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

**Economic Commission for Latin America and the Caribbean** **(ECLAC)
Santiago, Chile**

**13 and 14 June 2017**

**Summary of the discussions**

**Welcome, introduction and opening remarks**

In his opening remarks, Mr Antonio Prado, Deputy Secretary of Economic Commission for Latin America and the Caribbean (ECLAC), stated that Agenda 2030 was part of the solution to the current world situation. Equality, and environmental sustainability were recognized as guiding principles of Agenda 2030. He highlighted that sustainable development was only possible if it was based on human rights. Sustainable Development Goal 16, and its target of ensuring responsive, inclusive, participatory and representative decision-making at all levels, were key to achieving sustainable development.

In his opening statement, Mr Amerigo Incalcaterra, Regional Representative for South America of the Office of the High Commissioner for Human Rights (OHCHR), stated in his speech that participation was essential for democratic societies and the rule of law. He underscored that, without citizen participation, public policies lose their validity and democracy suffers.

In her opening remarks, Ms Nathalie Prouvez, Chief, Rule of Law and Democracy Section, OHCHR, pointed to the need to ensure effective implementation of the right to participate in public affairs, and to overcome challenges in the enjoyment of this right, particularly for vulnerable groups such as indigenous peoples, migrants, people with disabilities, and others. She stated that technology had made it possible to reduce some of the barriers to participation. She referred to Human Rights Council resolution 33/22, which requested OHCHR to prepare draft guidelines on the implementation of the right to equal participation, and emphasized that the Santiago meeting was part of the regional consultation process.

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

Mr Fabián Salvioli, former Chairperson of the Human Rights Committee, opened the session. He stated that the right to participation was at the basis of the enjoyment of all human rights, including economic, social, and cultural rights, and that it was closely linked to accountability. He recalled that the right to take part in public affairs could be subject to conditions provided, these conditions were objective and reasonable. Recalling his study,[[1]](#footnote-1) Mr Salvioli referred to some challenges for participation in the Americas, for example restrictions to voting rights for persons deprived of their liberty and lack of policies for those affected by multiple forms of discrimination. He also recalled good practices, such as the existence of access to information laws in most countries of the region and the fact that elections in the region were generally by universal suffrage and secret vote.

In the discussion that followed, participants recalled that the right to participate in public affairs went beyond the right to vote and to be elected and included being able to participate in regular decisions affecting peoples’ lives. Participants mentioned that administrative formalities sometimes acted as barriers to direct participation, and referred to obstacles for independent candidatures and popular consultations. Participants also mentioned obstacles faced by women, in particular afrodescendant and indigenous women, who suffer multiple discrimination in spite of constitutional provisions on gender parity. Reference was made to the *Castañeda Gutman* case, decided by the Inter-American Court of Human Rights, on independent candidatures and to the need to give more visibility to the issue.

**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 inter-linkages between the right to participate in public affairs and other human rights, such as the rights to freedom of opinion and expression and freedom of peaceful assembly and association. The speakers were Edison Lanza, Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights; and Leo Valladares, former member of the Inter-American Commission on Human Rights and former ombudsman of Honduras.

In his introductory remarks, Mr Lanza recalled that the Inter-American Commission on Human Rights, through various thematic reports, had indicated that participation required access by all groups, without discrimination, to the media. He referred to the adoption of the Declaration of Principles on Freedom of Expression by the Commission in the year 2000. He considered necessary to promote access to the media, including the internet, in order to be able to express opinions and transmit information and, thus, increase participation. Furthermore, he referred to the obligation to consult indigenous peoples and to access information on environmental matters.

Mr Valladares recalled that those in power needed the endorsement or consent of the population to exercise power. Referring to the role of political parties, he stated that they could hinder independent forces from gaining access to power. The issue of party financing was important to discuss and clarify. He stated that re-elections needed to be well regulated. Judicial control was key to ensure that national measures complied with international and regional treaties. He referred to the important role of civil society for effective implementation of the right to participate, and in this regard, recalled the challenges civil society organizations faced, such as harassment and other barriers to their work. Mr Valladares indicated that States should abide by the provisions of the Declaration of human rights defenders.

During the discussion, participants agreed on the importance of access to information as an enabler to the right to participate in public affairs. Mexico and Chile had special laws on access to public information that provided for specialized bodies, as well as sanctions for public entities that refuse to deliver public information. When national security reasons are provided as a justification to prevent access to information, States must prove how the information could actually harm national security. It was recalled that 40-45% population in the region did not yet have access to the internet, which was a matter for concern. Participants stated that States had an obligation to adopt measures for the different groups of the population to access the Internet, as it enabled communities to participate. Internet access had to be universal, affordable, and with due regard to the protection of privacy. Participants stated that protests had become a legitimate way for citizens to express their dissatisfaction. However, the excessive and disproportionate use of public force in public demonstrations in several countries of the region was a matter of concern.

**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 Alexandra Ocles, member of the Parliament of Ecuador; Raquel Yrigoyen, lawyer and independent expert on the rights of indigenous peoples; Lais de Figueiredo Lopes, lawyer and former member of the Board of Directors of International Center for Non-for-Profit Law; and Jane Hilderman, Executive Director of Samara Canada.

In her introductory remarks, Ms Ocles, pointed to progress in the norms on participation, but to a regression in terms of implementation. In her country, the effective political participation of indigenous and Afro-Ecuadorians remained minimal. She considered necessary to continue with affirmative action policies to increase their participation. Regarding persons with disabilities, she referred to a law that required that 4% of public office staff be persons with disabilities. She also pointed to the importance of including disadvantaged groups in pre-legislative participation processes.

Ms Yrigoyen focused her intervention on participation by indigenous peoples, who had intrinsic, constitutional and international rights. She recalled the definition of “indigenous peoples” which required descending from populations pre-existing to the States; and for indigenous peoples to have their own institutions. However, additional requirements had been added by States. She referred to examples where indigenous peoples were re-qualified as “communities”, excluding them from the enjoyment of the rights of indigenous “peoples”. She stated that the right to participation was not just an individual right, but it was a collective right. The guidelines should not link indigenous, tribal and Afro-descendant peoples with categories of vulnerability or minorities because this is not always the case. Ms Yrigoyen highlighted that it was important to train state agents on the rights of indigenous peoples and that it was important to institute quotas for indigenous peoples.

In her remarks, Ms de Figueiredo Lopes focused on three good practices from Brazil: the Law on participation and access to public resources (Law 13019/2014); the National Policy on Citizen Participation; and the Law on Inclusion, which regulated the Convention of Rights of Persons with Disabilities. Citizen participation was considered as a right in Brazil according to the law. The law allows civil society organizations to access public resources, establish accountability mechanisms, town hall meetings and training. She underscored some lessons learned from these policy and legal processes, including that civil society needed training and funding, that the dialogue with civil society must be regular and that political support from the Government was needed. She also stated that civil society needs to be given feedback on their participation and on the use of the inputs provided. Participation needed to be a policy of the State and not of particular Governments.

Ms Hilderman’s intervention focused on youth participation. She stated that young people wanted to participate, but participation should not be understood as reduced to the ballot box alone. She mentioned good practices in Canada, such as the creation of a youth council, run by the Prime Minister's office. In the 2011-2015 period in the Parliament of Canada, there had been a considerable increase in the number of people under the age of 30 elected. This brought discrimination or prejudice on the part of certain senior parliamentarians and cases of sexual harassment of young women parliamentarians. To engage young people, one needed to understand that youth is diverse, to go where they are, and use information technologies to interact with them and maintain feed-back. It was important to overcome distrust from youth in the State and its institutions. Ms Hilderman referred to the importance of imparting civic education from early on in schools.

In the discussion that followed, participants were of the view that multiple discrimination was one of the biggest challenges to participation in the region. Participants highlighted the importance of protection for people involved in participation processes, especially human rights defenders, indigenous peoples and people in rural areas. Political participation by persons with disabilities was not mandatory, and the views they expressed were not considered binding, which was a major obstacle for their participation. Funds should also be reserved for participation of persons with disabilities. Participants pointed out that the mechanisms for participation in environmental matters represented some progress. However, they should not replace the requirement for free, prior and informed consent of indigenous peoples as they are not the same. States should promote the participation of indigenous peoples as subjects of rights. It is not necessary to make new laws or regulations but to apply those that already exist, such as ILO Convention No. 169. Reference was made to how in practice the quota system for women in candidates’ lists could be easily trumped.

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

This session provided an opportunity to discuss various forms and levels of participation, including through elections, the use of technology, and by enhancing accountability, transparency, and the role of civil society. The speakers were David Becker, Executive Director and Founder of the Center for Election Innovation & Research; Fabio Velasquez, Director of *Foro Nacional por Colombia;* Jeanette Calder Executive Director, Jamaica Civil Society Coalition; Almudena Ocejo, former Executive Director of the *Centro de Contraloría Social y Estudios de la Construcción Democrática*; and Colombina Schaeffer, Executive Director of *Ciudadano Inteligente*.

In his introductory remarks, Mr Becker referred to declining voter turnout in the USA (with the exception of presidential elections) despite it being easier that before to cast a vote. Voters did not think their vote could make a difference. He referred to other challenges, such as hacking and the impact of disinformation. To increase participation, States should make clear what the benefits of voting are. He underlined the importance of independent electoral audits and complete voter lists. Technology could be useful to expedite voting process, but paper records should also be kept.

In his intervention, Mr Velasquez explained that some citizens chose to prioritize forms of participation other than the right to vote. He referred to participation in the formulation of public policies, regarding which the people that will be affected should as a minimum be consulted, and to participation in legislative processes. For participation to be effective, there must be political will, participation must be a policy of the State. The State must also create the conditions that are conducive to meaningful participation, such as respect of public freedoms. There must also be incentives to participation and access to justice and to financial resources to allow for participation. States must translate the right to participate into create clear mechanisms for participation.

Ms Calder spoke about good national practices in relation to ensuring accountability and transparency of public decision making institutions. It was key to have information to influence decisions and to have concrete accountability frameworks in place. In terms of information and communication technologies, it was important to reduce access gaps between population groups. She recommended using traditional strategies of participation and also other alternatives and novel strategies (meetings with neighbors, etc.) and strengthening networking at local, national and international levels. The guidelines should recommend that States provide information periodically and proactively, and not only when citizens request it.

Ms Ocejo spoke about the importance of citizen oversight, which was a way of participation in decision-making. She said that there were several citizen oversight mechanisms, but they were not coordinated, and recommended making these mechanisms more effective instead of increasing their number further. She warned against fake opportunities for participation which added no value. She recalled that States should give feedback to citizens on their participation and that they should explain whether proposals made were taken into account or not. Participation should not be restricted to governmental policies, but also include the work of parliaments and the judiciary. Ms Ocejo underscored the importance of civic education, promoting debate and dialogue and stated that those who participate need to be protected from reprisals.

In her introductory remarks, Ms Schaeffer focused on technology and social media and how they could strengthen participation. She stated that technology was a means and not the end goal and that it also presented challenges, including gender, age and location access gaps. She also stated that different forms of participation should be complementary and not exclude each other. In the region, some good practices are online government, community action, and use of social networks. She referred to some specific projects carried out in Chile and to the availability of laws online as a good practice.

During the discussion, participants pointed out that the practices regarding accountability in the countries of the region are complex and that accountability could not be restricted to the issuance of reports. It is necessary to generate mechanisms that allow for regular accountability and for citizen feedback. Participants referred to the lack of accessibility of information in digital media for people with disabilities. Regarding citizen oversight, it should be complementary to the formal control mechanisms existing in State institutions. Regarding the use of technology, it was noted that it should be done with due regard to the protection of human rights, such as the right to privacy.

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

In her intervention, Ms Marisol Blanchard, Institutional Relations Coordinator of the Inter-American Commission on Human Rights (IACHR), spoke about good participation practices from the IACHR. She voiced concern about possible restrictions of non-governmental organizations, especially when they criticized the authorities, including in the form of limitations on financing and tax obstacles. The IACHR had just approved its 2017-2021 strategic plan, which was preceded by participatory consultations with civil society and States to elaborate it. The plan proposed formal evaluation mechanisms on standards and among them on social participation. A virtual portal was being created to respond more efficiently via digital to requests made to the Commission. She also spoke of the public hearings of the Commission, with some taking place in the countries, which facilitated access to the IACHR. Before electing a Special rapporteur, a public call for candidates is made so that civil society can provide its views on the candidacies. The IACHR had implemented a new communication mechanism with civil society through a person as a focal point of communication. Ms Blanchard mentioned other good practices that the IACHR adopted for permanent dialogue with civil society (web portal, call center, receipt of notes and calls, public hearings, webcast of hearings, consultative meetings, etc).

During the discussion, participants referred to the difficulties in obtaining consultative status with the United Nations, which acted as an obstacle for civil society participation. Participants agreed that international organizations should increase their transparency as regards decision-making.

**Closing session**

During the closing session, participants reiterated the main points raised during the discussion. These included the need to provide guarantees for participation, such as protection, capacity building and funding; the need to lift barriers for the participation of women, indigenous peoples and persons with disabilities: the importance of transparency and accountability; and the key role of freedom of expression and access to information for the effective enjoyment of the right to participate.

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1. Available at www.ohchr.org/participationguidelines [↑](#footnote-ref-1)