

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

FROM THE PARTICIPANTS TO THE CIVIL SOCIETY FORUM ORGANIZED ON THE MARGINS OF THE 2015
SUPPLEMENTARY HUMAN DIMENSION MEETING ON FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION

Vienna, 15-16 (morning) April 2015

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

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

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

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

In an effort to enhance the participation of associations in public decision-making processes, a Civil Society Forum on this topic was organized in Vienna on 15 and 16 (am) April 2015 and was attended by 33 experts on civil society issues from 25 OSCE participating States. The main purpose of the Forum was to identify and/or define and endorse concrete recommendations and practical tools in order to enhance the participation of associations¹ in public decision-making processes, in an effective, transparent, impartial and non-discriminatory manner, to be presented and discussed at the Supplementary Human Dimension Meeting (SHDM) on Freedoms of Peaceful Assembly and Association (16-17 April 2015). A first set of draft recommendations – non-exhaustive – was presented during the SHDM and was further refined and supplemented in order to be presented at the Human Dimension Implementation Meeting in September-October 2015 in Warsaw, Poland.

OSCE participating States are invited by the Participants to the Civil Society Forum to review and implement the recommendations set out in this document.

¹ For the purpose of this document, the term “association” should be understood as it is defined in the joint OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2014) (“an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose”) and shall thus include non-governmental organizations (NGOs) which are membership-based and have more than one founder. While political parties are a specific form of associations, they also play a special and very particular role in a democratic society and in public affairs, particularly in the context of elections; the present recommendations thus focus mainly on other forms of civil society organizations.

Recommended tools and reference documents:

- The UN Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention") of 25 June 1998;²
- The UN Declaration on Human Rights Defenders of 8 March 1999;³ and UN Human Rights Council Resolution "Protecting human rights defenders" of 21 March 2013;⁴
- The UN Human Rights Council Resolution "Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment" of 23 September 2013;⁵
- The Council of Europe Convention on Access to Official Documents of 18 June 2009 (CETS No. 205);⁶
- The Council of Europe's Recommendation CM/Rec(2007)14 on the Legal Status of Non-governmental Organisations in Europe and Recommendation CM/Rec(2009)2 on Evaluating, Auditing and Monitoring Participation and Participation Policies at Local and Regional Level;⁷
- The Council of Europe's Code of Good Practices for Civil Participation in the Decision-Making Process (2009);⁸
- The Guidelines for EU Support to Civil Society in Enlargement Countries (2014-2020);⁹
- The OSCE-ODIHR – Venice Commission Guidelines on Freedom of Association (2015).¹⁰

1. Basic conditions for enhancing the participation of associations in public decision-making processes should exist, which are marked by:
 - a. continuous and genuine efforts to create and maintain a true enabling environment for civil society organizations, free from corruption, allowing civil society to operate and participate freely and actively in public decision-making processes, including policy and law-making; such efforts should ensure that civil society enjoys the right to participate in public affairs, including debates, to engage in advocacy on behalf of their beneficiaries and to monitor public institutions and offices, including in the context of elections;
 - b. respect for the rule of law and the fulfilment of other human rights and fundamental freedoms, including civil, political, economic, social and cultural rights, particularly the full and equal guarantee of the rights to freedoms of association and of peaceful assembly, freedom of expression (including freedom, independence and pluralism of the media and the right of access to information), and right to effective remedies;
 - c. the political will to facilitate and provide opportunities for the participation of associations, irrespective of their legal status, in public decision-making processes at all levels (local, national, regional and international) and at all stages (from the planning and policy stage until the time when decisions are implemented, monitored and evaluated);
 - d. a positive attitude of public authorities to encourage, support, and value civil society contributions to public debate, including critical voices and dissenting views;

² Available at <http://www.unece.org/env/pp/treatytext.html>.

³ A/RES/53/144, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Translation.aspx>.

⁴ A/HRC/RES/22/6, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/22/6.

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

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

⁷ Available at <https://wcd.coe.int/ViewDoc.jsp?id=1194609> and at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)2&Language=lanEnglish&Site=CM&BackColorInternet=DBD CF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)2&Language=lanEnglish&Site=CM&BackColorInternet=DBD CF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

⁸ Available at <http://www.coe.int/en/web/ingo/civil-participation>.

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

¹⁰ Available at <http://www.osce.org/odihr/132371> and at www.legislationline.org.

- e. a culture of dialogue between decision-makers/public authorities and civil society which could ultimately lead to building mutual trust;
- f. the capacity of both the state administration/government and of associations to engage in meaningful debate, with the caveat that lack of capacity of associations should not pose a barrier or be used as an excuse for not opening public decision-making processes to them;
- g. a free, independent, and active civil society with the capacity to develop and grow, particularly through the provision of and access to resources (financial, human and technological), including foreign and international resources – subject only to limitations in accordance with relevant international standards;¹¹ and
- h. free access by all associations and individuals to regional and international human rights mechanisms, and ability to freely co-operate and communicate with such mechanisms, without fear of reprisals.

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

Participation of associations in public decision-making processes should be facilitated in a transparent, impartial, open and accessible, accountable and efficient, non-discriminatory and inclusive manner – while guaranteeing that the independence of associations is not affected.

- 1. Transparency, impartiality, openness and accessibility, accountability and efficiency**
2. The transparency of public-decision making processes should be ensured, e.g.:
 - a. decisions should be taken and enforced in accordance with established rules prescribed by legal or other documents adopted by relevant public authorities, while also acknowledging that in certain national contexts, unwritten rules have also been considered as good practices if they are applied in a consistent manner;
 - b. there should be public access, in a timely and accurate fashion, to information held by public authorities to allow for informed contributions from civil society that can meaningfully affect decision-making (see also Recommendation No. 16 and Part III.1 on Access to Information);
 - c. decisions and other public documents adopted by public authorities shall be made available to the public in a timely manner and as a precondition for their enforcement;
 - d. timely feedback mechanisms on the results of public consultations should be in place (see also Recommendation No. 16).
3. Organizers of public consultations should be impartial and public decision-making processes should be opened i.e., offer possibilities for all interested associations, including smaller civil society groups, to get engaged even if they are not involved in regular discussions or institutionalized frameworks for participation such as consultative bodies (e.g. public councils) and appointed government bodies or working groups;

¹¹ See pars 218 to 223 of the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2014).

4. Organizers of public consultations should ensure that participation is result-oriented, rather than process-oriented, meaning that it should be able to have an actual impact on the content of the adopted policy, legislation, decisions or other public acts or programmes;
5. Governments and other state institutions should be accountable to the public with respect to consultation processes on policies and legislation and should have an obligation to report on the results of participation of associations and individuals in public decision-making processes (see also Recommendation No. 16 on feedback mechanism).

2. Non-discrimination, equal treatment and inclusiveness

6. All associations wishing to participate should have equal access to public decision-making processes and equal access to public participation should be enshrined in relevant anti-discrimination legislation;
7. State authorities shall not exclude certain persons, groups or associations from participation in public decision-making processes and, particularly, associations should not be discriminated based, amongst others, on:
 - whether they are international associations (including international NGOs and their respective branches) or national associations;
 - whether their activities are carried out at the international, domestic or local level;
 - their sources of funding (whether public, domestic, foreign or international);
 - the objectives or spheres of activities of associations, regardless of whether they involve advocacy and/or the defence and promotion of human rights and/or the rights of minority, disadvantaged, vulnerable or marginalized persons or groups;
 - their legal status (unregistered or registered); or
 - the fact that they, or their founders, are critical of the government and/or of draft policies, legislation, or other public decisions;
8. States should have clear and binding regulations ensuring equal participation in public decision-making processes of all those associations and individuals who are interested in the issue under discussion – irrespective of whether the associations are considered “representative” or actually represent a large number of people, or of their relations with the government or governing parties;
9. States should take positive measures to ensure the equal participation of women and men in public affairs, including the provision of support to associations furthering equality between women and men in public decision-making processes;
10. States should address the needs and overcome specific challenges confronting minority, disadvantaged, vulnerable or marginalized persons or groups wishing to participate in public-decision making processes and should put in place legal guarantees and organizational mechanisms to ensure more inclusiveness of public decision-making processes, while taking care to:
 - diversify the structures, methods, mechanisms, tools and types of public participation, ensuring that they are user-friendly, and include new technologies, but are not limited to the use of online tools;¹²

¹² These could include, among others, public announcements regarding draft policies and laws, consultation meetings, the posting of information on official websites, use of the Internet and of new technologies, civil society

- support associations which aim to enhance the capacities of disadvantaged, vulnerable or marginalized persons to take part effectively in public decision-making processes;
- adopt and implement the World-wide Web Consortium's guidelines on web content accessibility (1999)¹³ for persons with disabilities.

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

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

3. Independence of associations

12. An association must be independent i.e., free from unwarranted interference of the state or of other external actors, in line with international standards and principles;
13. The participation of associations in public decision-making processes, including through consultative bodies (e.g. public councils) and appointed government bodies or working groups:
 - should be secured through a public, transparent, open and competitive selection process;
 - shall be based on clear and predefined criteria;
 - should allow associations to choose their representatives to take part in public decision-making processes; and
 - should be transparent, particularly by ensuring that basic information on associations participating in public decision-making processes is made available to the public;
14. Safeguards should be in place to ensure that consultations are not overtaken by associations that are not independent from the state, such as associations created by the government, or which are directly or indirectly influenced in their activities and the positions they defend by the government or certain public officials;
15. States should not impose on associations an obligation to engage in public decision-making processes or to defend certain positions.

II. SUPPORTIVE POLICY AND REGULATORY FRAMEWORK FOR PUBLIC PARTICIPATION

16. States should develop binding and unified standards on effective public participation/consultation in public-decision making processes in accordance with international standards,¹⁴ providing for:

networks and social media, with the particular aim to enhance youth participation. To avoid the risk of a digital and generational divide, some forms of generational partnerships could be envisioned whereby young people who may be more aware of new technologies may assist older generations and/or other measures whereby the risk of digital divide between urban and rural areas should be taken into consideration.

¹³ Available at <http://www.w3.org/WAI/intro/wcag>.

¹⁴ Legislation or other binding standards should reflect the minimum standards stated in the Council of Europe's Code of Good Practice for Civil Participation in the Decision-Making Process (2009) as well as in the Aarhus

- a. Scope: participation/consultation of any public initiative which has a potential impact on third parties, whether it is initiated by government bodies, parliament, individual MPs, or other public entities;¹⁵
 - b. Access to information: free and timely access of the public to any document/draft law/legislation under development and related background information; and responsiveness on the side of relevant authorities to any request for additional information (see also Part III.1 on Access to Information);
 - c. Allocation of appropriate funding by the States to ensure the inclusiveness of public decision-making processes and that participation does not impose an undue financial burden on the participants;
 - d. Timeliness: setting out a clear and reasonable minimum timeline for public participation/consultation that will involve associations as early as possible in the process and provide associations with sufficient time to prepare, discuss and submit recommendations on draft policies and draft legislative acts;
 - e. Feedback mechanism: a legal obligation and a mechanism whereby decision-makers shall report back to those involved in consultations, including the public, by providing, in due time, meaningful and qualitative feedback on the outcome of every public consultation, including clear justifications for including or not including certain comments/proposals;
 - f. Consequences for the failure to comply with laws requiring the organization of public consultations on drafts of policies, legislation, or other decisions (see Recommendation 20);
 - g. The obligation of public authorities to conduct a self-assessment on compliance with such binding standards on effective public participation/consultation and to report on the results to the public on a regular basis;
17. Early and inclusive consultations on the regulatory framework on public consultation-related matters should be organized before and during the process of drafting such a framework, to avoid over-regulation in this field;
 18. Regulatory frameworks should not be burdensome for the public and associations and should focus on creating opportunities for participation, not restricting them;
 19. On the modalities of participation:
 - there should be some balance between consultations with experts and wider public consultations;
 - where expert working groups are formed, similar (and publicly known) selection criteria and requirements in terms of competence and expertise should be applied to government representatives and civil society representatives, and all members of the working group should be subject to the same working conditions and guaranteed an equal voice;
 - the working group should have a clear mandate and publish its results;

Convention (*it is recommended that the application of key provisions of the Aarhus Convention should extend to all issues, not just environmental matters*).

¹⁵ Given the particularities of decision-making within the judiciary (*aspects relating to both the internal operation and administrative aspects of the judiciary as well as to the jurisdictional functions of the judiciary – and more generally the issues of transparency and access to public information in the judicial branch – for instance issues linked to the publicity of court decisions, access to court files in public interest-related cases such as corruption of public officials, the publicity and opening of court sessions, public hearings, amicus curiae, trial monitoring by civil society, jury trial as a form of civil participation in court decisions, etc.*), the present recommendations focus more on public-decision making processes involving the legislative and executive branches, at all levels, and do not intend to provide specific recommendations regarding public participation in decision-making processes of the judiciary.

- the state body establishing the working group should guarantee associations sufficient representation within the working group;
 - a coordinating body should be put in place to ensure that the consultations are carried out in a consistent manner by all state bodies;
 - coordinators of public consultations should be appointed in all state bodies in order to ensure that good practices are well understood and harmonized across state bodies and that legal standards for public participation are implemented in practice;
20. In cases where legislation, decisions or other public acts were adopted without complying with binding standards on public participation:
- procedures should be in place whereby such legislation, decisions or public acts can be challenged before judicial bodies or other designated independent bodies, by interested individuals and associations; or, at a minimum, a mechanism for referring back the proposed draft document to the drafters for lack of public consultation should be provided;
 - government officials and other representatives of the State shall be held liable for violating legal obligations to ensure participatory processes in public decision-making processes.
21. The law should clearly define and limit the number of instances when “emergency” or “expedited” procedures for the adoption of legislation, decisions or other public acts can be applied, in order not to use such procedures to circumvent the requirement for public consultation; a mechanism should be in place to ensure that any legislation, decisions or other public acts adopted through “emergency” or “expedited” procedures is reviewed at some later date to ensure whether it is still necessary and adequate.

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

1. Access to Information

22. There needs to be clear legislation guaranteeing access to information, including a general right to request and receive information, to all - individuals and organizations, including vulnerable and marginalized groups - in line with international standards;
23. Any limitation to the right to access information, including of information classified as “secret” or with “limited access”, should be narrowly and clearly defined by law to avoid wide discretionary application by government bodies; also, all denials of access to information shall be subject to review by an independent body;
24. Legislation on access to public information should establish strong independent oversight bodies, commissions or ombudspersons, to make sure that it is implemented; upon the request of individuals or associations, such bodies should have the mandate to investigate cases where public bodies refuse to disclose documents without a lawful justification;
25. Information held by public authorities, including draft legislation and decisions, should be proactively disclosed to the public in a timely manner (see also Recommendation No. 16) via online and other tools and states should ensure user-friendly access to information, by e.g.:

- having parliamentary voting records and session transcripts made public;
 - ensuring that public participation/meetings of public councils include open and online consultation processes and online access to related information and documents;
 - using social media – while avoiding the risk of a digital divide – as well as a variety of other dissemination methods depending on the national and regional context (see also Recommendations No. 10 and 26).
26. Information regarding public decision-making processes should be disseminated as widely as possible, using a variety of means and media, including various local newspapers and other printed media, social media, TV/radio-broadcasts, mails, telephones/sms, online applications, issuing open invitations for dialogue using civil society and other networks, to ensure timely information of interested parties and the public.

2. Monitoring

27. States should establish a system of monitoring and reporting on compliance with binding standards on public participation in decision-making processes by designated independent bodies (such as national human rights institutions and/or information commissioners) with the participation of associations (e.g., Monitoring Matrix on an Enabling Environment for Civil Society Development¹⁶);
28. As part of the role of parliaments in approving legislation and supervising its implementation by state bodies, parliaments should set up mechanisms to monitor and control laws, regulations, structures and/or other modalities that promote the participation of associations in public decision-making processes;
29. Where the Government is obliged to provide the Parliament with information and results on impact assessments attached to a piece of draft legislation, this should include an assessment of the outcome of consultations/participation processes and the way in which relevant recommendations emanating from public consultations have been taken into account in the draft legislation;
30. The assessment of public participation in decision-making processes in a given State should not only take into account regulations and procedures that are in place but the way in which they are being implemented in practice (to ensure the equal involvement of various groups and associations, the acceptance of all views - including critical ones, and that the proposals and recommendations put forward by associations are actually taken into account).

3. Building a culture of participation

31. In order to strengthen the participatory culture of both the public and of civil society, States should:
- build the capacity of the state administration and decision-makers to engage in meaningful and consensus-oriented public debate with civil society;
 - support civil society development and support initiatives and programmes in order to create “civil society capacity for public participation”;

¹⁶ Developed by the Balkan Civil Society Development Network and ECNL, available at <http://www.balkancsd.net/index.php/resources-and-links/publications/1408-balkan-civic-practices-9-monitoring-matrix-for-enabling-environment-for-civil-society-development-the-tool-kit>

- build on experiences of citizens and public servants in terms of public-civil society partnership;
 - ensure that permanent and *ad hoc*, formal and informal, channels or platforms for dialogue exist between decision-makers/representatives of state/public administration and civil society actors, in order to lobby and advocate for certain issues;
 - introduce civic education in the formal education systems, that will also specifically address issues relating to participation in public affairs;
 - undertake systematic awareness-raising activities among both state structures and civil society on the need to engage in policy/decision-making processes;
32. States should share and promote good practices in involving associations and civil society in general in public decision-making, including at local/municipal, regional, national and international levels;
33. Designated independent bodies, such as national human rights institutions (e.g., ombudspersons) and/or information commissioners, should actively support and advocate for effective public participation of associations, irrespective of their legal status and the views (critical or dissenting) that they may defend or advocate for.

IV. SPECIFIC RECOMMENDATIONS TO OSCE PARTICIPATING STATES AND OSCE INSTITUTIONS

34. OSCE participating States should implement the recommendations contained in the “Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes” prepared by the participants to the Civil Society Forum held on 15-16 April 2015 in Vienna;
35. The OSCE should assess and provide an overview of consultation processes in OSCE participating States, including the legal basis/soft laws and legislation on freedom of association, as well as state practices;
36. The OSCE should develop, or contribute to efforts of other international organisations to develop guidelines for the effective participation of associations in public decision-making processes that would highlight what is generally acceptable as good practice in selected OSCE participating States;
37. OSCE/ODIHR should develop an international public participation index/ranking of States and put in place a respective monitoring system;
38. In countries where there are OSCE field offices or where the OSCE implements certain project/programmes directly, the involvement of civil society actors should be a guiding principle and the OSCE should involve such actors at all stages of project/programme, from planning to implementation, followed by monitoring and evaluation;
39. International organizations, including the OSCE, should ensure continuity and consistency in the manner in which they provide support in order to reach sustainable results in the area of public participation in decision-making processes;
40. OSCE participating States should be responsible for ensuring the participation of associations in public decision-making processes.

*
* *