBLIC PARTICIPATION AND DECISION-MAKING IN TAJIKISTAN

- 1 The term 'NCO' or Non-Commercial Organisation is used in Tajikistan instead of Non-Governmental Organisation.
- 2 NGO Sustainable Index. USAID. 2010.

PUBLIC PARTICIPATION IN EGYPT

- 3 This paper was prepared in 2012 and is therefore not reflecting recent developments in Egypt.
- 4 For more information on the newly established parties, please visit: <http://www.eip.gov.eg/Directories/Directory.aspx?id=56&ClickOK=0>

PUBLIC PARTICIPATION IN ZIMBABWE

- 5 This paper was prepared in 2012 and is therefore not reflecting recent developments in Zimbabwe
- 6 Multiple Indicator Survey Report 2009
- 7 Mid-Term Plan 2011-2012
- 8 Research Publication on Citizen Participation in Zimbabwe 2011.

- 9 Consolidated NANGO Northern Region Community Score Card Report 2011.
- 10 World Bank <http://databank.worldbank.org>

PUBLIC PARTICIPATION IN BURKINA FASO, MALI AND NIGER: A COMPARATIVE SYNTHESIS

- 11 Article 28, Constitution of the Republic of Mali (1992).
- 12 Under the form of a loss of job, opportunity, marginalization, etc.
- 13 The turnout of the various countries can be viewed on the site of International IDEA: <http://www.idea.int/vt/countryview.cfm?id=22>
- 14 Source: Drawn from the data compiled by the Inter-Parliamentary Union on the basis of information provided by 189 National Parliaments by 1st April 2013. <http://www.ipu.org/wmn-e/classif.htm>

CITIZEN PARTICIPATION IN NIGER

- 15 This text is a summary of the report which drafted in Niger on the parameters of citizen participation in Niger in 2011.
- 16 Djibo M., *Les transformations politiques au Niger à la veille des indépendances*. Paris: L'Harmattan, 2002.
- 17 Charlick R. *Niger: Personal Rule and Survival in the Sahel*. Westview and Darmouth, Boulder (USA) and Albershot ' (UK) : 1991
- 18 Tidjani Alou M. Niger. Civil society activists reinject politics in public life. In Polet F. , 2007, *The State of resistance*. New York: Zed Book
- 19 Idrissa K. (DIR). *Le Niger : Etat et démocratie*. Paris: L'Harmattan. 2001.
- 20 Yaya, 2011
- 21 See the Parameters of citizen participation in Niger. 2011 One can find their relevant texts which have been reviewed.
- 22 Yaya Assane, *Etat des lieux (mapping) de la société civile au Niger*, Niamey, september 2011 ; 15.
- 23 Tidjani Alou M. Niger. Civil society activists reinject politics in public life. In Polet F. , 2007, *The State of resistance*. New York: Zed Book

APPROACHES TO PROMOTE THE RIGHT TO FREEDOM OF ASSOCIATION: LESSONS LEARNED FROM IRAQ

- 24 Michael Allen, "Iraq's NGO law: rare victory for Arab civil society," **Democracy Digest** (2010), available online at <http://www.demdigest.net/blog/2010/01/iraqs-ngo-law-rare-victory-for-arab-civil-society/>.
- 25 Under the **International Covenant on Civil and Political Rights**, among other treaties, "freedom of association is a right, and not something that must first be granted by the government to citizens." See Public Interest Law Initiative, **Enabling Civil Society: Practical Aspects of Freedom of Association** (2003), p. 14.
- 26 See Jamal Jawahiri, **Lessons from the NGOs Law Campaign in Iraq** (2012), p. 3.
- 27 The Iraqi al-Amal Association is one of the oldest and largest independent NGOs in Iraq. For more information about them, visit <http://www.iraqi-alamal.org/>.
- 28 See, for example, Leila Fadel, "Iraq breaks record for longest time with no government," **Washington Post** (1 October 2010), available online at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/30/AR2010093006546.html>.

ANNEX I

WORK IN PROGRESS:

CHECKLIST ON PUBLIC PARTICIPATION

Anette Faye Jacobsen

	ENABLING ENVIRONMENT	VOICE AND REPRESENTATION
Public Participation	<p>Direct Participation</p> <ol style="list-style-type: none"> 1. Equal access and opportunity to take part in public affairs is secured in the constitution or other statutes (at all levels) for every citizen without discrimination. 2. Authorities (at all levels) guarantee protection of candidates running for elected posts at all levels from impediments to prepare and conduct campaign activities, and secure that conditions for and restrictions on seeking and receiving elected posts are established by law and based on reasonable and objective criteria. 3. The powers allocated to elected representatives are in accordance with constitutional provisions. Conditions for holding elective public office and for being removed from such posts are reasonable, non-discriminatory and established by law. 	<p>National Human Rights Institutions</p> <ol style="list-style-type: none"> 1. The NHRI secures information and training on the rights to participation including access to consultation with a particular focus on vulnerable people or groups facing special challenges 2. The NHRI facilitates consultation and dialogue between relevant government or other authorities and stakeholders on issues and decisions relevant to them. 3. The NHRI reports to relevant international monitoring bodies about challenges to public participation rights including access to consultation, and offers advice and coordination to civil society and the public on mechanisms for supplementary reporting.

<p>4. Positive measures ensure effective equal access to direct public participation, including to public campaign means and media, in particular for groups facing special challenges, including women, people with disabilities and migrant workers.</p> <p>5. Consultation measures are established to ensure stakeholders' opportunity to participate in public affairs relating to them, including people with disabilities, migrant workers, as well as women, older persons, ethnic, religious, linguistic minorities and indigenous peoples. Individuals and groups are also consulted in decision processes relating to vital resources, such as water, food, housing including forced evictions, health facilities, primary education, and cultural life.</p> <p>6. (Complaint systems and) effective remedies to deal with violations of all rights relevant to public participation are established.</p> <p>7. An independent national human rights institution monitors and advises parliament, government and administrative bodies on legislation and implementation of participation rights and issues.</p>	<p>4. The NHRI secures follow up activities to international observations and recommendations, including through dialogue between stakeholders and government structures.</p> <p>Civil Society</p> <p>5. Civil society organize campaigns and offers training to secure knowledge of and skills in participation, in particular for vulnerable and challenged groups.</p> <p>6. Civil society offers assistance to stakeholders, in particular vulnerable and disadvantaged groups, to engage in dialogue with authorities in decisions making processes pertaining to them.</p> <p>7. Civil society secures monitoring, documentation of violations of the right to direct participation including offers assistance to vulnerable groups in seeking redress for violations of their right to participate and be heard.</p> <p>8. Civil society offers assistance to victims of violations of participation and consultations rights to send in communications to international treaty bodies.</p>
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	<p>8. Government ratify and abide with relevant human rights treaties to protect participation rights including optional communication protocols, secures information about its international obligations herein, and consults with National Institutions and civil society on reporting obligations and processes to regional and international human rights bodies.</p>	
	<p>Indirect Participation (elections of representatives)</p> <ol style="list-style-type: none"> 1. Constitutional provisions and other laws secure a genuine expression of the will of all citizens through free periodic elections. 2. Universal and equal right to vote are provided by law. Effective measures are implemented to ensure free and equal access to voter registration, voter education and voting, including for people with disabilities, illiterate, people in rural areas and other groups facing special challenges. 3. Every voter is free to choose among alternative candidates also from the opposition. (For the entire election) process measures are in place to protect voters against all forms of intimidation or threats and to endorse 	<p>National Human Rights Institutions</p> <ol style="list-style-type: none"> 1. The NHRI coordinates election information and training among civil society groups and other stakeholders, in particular with a view to supporting that political participation can be enjoyed effectively by all citizens. <p>Political parties</p> <ol style="list-style-type: none"> 2. Political parties are multiple and reflect, in totality, different views and policies. 3. Political parties represent, in totality, diversity of religious, ethnic, geographic etc. backgrounds. 4. All political parties, including youths branches, and activists abide by law and respect the rights of others as well as cooperate to quell all forms of

	<p>voters free access to campaign information including a balanced public media coverage.</p> <p>4. Independent and neutral structures in charge of the election process is established. Efficient and impartial election monitoring and means to redress violations on the right to vote are established.</p>	<p>and incitements to harassment and violence.</p> <p>Civil society</p> <p>5. Civil society engages in information and training on indirect political participation supplementary (to government's) voter education, and endeavor that women, minority groups including people with disabilities and other groups facing special challenges have access to such programmes.</p> <p>5. Civil society mobilizes the electorate, in particular under-represented groups, in election processes, and raises funding to support disadvantaged groups' participation in elections.</p> <p>Supplementary election monitoring</p> <p>6 Civil society, including political parties, organize supplementary election monitoring and publish assessment of election processes, in particular with a focus on inclusion of disadvantaged groups' effective equal opportunities to participate in all aspects of the election as well as their access to effective remedy.</p> <p>7. Civil society, including political parties, develop contacts and networks to regional and international bodies competent to support electoral monitoring</p>
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<p>Freedom of Expression, Assembly and Association</p>	<ol style="list-style-type: none"> 1. Freedoms of expression, assembly and association are guaranteed by law. 2. Restrictions on freedom of expression, assembly and association are provided by clear law, and are necessary in a democratic society to protect rights of others, national security, public order, health or morals. 3. Monitoring mechanisms are respected, and effective and accessible remedies are available to victims of rights violations. 4. Positive measures secure that no one is discriminated in relation to freedom of expression, including minorities and disabled persons, and that free flow of information is not hampered either by public or private actors including monopolized media. 5. Positive measures secure that everyone has a right to join a trade union and that trade unions can form national federations and freely pursue the interests of their members including through the right to strike. 6. No limitations on the right to join trade unions are allowed other than those prescribed by 	<p>National Human Rights Institutions</p> <ol style="list-style-type: none"> 1. The NHRI secures that information and training programmes are available to human rights defenders in all parts of the country. 2. The NHRI secures and coordinates reporting on the rights and protection of human rights defenders to international monitoring bodies, and follow up on observations and recommendations promoting the working conditions for human rights defenders. <p>Civil Society</p> <ol style="list-style-type: none"> 3. Civil society engages in ongoing monitoring of freedoms of expression, assembly and association and access to information. 4. Civil society, media, academics etc. assist vulnerable and marginalized groups' access to media. 5. Civil society prepares information and conduct education on capacity building for civil society groups.
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	<p>law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.</p>	<p>Media</p> <ol style="list-style-type: none"> 6. A diverse and accessible media landscape exist including a variety of media representing different ideas and societal groups including linguistic, religious and national minorities, indigenous peoples and vulnerable segments. 7. Media adopt media codes of conduct and enforceable reply and redress mechanisms.
<p>Access to Information</p>	<ol style="list-style-type: none"> 1. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through whatever means. 2. Access to information standards, systems and procedures are developed for at all levels of government and for all public entities. 3. Public agencies secure pertinent and accessible information to the public relevant to the effective enjoyment of all applicable human rights. Measures are undertaken to provide relevant information to groups with specific communication challenges, including people 	<p>National Human Rights Institutions</p> <ol style="list-style-type: none"> 1. The NHRI coordinates information and training activities to secure that individuals, civil society and other interest groups including media can effectively enjoy access to information at national as well as local levels. 2. The NHRI facilitates consultations and dialogues between government structures and civil society including media to promote adequate systems and good practice for access to information. <p>Civil society</p> <ol style="list-style-type: none"> 3. Civil society offers information and training about how to access

	<p>with disabilities, and minority languages –speakers, about their rights.</p> <p>4. Parliamentary sessions, local government councils and other state institution meetings are open and accessible to the public.</p>	<p>relevant information with a special focus on reaching out into remote areas and vulnerable and challenged groups.</p> <p>4. Civil society provide assistance to individuals or groups in need to access information concerning matters or cases of relevance to them.</p> <p>Media</p> <p>5. Media adopts guidelines to secure protection of sources and whistleblowers.</p>
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ABOUT THE CHECKLIST

The Danish Institute for Human Rights prepared a draft of a checklist on public participation. The checklist is structured as a matrix where the horizontal dimension is divided into the four civil and political rights from the International Covenant on Civil and Political Rights (ICCPR) constituting public participation, namely, public participation (ICCPR article 25), freedom of expression (ICCPR article 19), freedom of assembly (ICCPR article 21) and freedom of association (ICCPR article 22). The vertical dimension is divided into “enabling environment” referring to state responsibilities which is subdivided into direct and indirect participation. The second column is entitled “voices and representation” pointing toward non-state actors which refers to national human rights institutions, civil society, political parties and media.

The filled in text are proposed responsibilities within the “enabling environment” such as (1) “Equal access and opportunity to take part in public affairs is secured in the constitution or other statutes for every citizen without discrimination” and (7) “an independent national human rights institution monitors and advises parliament, government and administrative bodies on legislation and implementation of participation rights and issues.” The identified responsibilities are drawn from hard and soft law in the UN human rights bodies. Examples of suggested actions in “voice and representation” are (1) “the NHRI secures information and training on the rights

to participation including access to consultation with a particular focus on vulnerable people or groups facing special challenges” and (5) “civil society organise campaigns and offers training to secure knowledge of and skills in participation, in particular for vulnerable and challenged groups.” The suggested actions either refer to soft law in the UN human rights bodies or are inspired by those.

The checklist is neither exhaustive nor final but should be seen as a step on the way to establish the most urgent responsibilities and actions needed to establish public participation at the national level. In the efforts to do so in a convincing manner the recommendations are based on or inspired by international human rights instruments or interpretations of those.

ABOUT THE CONTRIBUTORS

Anette Faye Jacobsen holds a Doctorate in Legal and Political History from University of Copenhagen, Denmark where she has also taught History of Human Rights. She has worked at the Danish Institute for Human Rights for many years, among other positions there she was a Director of Education for a number of years, and is currently serving as researcher and senior advisor. She has written on themes including democracy, rights and citizenship, children rights issues, public participation and human rights as well as published a number of educational text books, handbooks and other information resources on human rights.

Augustin Loada is a Professor of public law and political science at the University of Ouagadougou, and the Executive Director of the Center for Democratic Governance (CGD), an independent institution, which aims to promote democracy and good governance in Burkina Faso and its sub-region. He graduated from the Institute for Political Studies, Bordeaux (France) where he received his Ph.D in 1994.

Jakob Kirkemann Boesen is the Department Director of the Freedom and Civic Participation Department at the Danish Institute for Human Rights where he has been employed since 2003. Prior to becoming the Department Director in 2010, Jakob was the Senior Programme Advisor at the Malawi Office of the President and Cabinet. His specializations lie in programme management and design, strategic planning and facilitation, monitoring and evaluation, and policy and political analysis. He holds a European Masters Degree in Human Rights and Democratisation from the University of Padua, Venice, Italy and the University of Essex, England and a Post-Graduate Degree from the Institute of Anthropology at the University of Copenhagen.

Kareem Elbayar was, at the time of writing, a Legal Advisor for the Middle East/North Africa at the International Center for Not-for-Profit Law (ICNL). Since 2007, Mr. Elbayar guided ICNL's civil society law reform programmes in the Arab world. ICNL is the leading source for information on the legal environment for civil society and public participation.

Mr. Elbayar specializes in civil society law in the Middle East and North Africa region and has worked in Iraq, Egypt, Bahrain, Jordan, Lebanon, Libya, Morocco, Palestine, the United Arab Emirates, and Yemen. He is now the Programme Manager for Civil Society and Reconciliation at the United Nations Office for Project Services in Baghdad, Iraq. He holds a Juris Doctorate and a Master of Arts in International Affairs with honors from the George Washington University.

Lis Dhundale holds a master degree in Social Anthropology. She work as an advisor at the Danish Institute for Human Rights where she has been employed since 1995. Her specialization lies in the field of public participation including concept development based on interpretation of international human rights standards and development of public participation audits and platforms as well checklists to be applied in implementation of public participation. She has been engaged in project management of partnerships in MENA, Southern Africa and East Asia. The partners included civil society organisations, network and centres and the cooperation targeted the empowering of the partners and their promotion of human rights.

Mahaman Tidjani Alou has his Doctorate in Political Science and holds accreditation to supervise research at Montesquieu University, Bordeaux IV. He is an associate professor of Political Science at the University of Niamey, where he serves as Dean of the Faculty of

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Marie Villumsen is Project Manager for the Southern African region at the Danish Institute for Human Rights. She works within the Freedoms and Civil Society Department and specializes in local empowerment programs. Prior to joining DIHR in 2009, Marie worked with Médecins Sans Frontiers and held four field placements in North Sudan, South Sudan, Indonesia, and Zimbabwe where she developed human resource, administration, and finance policies and systems. She graduated with a Master of Arts in African Studies from the University of Copenhagen in 2011.

Muatar Khaydarova is a recognized Tajik lawyer, researcher, trainer, and senior manager with over 20 years of experience working in Central Asia, especially Tajikistan and Kyrgyzstan. She is an expert in analyzing regional legislation, strengthening civil society, and defending human rights protections as well as the right to freedom of association and assembly for increasing citizens participation on decision making and is the author of more than 50

publications on civil society, human rights, policy and protection in Central Asia. She holds a Diploma Degree in Oriental Studies from the Tajik State National University and a Ph.D in Law from the Institute of State and Law at the Russian Academy of Sciences.

Most recently, Dr. Khaydarova was the Director and Senior Legal Representative of the ICNL Tajikistan, and Senior Legal Consultant for the ICNL Kyrgyzstan. Currently, she is Founder and Board Chair of Society and Law (SL).

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Rowida Omar, at the time of writing, was a political activist working as Projects Director for the Egyptian Democratic Academy. She graduated from Faculty of languages and has previously worked as a translator.

At EDA, Rowida worked on monitoring the performance of the members of the parliament and writing a weekly report in two languages. In addition, she is a member of the 6th of April movement and was responsible for the political education of the movement in East Cairo sector.

Tina Michieli holds a university degree in International relations (University of Ljubljana) and works in Slovene Centre for information service, co-operation and development of NGOs since 2004. Her work has included project management, networking, capacity-building for NGOs and development of international and EU projects. She was engaged in the work of several European NGO networks on different topics of participation and strengthening the civil society in the EU and the Western Balkans. She was also one of the drafters of the council of Europe's Code of Good Practice for Civil Participation in the Decision-making process.

THE DANISH INSTITUTE FOR HUMAN RIGHTS

Is public participation a right? If so, which international human rights conventions protect this right? What kind of restrictions limit the enjoyment of public participation? Are restrictions in public participation the same across various regions in the world? Does protection in legislation of public participation mean that people actually are able to exercise it freely? Are there good examples of governments inviting to public participation? Are such examples having any affect on political decisions? Are civil society organizations vehicles for people wishing to engage actively in the conduct of public affairs? Are civil societies able to operate freely and to voice critic? If not, in which ways do they face limitations? Are there examples of civil societies improving the critical conditions? What kind of systems and procedures can decision makers follow if they wish to invite for public participation?

This publication is a collection of public participation audits carried out in 7 countries. The audits look into the these and other questions by examining various aspects of public participation. New perspectives on ways forward are presented in additional papers.



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