**Regional consultation on draft guidelines**

**on the effective implementation**

**of the right to participate in public affairs**

**for Western Europe, Eastern Europe, Central Asia and other States**

 **Geneva, Switzerland**

**9 and 10 April 2018**

**Summary of the discussions**

**Welcome, introduction and opening remarks**

In her opening remarks, Ms. Mona Rishmawi, Chief of the Rule of Law, Non-Discrimination and Equality Branch, Office of the High Commissioner for Human Rights, highlighted some of the key issues from the previous four regional consultations. She described the right to participate as a full-fledged right and an enabler for other human rights, but noted that the full and equal implementation of this right remained a challenge in all regions. She highlighted that participation was a crosscutting issue for the effective implementation of the SDGs and described the full enjoyment of the right to participate as the most effective antidote to alienation and a means to enhance people’s trust in State institutions. She concluded by emphasizing that the right to participate did not concern only electoral processes, but also the various stages of public decision-making.

**Session 1: The right to participate in public affairs: Scope, content, and related guidance at the international, regional and national levels**

The session was opened by Mr. Olivier de Frouville andMs. Ilze Brands-Kehris, members of the Human Rights Committee.

Mr. de Frouville opened the session by referring to the General Comment on Article 25 of the International Covenant on Civil and Political Rights and said that the right to participate, contained in Article 25, lay at the core of democratic government. He noted that this right could not be dissociated from freedom of expression, freedom of association, and the right of peaceful assembly. He reminded participants about the obligation for States to take measures to ensure that all people were able to freely exercise their rights, taking into account language barriers, restrictions on freedom of movement, disabilities, and other obstacles. He indicated the need for a more detailed account of States’ implementation of Article 25 and related standards. Presenting the findings of his study on the right to participate in public affairs in Western Europe, he offered examples of positive practices in relation to inclusive decision-making processes, the use of new communication technology to make participation more effective, and in relation to participation at the supranational level, including within international organizations. He concluded by stating that both the material and personal scope of Article 25 seemed to be expanding to include new forms of participation beyond elections and all people rather than only “citizens”, as participatory initiatives increasingly aimed to involve all individuals affected by the decisions at stake.

Ms. Ilze Brands-Kehrisreferred to General Comment on Article 25 of the ICCPR as a source of the minimum standards on participation and said that those minimum standards should be expanded. She explained that because human rights treaties were living instruments the content and scope of Article 25 had been developing. She discussed some regionally specific challenges to equal participation, and barriers faced by specific individuals or groups, such as persons in pre-trial detention, persons with disabilities, indigenous peoples and women, and suggested ways to overcome them. Ms. Brands-Kehris explained that participation required providing real opportunities to influence decision-making and shared concrete examples from the implementation of the Framework Convention for the Protection of National Minorities which proved successful in strengthening participation of minorities, including through voting arrangements, consultative mechanisms and access to public services positions.

During the ensuing discussion, participants recalled the importance of considering the right to participate as a fully-fledged right. Commenting on the expanding material and personal scope of the right to participate in public affairs, participants provided examples of States in the region allowing the exercise of voting rights of citizens residing abroad and providing avenues for all residents to participate in political life beyond elections.

**Session 2: Ensuring an enabling environment for the effective exercise of the right to participate in public affairs: pre-requisites**

The session was opened by Ms. Slavica Banić, former Justice of the Constitutional Court of Croatia and former Substitute Member of the Venice Commission, and Ms. Tolekan Ismailova, Chairwomen, Human Rights Movement Bir Duino.

Ms Banić opened the session by stressing the importance of the rights to freedom of association and expression as enablers of participatory democracy and as an indication of the determination to respect the rule of law. She stated that the first condition for the effective exercise of the right to participate and other associated rights required their enshrinement in the constitution, as well as the existence of a coherent and harmonized legal and policy framework to enforce them in practice. She offered examples of States in the region providing complaint mechanisms in their constitutions for the protection of public freedoms and for the constitutional review of legislation. She further discussed the importance of independent and accountable institutions, such as ombudspersons and commissioners, for the effective protection and promotion of the right to participate and public freedoms. Ms. Banić also highlighted the role of an independent judiciary and access to justice guarantees as essential to protect human rights and against the discretionary use of power.

Ms. Tolekan Ismailova provided examples of cases in the region where the civic space had been narrowed in recent years, thus heavily impeding the effective exercise of the right to participate. She explained how undue restrictions on freedom of expression, both online and off-line, gave the authorities a broad power to silence dissent. She also discussed the extent to which the functioning and independence of civil society organizations were threatened, including by placing restrictions on access to funding. As essential elements of an enabling environment, Ms. Ismailova considered the importance of adopting national anti-corruption legislation and of domesticating core human rights treaties. She also noted the need for any measures to combat violent extremism and terrorism to be firmly grounded in the respect for human rights. Lastly, she stressed the importance of creating national institutions, such as the Ombudsperson, in compliance with international standards and principles.

Participants discussed the importance of recognizing human rights defenders, including LGBT activists, as contributors of the civic space. In this regard criminalization of human rights defenders, prosecution of political opponents, particularly ahead of elections, and restrictions on activities and access to funding were identified as main challenges to civil society participation. The importance of human rights education for all stakeholders, including judges, was said to enable individuals to exercise the right to participate, and to ensure effective access to justice. Access to information guarantees were said to be critical for effective participation and for transparent and accountable decision-making processes.

**Session 3: Enjoyment of the equal right to participate in public affairs by all: overcoming challenges, creating opportunities and sharing good practices**

This session was opened by Ms. Drude Dahlerup, Professor of Political Science at Stockholm University and honorary professor at Roskilde University, Mr. Maksim Larionov, Deputy Head of Department of social policy and rehabilitation of the All-Russian Society of the Deaf, Mr. Dan Doghi, Chief of the Contact Point for Roma and Sinti Issues at OSCE/ODIHR and Mr. Karl Andreas Sprenk, Youth Policy Advisor for the National Youth Council of Estonia,

Ms. Dahlerup discussed participation of women in public affairs. She identified the need to shift the focus from whether women were qualified to hold political positions, to building gender sensitive institutions and electoral systems, emphasizing that sexual harassment inside parliaments remained a widespread practice and needed to be addressed. Discussing different types of electoral gender quotas, she explained that for quota systems to be effective in overcoming discrimination and structural barriers, a contextual diagnosis was needed to understand why women, especially from marginalized groups, were under-represented. Ms. Dahlerup also emphasized the importance of sanctions for non-compliance and listed various examples of effective sanctions including rejection of party lists, financial penalties, and financial incentives.

Mr. Larionov focused his opening remarks on the right to participate of persons with disabilities. He offered an overview of the legal framework in his country protecting persons with disabilities’ equal right to vote and be elected, including by ensuring special assistance and voting accessibility measures. Referring to certain limitations that persons with disabilities still encountered, he explained how barriers continued to prevent persons with mental and behavioral disorders from entering the public service. Mr. Larionov concluded by stressing the importance to ensure participation of persons with disabilities in all phases of the electoral process, including in pre-electoral campaigns, and suggested that the exchange of good practices between States on the effective implementation of relevant provisions of the ICCPR and other relevant human rights instruments should continue.

Mr. Doghi explained that, in the various European programs and initiatives for Roma inclusion, their right to participate had received less attention than access to economic, social and cultural rights. He mentioned how discrimination and stigma against Roma often went unchallenged, and the extent to which this impacted on their ability to participate. Referring to additional barriers and challenges that persisted, such as lack of access to identification documents, manipulation of vote and family voting, weak capacity to run as candidates, and lack of civic education, he also stressed the importance of eliminating patronizing attitudes. He recommended instead the creation of an environment where Roma people could participate meaningfully, including through early involvement and scaling up systems of minority representation.

Mr. Sprenk spoke about the demands of young people to participate beyond the electoral process, invarious stages of legislative and policy decision-making, and provided examples of national reforms initiated by youth-led organizations. He explained the importance of removing barriers to their participation**,** such as combatting discrimination based on age and assumptions on young peoples’ ability to participate in public affairs. He also discussed positive examples showing how youth were able to participate as equal partners from the early phases of decision-making processes. Finally, he explained that the development of a network of youth councils provided proper channels to influence municipality councils’ agendas.

During the following discussion, participants highlighted the importance of gathering data on intersectionality in order to design appropriate measures to address barriers to participation. They argued that the proper realization of the right to participate provided a means to combat marginalization and to lift people out of poverty. Examples were mentioned where progress had been made in advancing the representation of women and other marginalized groups through the implementation of appropriate quota systems. Participants discussed the importance of intra-group pluralism and diversity and the need to allow different voices representation within marginalized groups. They highlighted the specific obstacles faced by persons with intellectual or psychosocial disabilities in the exercise of the right to participate in public affairs, for example in relation to their right to vote and legal capacity restrictions. In addition to an adequate legal framework, the role of institutions was said to be necessary to go beyond tokenism and to achieve meaningful and equal participation, including through e-participation.

**Session 4: Various forms and levels of participation, including emerging new forms**

The speakers for this session were Mr. Anthony Zacharzewski, President of the Democratic Society, Mr. Miguel Arana Catania, Director of Citizen Participation in the City Council of Madrid, Ms. Veronica Cretu President of the Open Government Institute, Mr Martin Skalsky (Czech Republic), Executive Director, Arnika - Citizens Support Centre, Prague, and Ms. Helene Hahn, Project Lead of Open Knowledge Foundation in Germany.

In his presentation, Mr. Zacharzewski suggested the need for a cultural shift in the government towards openness and explicit support to innovation and new forms of participation. He discussed small scale mechanisms that pushed participatory decision-making into local government, which were then taken forward and enlarged as part of long-term and sustained participatory initiatives. He recommended that new technologies should be embraced and that it should be recognized that people participate in multiple levels of government and as part of different communities that reflected non-standard/transnational communities and communities of interest. In this context, the preservation of the civic space was said to be critical. He also recalled that democracy was a shared endeavor that should combine citizens’ initiatives, government’s actions and the space created by new technologies. Finally, he suggested that the guidelines should have a forward looking focus and be sufficiently flexible to stand the test of time.

Mr. Arana Catania, described the steps that the city of Madrid had taken using technology to increase participation in decision making. He provided examples of participatory decision-making whereby citizens could submit proposals that went to a vote and were eventually taken forward, of participatory budgeting, as well as of collaborative legislation, where amendments in regulations were published so that citizens could comment on the changes. He identified a bottom-up approach and binding participatory processes as pre-conditions of any decisions made. He also stressed the importance of early civic participation to allow politicians’ agendas to be shaped by the needs of the people. Finally, he expressed the hope that governments would be brave enough to diffuse power and to trust citizens in order to allow for genuine direct participation.

Ms. Cretu presented national practices in relation to ensuring accountability and transparency of public decision-making institutions. She described accountability and transparency as pillars of open government and stressed the importance of problem mapping in any initiatives that aimed at strengthening transparency. She presented the elements of an “ecosystem for transparency” in public institutions which included, for example, a regulatory framework, implementation mechanisms, monitoring and evaluation/impact assessment, and training for the public sector. She explained that the ecosystem consisted of five levels: data transparency, process transparency, strategic transparency, transformational transparency, and radical transparency, and provided examples for each of the levels. Finally she described a transparent government as one that is trusted, accountable, strategic, transformational and sustainable.

Mr. Skalsky shared lessons learnt from participatory environmental decision-making in the context of the implementation of 1998 Aarhus Convention (hereafter “the Convention”). He noted that the essential elements of the Convention were: access to information, participation and access to justice. He highlighted that the right to participate belonged to everyone (individuals, groups and associations) affected, or likely to be affected, by environmental-related decisions. He explained that the Convention required the public to be informed about decision making in an adequate, timely, free of charge, and effective manner, including in relation to activities, procedures and possible implications of decisions. Opportunities to participate were to be provided at early stages, when all options and alternatives were still open and authorities had to explain, in writing, the reasons for accepting or rejecting inputs submitted by the public. He also recognized the importance of establishing independent oversight mechanisms.

Ms. Hahn’s presentation focused on the role of technology and social media to increase participation. She described digital information literacy as the first step to meaningful and informed participation, noting that many people in her country still lacked such literacy and thus, encountered barriers to new forms of participation. She mentioned some examples showing the significant uptake in technologies and digital tools for better participation and the positive developments produced by the introduction of open data laws in many countries of the Region. Noting that democratic government was based on the principles of transparency, accountability, non-discrimination and inclusiveness, she argued that the design and implementation of participatory technologies should follow and incorporate these same principles in order to be effective and meaningful for all. These principles were also said to be a key component of building mutual trust between States and the civil society. She further spoke about the importance of seeking the views of members of the most vulnerable communities when implementing technologies to enhance participation. She concluded by highlighting the need for the safeguarding of personal data while fully respecting the right to freedom of opinion and expression online.

During the discussion, participants exchanged views on the ways in which formal representative democracy could link with new, more direct forms of participation and how to mitigate the risks faced by traditional decision making structures when opening up to direct forms of participation. It was noted that spaces for participation should be based on trust, continuous feedback between participants and authorities, clear and transparent regulatory frameworks and the necessary capacity of civil servants to implement participatory initiatives. Participants noted that civic proactive engagement also depended on the ability to access accurate information in a timely manner. Participants agreed that public participation prevented corruption, and increased transparency, quality of decisions and the protection of public interests. The role of civil society as a watchdog and a protector of whistleblowers was stressed as essential to reduce corruption and to improve transparency. Participants focused on the use of social media and cautioned not to focus on how to regulate the information that is travelling online, but rather on providing people with the right set of skills to receive and impart information on-line. They recalled that technology was not the goal, but a tool to achieve participation, and that open and free technologies were key to achieve this goal. Comments were made on the need not to hold technology to a higher standard than standards in the real world (e.g. online voting held to an unfairly higher standard than voting in the real world). New visual and audio technology was said to facilitate more dialogue and improve inclusion.

**Session 5: The right to participate at the regional and international level, including within international organizations**

The presenters for this session were Ms. Mary-Ann Hennessey, Head of the Civil Society Division at the Council of Europe, and Mr. Patrick Mutzenberg, Director, Centre for Civil and Political Rights.

Ms. Hennessey discussed participation of civil society in the work of the Council of Europe (CoE) and provided an overview of how participation had expanded over the years. She explained the criteria and framework in which the relationship with International Non-Governmental Organizations (INGOs) was operationalized and their contribution recognized in the CoE. The conference of the INGOs was said to provide an opportunity to meet annually and to coordinate on how best to influence processes in the CoE. She recalled that there was no opportunity for a State to veto the participation of an INGO and that legal certainty, room for complaint, a high level of interaction with civil society were guaranteed. Finally, she highlighted the importance of ensuring that freedom of expression and of assembly remained high on the agenda of the CoE and emphasized the role of civil society as watchdog of democracy.

Mr. Mutzenberg made introductory remarks on the right to participate at the international level. He emphasized the role of civil society as a key actor in contributing to the development of norms and standards at the international level and provided examples, including NGO advocacy efforts advocating for the establishment of new Special Procedure mechanisms. Civil society participation was said to be crucial to ensure that international bodies could work effectively, for example through the submission of shadow reports and individual complaints before human rights treaty bodies. Turning to challenges to civic participation at the international level, Mr. Mutzenberg mentioned the negative environment in which civil society operated and provided figures of cases of reprisals against individuals engaging with the UN human rights mechanisms and bodies, including freezing of financial assets, torture and arbitrary detention. Visa restrictions, limited access to international organizations and to information regarding the various UN activities were also said to be barriers for civil society’s participation.

During the ensuing discussion, participants provided examples of some structural changes in regional and international organizations which enabled more civil society participation, in particular for under-represented groups. Participants acknowledged that cooperation and engagement of civil society in the work of human rights mechanisms, including the UPR, was mutually beneficial for States and civil society. The issue of reprisals and the need to better monitor the safety of human rights defenders and CSOs was discussed further.

**Closing session**

During the closing session, participants reiterated some of the main points raised during the discussions, including the need to address and remove both legal and practical barriers to participation, including systemic issues such as corruption. Ensuring inclusive, bottom-up and pluralistic participatory processes from agenda setting to monitoring and implementation, with particular attention to marginalized groups, was said to be not only a matter of rights but a means to get better policy solutions. Participants reaffirmed that new forms of participation should not replace but complement and improve the functioning of representative democracy, and that the basis for legitimacy of deliberative democracy rested on how new forms of participation were designed and implemented. They recalled the importance of constitutional guarantees of minority rights, gender equality, non-discrimination and the right to participate. They also underscored the value of recognizing the impact of multiple forms of discrimination, and the role of civic education, digital literacy and critical thinking to counter the risks related to direct participation. They noted the need to keep the civic space open and safe for all to participate at all levels, and to adopt a broad understanding of the scope and content of the right to participate in public affairs.