**Regional consultation on draft guidelines on the effective implementation of the right to participate in public affairs**

**Economic Commission for Africa (ECA)
Addis Ababa**

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**Summary of the discussions**

**Welcome, introduction and opening remarks**

In his opening remarks, Mr Anand Chand, Officer in Charge, Office of the High Commissioner for Human Rights (OHCHR), Regional Office for East Africa welcomed the request by the Human Rights Council to OHCHR to develop guidelines on the effective implementation of the right to participate, and noted its relevance in the African context. He further noted that the right to participate was inextricably linked to other human rights, such as the rights to peaceful assembly and association, and to freedom of opinion and expression. Finally, he stressed that the challenges African countries experienced in the implementation of the right to participate required practical and effective solutions, as well as strong commitment to promote and protect this right.

In her opening remarks, Ms Nathalie Prouvez Chief, Rule of Law and Democracy Section, OHCHR, noted that political and public participation played a crucial role in the promotion of democracy and the rule of law. She emphasized that the exercise of the right to participate contributed to empower individuals and groups, and was one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination. Ms Prouvez further referred to information and communication technologies, including social media, as tools for people to participate, but raised questions on their accessibility and inclusivity. She referred to Human Rights Council resolution 33/22 mandating OHCHR to prepare draft guidelines on the implementation of the right to equal participation, and recalled that this document would be informed by the discussions held in the regional consultations.

**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 Christof Heyns, member of the United Nations Human Rights Committee. He noted that the exercise of the right to participate allowed people to influence their future and assume responsibility for it, as opposed to being at the receiving end of decisions by others. He described participation as an antidote to alienation, disenfranchisement and lack of sense of agency. He noted that the basis for democracy, the legitimacy of the State and its exercise of power rested on participatory decision-making. He stressed that elections were key, but should be seen only as one step in an ongoing cycle of participation in public affairs, which included different public policy cycles (such as formulation, realization, and evaluation). Mr Heyns stressed the importance of related rights, including the rights to access information, freedom of expression, assembly, association, equality and non-discrimination, and social, and economic rights. He noted that when individuals or even entire sectors of society were marginalized, they were unable to participate and were stuck in a vicious cycle of exclusion. He emphasized the importance given by the Human Rights Committee to the need for all States to take measures to strengthen participation of the most excluded. Mr Heyns emphasized the collective dimension of the right to participate. He concluded by suggesting the two main elements of a proper definition of “participation”: participation as a broad concept; and democratic institutions as “backbone” of any participatory system.

During the discussion, participants agreed that the scope of the right to participate in public affairs extended beyond elections and on the importance for democratic systems to allow for more participation in the public sphere. Participants acknowledged the progress made in Africa in the past 30 years vis-à-vis strengthening democracy, for example by setting presidential term limits, and more generally, through domestication of international human rights norms in national constitutions and legislation. However, it was noted that many States faced obstacles in ensuring an enabling environment for the exercise of the right to participate, including the physical safety of journalists and human rights defenders, as well as in providing marginalized groups with the real possibility to influence decision making processes.

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

This session focused on the normative and institutional frameworks required to ensure the enjoyment of the right to participate in public affairs by all. The speakers in this session were Charles Fombad, Professor of law and Head of Constitutional Law Unit at the Institute for International and Comparative Law in Africa, University of Pretoria; and Pansy Tlakula,, Chairperson of the African Commission on Human and Peoples’ Rights, Special Rapporteur on Freedom of Expression and Access to Information in Africa.

In his introductory remarks, Mr. Fombad highlighted rights that are closely associated with the creation of an enabling environment, in particular: the rights to freedom of opinion and expression, peaceful assembly, education, the right to access information, the right to the truth, to access to justice and to a fair trial. He noted that particular protection vis-à-vis these rights was required for women, children, persons with disabilities, minorities, older persons, migrant workers, homeless people, persons belonging to minorities, indigenous peoples and LGBTI persons. He explained that one of the main causes of the fragility of the human rights protection system was the weak and ineffective normative framework promoting public participation in public affairs. Mr Fombad noted that in most African constitutions, the exact nature and scope of such participation was not clearly defined. Constitutional guarantees were instrumental to prevent arbitrary changes or distortion of the right to participate by parliamentary majorities, to recognize the rights of marginalized groups and to provide avenues for a remedy in case of non-compliance with relevant constitutional provisions. Turning to the necessary elements of an institutional framework to promote the effective exercise of the right to participate, he explained that institutions that were specifically designed to promote public participation were likely to be more efficient when recognized in the constitution.

Ms. Tlakula discussed the positive developments in the region and challenges faced by the African Commission on Human and Peoples’ Rights (the Commission) in the promotion of the right to participate. She started by recalling that this right was entrenched in a number of regional instruments and was dependent on other human rights, such as the right to access to information, the rights to freedom of opinion and expression and freedom of assembly and association. Referring to positive developments in the region, she explained that the Commission expanded the scope of those rights that are necessary to the exercise of the right to participate, more specifically the rights to freedom of opinion and expression and access to information. Referring to the former, she explained that the 2002 Declaration of Principles on Freedom of Expression in Africa encouraged Member States to repeal criminal defamation laws, to promote media independence, to protect journalists from reprisals and to take positive measures to inform and educate the public. With regard to the right to access information, she noted that article 2 of the African Charter recognized it as a stand-alone right (and not as part of the right to freedom of opinion and expression). The Commission adopted a Model Law on Access to information in 2013 setting out the principles that should guide the regulatory framework for the exercise of this right, including the duty of authorities to proactively disclose information, to provide information in an accessible manner, the prohibition of overly broad exceptions justifying non-disclosure of information, and the creation of an independent oversight bod. Ms Tlakula stressed the importance of the protection of whistleblowers as an integral part of any legislation regulating the right to access to information.

During the ensuing discussion, participants agreed that the recognition and protection of the right to access to information was a major tool to ensure the right to participate, including as a means to challenge the opacity of decisions made by private actors performing public functions, such as multinational corporations dealing with environmental issues and land rights. Participants emphasized the need to ensure the enjoyment of economic and social rights, particularly the right to education, as necessary to enhance participation in public affairs. The link between the right to development and public participation was also noted, and the need to ensure participation as we move towards the implementation of the Sustainable Development Goals (SDGs).

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

This session focused on challenges, and ways to overcome them, as well as sharing good national practices, with regard to enhancing the right to participate of various disadvantaged groups. The speakers were Ikponwosa Lauretta Ero, United Nations Independent Expert on the enjoyment of human rights by persons with albinism; Batundi Hangi Vicar, coordinator of the *Foyer de Développement pour l’Autopromotion des Pygmées et Indigènes Défavorisés*; Gogontlejang Phaladi, founder and executive director of the Gogontlejang Phaladi Pillar of Hope Organization; and Yetnebersh Nigussie, co-founder of the Ethiopian Center for Disability and Development and senior inclusion advisor at Light for the World.

Ms. Ero noted that lack of public participation by persons with albinism contributed to their marginalization. She stressed that historically marginalized groups and the poorest have not been able to take part in decision-making, and pointed to the correlation between marginalization and lack of participation. Ms Ero shared several good practices from the region, which contributed to demystify negative stereotypes attached to the marginalized, including: the election of a member of parliament with albinism in Kenya, the appointment of a person with albinism as Deputy Minister in Tanzania, and the commitment of civil society and the Government to the principle of “nothing about us without us” in Malawi. She recalled that special temporary measures were also necessary to reduce underrepresentation and referred to the Regional Action Plan in Africa, as a good policy document on the rights of persons with albinism. Ms Ero recalled that strengthening participation was a long-term process with immediate obligations to act, and, that scarce resources could not be an excuse.

Mr. Vicar discussed the historical exclusion of Pygmies from public participation and from political parties in the Democratic Republic of Congo, including due to lack of quotas for Pygmies in municipal councils, or in political parties. Mr. Vicar also shared some of the positive effects of decentralization on the right to participate of indigenous peoples, including the increased proximity of parliamentarians to marginalized communities and the creation of local fora for indigenous peoples to discuss issues affecting they lives. He underlined the importance of adopting specific legislation promoting public participation of indigenous peoples and, to this effect, discussed opportunities provided by newly introduced legislative initiatives in his country, as well as by the Universal Period Review, to strengthen public participation of Pygmies.

Ms. Phaladi discussed the importanceof meaningful participation of youth in decision-making processes. She recalled that the demographic composition of African societies required young people to be engaged in order to avoid fueling frustrations and disenfranchisement, which in turn might lead to radicalization and extremism. Discussing some of the challenges faced by young people, Ms Phaladi pointed to the inconsistency between the age for voting and running for office, intimidation of young leaders and human rights defenders, and lack of genuine political will to work with young people. She also discussed some good practices/opportunities that proved successful in strengthening youth participation, including human rights education at grassroots level, fair distribution of funding in election period, online campaign mobilizing the youth to engage, youth parliaments and local structures allowing member of parliaments to consult with rural communities.

In her presentation, Ms Nigussie recalled that participation was a right for all but a reality for few and discrimination, particularly for persons with psycho-social disabilities, occurred in many countries in Africa. She added that participation was a key element of the SDGs and their commitment to “leave no one behind”. She highlighted the need for active, meaningful and continued participation of persons with disabilities in-between elections. She discussed the positive impact of quotas for strengthening participation of marginalized groups provided these were accompanied by measures to challenge stereotypes around the ability of persons with disabilities to contribute. Referring to challenges in electoral processes, she mentioned accessibility, including of voting stations and electoral information. She also pointed to the lack of trained electoral officials, and widespread confusion between the concepts of legal capacity and intellectual capacity. Turning to good practices in the region, Ms Nigussie referred to accessible voting stations in Liberia, Ghana and Yemen, the possibility for voting by proxy in Niger, reserved parliamentary seats in Namibia and to the National Council for Persons with Disability in Kenya. With regard to access to public service, she noted that South African labor law allowed two per cent quota for persons with disabilities in all public offices. Ms. Negussie emphasized the need for a radical shift in mindset through the inclusion of the human rights of persons with disabilities in voter/civic education programs and the accessibility criteria as an element for electoral observation bodies to assess free and fair elections.

In the ensuing discussions, participants highlighted the need to provide institutional attention to young people, noting the positive correlation between inclusive institutions and accountability of duty bearers. Economic empowerment of young people and the need to allocate adequate financial resources to allow youth to articulate needs and solutions at the local level were also discussed.

Participants underlined that women were exposed to multiple forms of discrimination and acknowledged that specific challenges often stemmed from gender stereotypes compounded by a misrepresentation of women in the media. It was noted that much work was needed in between elections, including to redefine gender roles, to amend or repeal laws pertaining to inheritance and to remove cultural barriers to women participation in the public sphere, in line with the human rights of women. It was suggested to invest in education/training for the media, empowerment programs/voter education for women at the grassroots level and in the adoption of special temporary measures. Participants emphasized the importance of economic empowerment as a means to address discrimination and provide an opportunity to influence decision-making processes. Moreover, participants suggested that principles such as accessibility of information, reasonable accommodation and protection of minorities were to be enshrined in the constitutions and that the ethnic composition of a country was to be reflected in appointments to public official positions and in the government’s composition.

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

The speakers in this session were Emmanuel Ntakarutimna, former President of the Independent National Human Rights Commission in Burundi; Emmanuel Saffa Abdulai, Executive Director of the Society for Democratic Initiative and Chairman of the Governing Council of the African Freedom of Information Center; Esther Mwaura-Muiru, founder and coordinator of GROOTS Kenya; and Jimmy Kainja, lecturer on media and communications at Chancellor College, University of Malawi.

Mr. Ntakarutimna discussed some of the elements of participatory decision-making in post-conflict situations. Post-conflict initiatives, including transitional justice mechanisms, should provide an open and safe space for a “healing process” for all members of the society, through a multidisciplinary and intercultural approach to participation. He stressed the importance of ensuring accountable and transparent legislative and policy making processes, particularly in the drafting of legislation governing the protection of public freedoms and media regulation. Mr Ntakarutimna recalled that independent national human rights institutions should have the capacity to monitor and report on human rights violations and to receive complaints, including for violations of the right to participate, particularly of marginalized groups. He further stressed the importance of building the capacity of historically marginalized groups to understand, promote and defend rights and those of others.

Mr Abdulai discussed good practices in the region to ensure accountability and transparency of decision-making institutions. He explained the extent to which freedom of information laws were instrumental to hold government accountable. He also explained that concerns regarding accountability often created tensions between civil society and the government. Mr Abdulai shared some examples of how legal instruments on access to information were used to obtain the disclosure of information on decisions made by private actors, in particular in the fields of development and extractive industries. In this respect, access to justice was critical. He noted positive developments in Nigeria and Ghana where accountability measures were enshrined in public procurement laws. He commended the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, particularly regarding the narrow definition of security exemptions as a legitimate ground to restrict the right to access information.

Ms. Mwaura-Muiru discussed the participation of people living in urban slums and rural areas, particularly women, in the formulation, monitoring and implementation of policies and legislation.She stressed the need for women living in poverty to participate meaningfully and for governments to deliver on their obligations ‘beyond ticking the box’. She further noted that 16 articles in the Kenyan constitutions spoke to the issue of participation, thus providing a strong legal framework for the implementation of the right to participate in national laws and policies instruments, including the 2016 Public Participation Guidelines. Central to the those legal and policy instruments was the principle of citizens as drivers of public participation, thus shifting the perspective of people living in poverty from vulnerable and passive recipients of services to empowered agents for development. She explained that the shift was made possible through, *inter alia*, access to timely and relevant information, giving communities enough prior notice of the consultation process, enhancing capacities to understand the political discourse, the direct engagement with duty bearers and the support of candidates from poor communities, which ultimately created a sense of ownership and accountability of decision-making processes. Ms Mwaura-Muiru recommended that allocation of budget and donor grants take into account the ability of grassroots communities to organize themselves and build their own agency.

Mr. Kainja discussed opportunities and challenges offered by technology to strengthen participation. Describing the situation in Malawi, he indicated that technologies, especially internet and social media, provided the space for people to access information and act as an organizing force. However, he stressed that technology was to be considered as an enabler and not an end in itself. Mr Kainja emphasized that internet shutdowns, particularly during elections, prevented people from accessing information when it was mostly needed and was often used as a means to silence dissenting voices. Turning to the issue of accessibility and affordability, he noted that technology today remained a luxury for the privileged few, often located in urban areas. He highlighted the need for African governments to improve access to new technologies both qualitatively and quantitatively and for civil society organizations to advocate for equal access to new technologies.

During the ensuring discussions, participants noted that in many countries, including Kenya, the source of a comprehensive legal and policy framework on public participation stemmed from the compelling obligation to protect the right to participate in the constitution. It was noted that in West Africa, people living in rural areas seemed to be increasingly aware of their role in ensuring good governance.

Participants stressed the importance of including women in all peace and security processes in line with Security Council resolution 1325. They emphasized that political and electoral processes were the “building blocks” of participation and should capitalize on adequate structures, tools and enabling environment. Participants stressed the need for ordinary citizens to understand the link between their right to participate and the importance/advantage of participating. Building political agency and fostering a “culture of participation” within local communities was identified as crucial for the democratization of local government and inclusive decision making.

Participants noted that transparency and accountability should apply to the appointment of all officials and government positions at all levels, including at regional and inter-governmental levels. Examples were given where local communities had contributed to mapping the implications of extractive industries’ activities and therefore to gathering the information necessary to hold decision-makers to account. The experience of open government partnerships with civil society was also considered a good practice.

Participants recalled that governments bear the responsibility to protect the right to access to information online and to protect journalists and bloggers from attacks and reprisals, including arbitrary arrest for expressing their opinions. The need to repeal laws allowing internet shutdown and filtering was stressed, as it amounted to violating the right to freedom of opinion and expression. Participants suggested strategic litigation to promote the right to internet as an element of the right to freedom of expression. Participants underscored that States should ensure genuine competition in the telecommunication market to increase affordability and accessibility of new technologies.

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

Discussing some positive experiences with regard to the participation of civil society in the work of the Commission, Ms. Tlakula recalled the great number of civil society organizations enjoying observer status. She highlighted that observers are given opportunities to influence the agenda of the Commission, including through the presentation of the deliberations adopted by the NGO forum before the Commission at its opening session. Several initiatives by the Commission, including the drafting of Guidelines on Access to Information and Elections for Africa and of Principles and Operational Standards for the Policing of Assemblies by Law Enforcement Officials in Africa were developed following a participatory process. Ms Tlakula recalled the importance for the Commission to maintain its independency and impartiality and yet to work collaboratively with all relevant stakeholders.

John Ikubaje**,** Political Officerin theDepartment of Political Affairs at the African Union Commission, stated that the African CharteronValues and Principles of Public Service and Administration and the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development placed specific emphasis on the promotion of the right to participate. However, he noted that challenges remained in their implementation. Turning to participation in the AU, Mr Ikubaje acknowledged the criticisms vis-à-vis the little space for civil society in the work and activities of the AU, as well as the opacity in the appointment process of commissioners. However, he noted a current trend towards a paradigm shift at AU level, which manifested itself, for example, in the establishment of the African Union High Council of Local Authorities. The AU ECOSOCC and the Citizen and Diaspora Engagement Organization were also mentioned as good examples aimed at strengthening the involvement of civil society organizations. He further pointed to the lack of participation of African States in the work of the UN Security Council and of equal representation in the appointment of civil servants at international organizations. He concluded by stressing the importance of institutions allowing the inclusion of all voices and ensuring accountability in policymaking, implementation and evaluation at all levels.

In the ensuing discussions, participants recalled the essential link between participation of civil society organizations in inter-governmental organizations and granting of the observer status. In this context, they discussed the Socio-Economic Rights and Accountability Project (SERAP) case before the African Court on Human and People over a corruption case, in which the Court concluded that it had no jurisdiction to render an advisory opinion on the SERAP’s request because the organization did not have an observer status with the AU. Participants emphasized that participation in regional and international organizations should be strengthened and suggested that the UN system, including human rights monitoring mechanisms should allow greater participation in their activities.

**Closing session**

During the closing session, participants reiterated some of the main points raised during the discussions, including the need to promote public participation at all levels, to strongly commit to eliminate discrimination to guarantee the effective enjoyment of the right to participate, the importance of a safe and inclusive environment in which public freedoms are promoted and protected, the role of education to empower individuals, particularly the most marginalized, accessibility and affordability of new technologies, and the requirement of transparent and accountable democratic institutions.

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