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

**Economic and Social Commission for Asia and the Pacific (ESCAP)

Bangkok**

**2 and 3 October 2017**

 **Summary of the discussions**

**Welcome, introduction and opening remarks**

In his opening remarks, Ms. Katia Chirizzi, Regional Office for South-East Asia, Office of the High Commissioner for Human Rights (OHCHR) welcomed the opportunity provided by the consultations to gain a better understanding of the implementation of the right to participate in public affairs in the region. By providing a brief review of the human rights situation in some of the countries covered by the Regional Office, she identified some trends in the region that have a negative impact on the exercise of the right to participate, including the shrinking of civil society space, and increasing undue restrictions on public freedoms. She finally welcomed the emphasis in resolution 33/22 of the Human rights Council on the importance of removing obstacles to equal participation by all.

In her opening remarks, Ms. Nathalie Prouvez, Chief of the Rule of Law and Democracy Section, OHCHR, noted that equal and meaningful participation underpinned the realization of all human rights and was also inextricably linked to them. She recalled that the universal nature of the right to participate in public affairs was reflected in its inclusion in several human rights treaties. In addition to the consequences of discrimination on equal and meaningful participation, she highlighted that exclusion from public decision-making had also negative implications for the enjoyment of economic, social and cultural rights and the right to development. Ms. Prouvez further explained that Human Rights Council resolution 33/22 mandated 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 Miloon Kothari, President of UPR Info and Former Special Rapporteur on the right to adequate housing. He emphasized the indivisibility and mutually reinforcing nature of human rights, and the increasing recognition at international level of the importance of the right to participate for the effective realization of all human rights. Drawing from relevant jurisprudence of various United Nations human rights mechanisms, he highlighted the many obstacles that marginalized groups faced in accessing economic and social rights, such as the rights to housing, land, property and inheritance, and their negative impact on the effective exercise of their right to participate in public affairs, particularly for women. He noted that forced displacement is often a cause and a consequence of exclusion in decisions on development projects that affect right-holders. In this regard, he emphasized the importance of the concepts ofparticipation, free and informed consent, and prior consultation in all policy and development processes to prevent forced displacement. When displacement occurred, he stressed the need to ensure the right to participate in any resettlement and recovery projects. He described the New Urban Agenda and the Sustainable Development Goals (SDGs) and their emphasis on the right to participate, particularly in local government, as a positive development towards the global recognition of the right to participate as a central element of any successful development initiative. In particular, he recalled that the objective of the Agenda 2030 “to leave no one behind” could only be achieved through a participatory approach to all the 17 Sustainable Development Goals.

During the discussion, participants emphasized the link between the protection of the right to participate, strengthening democracy and the rule of law. Participants agreed that the scope of this right extended beyond elections and reference was made to article 21 of the Universal Declaration of Human Rights and its relevance insofar as it protected the right to participate for every person (and not for citizens only). Participants also stressed the importance of decentralization, and of local government, in providing opportunities to exercise the right to participate without discrimination. Discussing developments in the region in relation to existing legislation and jurisprudence on the right to participate, it was noted that relevant jurisprudence by UN treaty bodies and the Universal Periodic Review (UPR) provided an opportunity to elaborate on the scope and to strengthen protection of this right.

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

The speakers in this session were Ahmed Tholal, Senior Project Coordinator, Transparency International Maldives and former Deputy Chair of the National Human Rights Commission; and Sor Rattanamanee Polkla, Co-founder, Community Resources Centre.

In his introductory remarks, Mr. Tholal noted that the creation of a conducive environment for the exercise of the right to participate was dependent on how other human rights were protected in the national legal system. The right to participate in public affairs rested firmly on the guarantee of free and fair elections, the rights to freedom of peaceful assembly and association, of opinion and expression, the freedom of movement and the right to access to information. He further provided some examples showing the extent to which the lack of an enabling environment could threaten the right to participate, democracy and the rule of law. Lack of accountability for violations of the laws protecting the exercise of public freedoms, including the excessive use of force by the police in managing assemblies and attacks against human rights defenders, were also identified as an element impeding the creation of an enabling environment. He further highlighted that proper judicial mechanisms ensuring access to justice and remedy for violations of the right to participate were essential to an enabling environment.

Ms. Polkla noted that an adequate legal framework was needed but often not sufficient to guarantee the exercise of the right to participate in public affairs and described the lack of implementation of existing legal standards as one of the major challenges, especially at the local level. She discussed examples of individuals and grassroots communities charged with “criminal defamation” or “incitement to illegal activity” for organizing “illegal demonstrations” to demand participation in development and environmental projects. She further explained that strategic litigation was used to influence decision-makers, including legislators, as well as policies and practices in order to advance the legal protection of the right to participate. She also described the promotion and protection of the right to access to information as a pre-condition for the exercise of the right to participate. Finally, Ms. Polkla noted that meaningful participation included the possibility to exercise real influence on decisions making processes and the requirement for duty bearers to be accountable for the decisions they made. Finally, she emphasized that authorities should provide feedback on the outcome of the consultation process.

During the ensuing discussions, an enabling environment was described as a framework providing all individuals, without discrimination, including on grounds of social status, gender identity and nationality, with the possibility to fully exercise the rights to freedoms of opinion and expression, association and peaceful assembly, the rights to information and freedom of movement. In this context, participants discussed the importance of repealing laws on criminal defamation, and those criminalizing homosexuality and transgender people. They discussed the need to prohibit overly broad limitations on public freedoms and restrictions on foreign funding for civil society organizations (CSOs), which were often used to silence dissenting voices and further exclude marginalized groups. The importance of protecting journalists and human rights defenders from attacks, threats and reprisals, including through access to justice and an independent judicial system, was stressed. Participants emphasized the importance of economic and social rights in order to enhance participation in public affairs, particularly for people living in poverty. They recognized the importance of civic education and empowerment of rights holders, including on political participation and voting rights, to strengthen capacities to claim rights. Participants noted the need to adopt a human rights based approach to development, in particular the importance of equal and meaningful participation in the identification of development priorities, impact-assessment analysis and budgetary allocation. Participants discussed the importance of legal and institutional frameworks providing clear identification of responsibilities for the implementation and monitoring of decision-making processes. The issue of accountability for human rights abuses of private actors performing public functions, in particular in the fields of development and extractive industries, was raised.

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

The speakers were Shreen Saroor, Founder of Mannar Women’s Development Federation; Vitit Muntarbhorn, UN Independent Expert on violence and discrimination based on sexual orientation and gender identity; Patricia Wattimena, Advocacy Coordinator, Asia Indigenous Peoples Pact, and Ramesh Nathan, General Secretary, National Dalit Movement For Justice-NDMJ (NCDHR).

Ms. Saroor discussed participation of women in transitional justice and constitutional review processes, describing those as an opportunity to address historical injustices, deep-rooted cultural and institutional discrimination, and ultimately to increase women’s participation in the public sphere. Recalling some figures on the low level of women’s political representation in her country, she noted that the introduction of quotas in the upcoming 2017 local elections had the potential to increase their representation in local government’s positions. In order to address challenges to women’s participation, she identified the need to prioritize long-term reforms aimed at, *inter alia*, increasing the number of women elected leaders, changing public biased perception of female leadership and eliminating gender based violence in electoral processes. Referring to measures for achieving those goals, Ms. Saroor highlighted the importance of gender-sensitive voter education and trainings, and media training in order to promote equal coverage of women candidates and challenge gender stereotyping/misrepresentation of women in the media. She further asserted the need to ensure accountability for gender based violence against candidates and voters, and to encourage more equitable and transparent allocation of funds in electoral campaigns. The role of political parties in ensuring representation of women at higher positions on the candidate lists was also noted. Finally, she recalled that the principle of non-discrimination was particularly relevant to address multiple and intersecting forms of discrimination preventing women from participating in public affairs, including women who are internally displaced, migrant women and refugees.

Mr. Muntarbhorn noted that the right to participate was broad in scope and related to the various ways in which right-holders participated in political and public affairs beyond elections. He described the right to participate as entailing the opportunity for all to influence the planning, implementation, monitoring and review of decision-making processes, in a dynamic continuum in which people should be able to make decisions. He recalled Goal 16.7 of the SDGs and its emphasis on “accountable and inclusive institutions” at all levels. Turning to measures to address marginalization, Mr. Muntarbhorn discussed those elements providing the parameters for testing the capacity of a democratic system to reduce exclusion, violence and other harms, including effective anti-discrimination laws and policies that take into account the impact of intersecting forms of discrimination, and legal recognition by the State of self-identified gender identity. He explained that de-stigmatization of LGBTI persons was linked to de-pathologization because the latter promoted a shared understanding that sexual orientation and gender identity were part of the natural state of being human. Measures to foster socio-cultural inclusion of LGBTI persons were also recognized as necessary to strengthen participation and break the vicious cycle of discrimination, exclusion and violence. Finally, he noted that quality education had the potential to nurture a sense of empathy for diversity.

Ms. Wattimena explained that indigenous peoples constituted about five percent of the world’s population, and that two thirds of the world’s indigenous people lived in Asia. She recalled that indigenous peoples made up 15 per cent of the world’s people living in poverty*.* She highlighted that indigenous peoples shared common patterns of historical oppression, continued dispossession of lands and resources, as well as ongoing marginalization and discrimination in the economic, social and political spheres. Ensuring effective and equal participation of indigenous peoples in public affairs represented a fundamental step towards the realization of all other human rights. She stressed the importance of recognizing both the individual and collective aspects of the exercise of the right to participate of indigenous peoples in national legislation, polices and development initiatives. To this end, the domestication of relevant international instruments was considered essential. Turning to challenges, she identified the lack of recognition by the State of indigenous peoples’ existence and distinct identity as one of the major factors impeding their participation in public affairs. She raised the issue of accessibility of internet and ICTs explaining that the digital divide added to challenges indigenous peoples already faced in exercising their right to access to information, including because of language barriers. She underlined that many indigenous peoples were deprived of their right to vote and be elected as a consequence of electoral systems designed around the concept of “citizenship”, unaffordable procedures, and/or discriminatory regulations to obtain national identity cards. Respecting the right to free, prior, and informed consent, as well as adequate inclusive institutions were said to represent a prerequisite to ensure meaningful participation of indigenous peoples.

Mr. Nathan Vedana explained that, despite constitutional safeguards, progressive legislation and policies, Dalits continued to experience *de facto* discrimination. He provided examples of discrimination in the electoral process, such as cases of intimidation preventing Dalits candidate from running for office. Among measures to address these challenges, Mr. Nathan suggested the respect of human rights in all phases of the electoral process, including safe access to polling stations, and physical protection of women candidates and elected representatives. He noted the importance of providing adequate training to all actors involved in elections, including government officials, political parties, electoral officials, and highlighted the importance of guarantees of access to justice and reparation for human rights violations. He emphasized that adequate financial and technical support to CSOs working at the local level to address root causes of discrimination against Dalit was needed. He recognized the role of the Government in applying a comprehensive approach to anti-discrimination efforts, hence the need to extend non-discrimination guarantees to the private sector to reduce discrimination in all spheres, including employment, agricultural land, private education and housing, services, products and goods.

During the ensuing discussions, participants agreed that temporary affirmative measures, such as quotas, were a necessary tool to address historical injustices and marginalization. However, in order to achieve their purpose, such measures had to be accompanied by a broader approach aimed at reducing social marginalization and harmful cultural practices, including gender stereotyping. Discussing the intersectionality and interlinkages between the right to participate and other human rights, participants acknowledged that stigma on transgender persons was often compounded by exclusion from economic and social rights, such as access to property, land, and education, which in turn pushed them into a situation of further marginalization and exposure to violence and exploitation. Discussing opportunities to support efforts by States to reduce discrimination, the relevance of jurisprudence of Treaty Bodies and UPR recommendations was emphasized. Well-resourced, independent and effective institutions were identified as “building blocks” of participation.

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

The speakers in this session were Saroeun Soeung, Executive Director of Cooperation Committee for Cambodia, Ahmed Rifai from the Kota Kita Foundation, Kedar Khadka, President, Go Go Foundation, and Bernise Ang, co-founder and Executive Director of Zeroth Labs, Behavioral & Complex Systems Analyst and Young Global Leader.

Mr. Soeung shared some national good practices in promoting the right to participate in public affairs, based on principles of equality and non-discrimination, transparency, accountability, dignity, and integrity of States institutions and decision-making processes. In terms of positive practice, he noted the establishment of specialized institutions focusing on specific issues such as health and education allowing for public engagement in policies/legal development initiatives. He highlighted the importance of citizens’ empowerment to participate at all stages of decision making, from planning, resource mobilization, implementation, monitoring and evaluation. He noted that empowerment efforts proved to be more effective when combined with evidence based advocacy and genuine political will. He further highlighted that multi-stakeholder engagement was one of the pre-requisites for building mutual trust and ultimately ensuring public participation. Finally, he underlined that equal and meaningful participation did not depend solely on the obligation of the State to guarantee appropriate institutional, legal and policy frameworks, but it rested primarily on the protection and promotion of a safe and conducive environment for public participation.

Mr. Rifai spoke about participation of civil society in urban planning, and presented some positive examples in the field of participatory democracy. He highlighted that, despite appropriate laws that guaranteed the right to participate in policy-making, challenges remained on how to ensure meaningful participation. He noted that meaningful participation required an environment where CSOs were able to actively engage grassroots communities. He provided examples of ways in which civil society contributed to achieve this goal, for example through participatory budgeting, action planning and implementation, and the creation of spaces and processes to facilitate engagement of local community in project prioritization. The role of civil society to build local capacities through training and public education initiatives was noted.  Mr. Rifai also stressed CSOs’ role in monitoring and evaluation, and contribution in balancing State and civil society’s interests. He identified the limited access and disclosure of information in a timely and accessible manner, including on budgetary allocation and procurement processes, as a threat to the openness and transparency of decision-making processes. Heavy procedural requirements and proliferation of regulations were also said to create obstacles to CSOs in bringing public policy issues to grassroots communities. Explaining that marginalized communities, such as people living in poverty and slum dwellers faced specific obstacles, Mr. Rifai noted the importance of developing affirmative actions, and to ensure their views were included in relevant policy proposals.

Mr. Khadka discussed national and regional practices in relation to ensuring accountability and transparency of public decision-making institutions. He provided a comparative analysis of the existing legal and institutional frameworks regulating decentralization in the South Asian region. He described elements that impede democratic systems to perform efficiently, including elitism in access to higher political positions, proliferation of oversight/anti-corruption bodies with unclear mandates, increasing economic inequalities and lack of accountability and transparency. He highlighted some entry points for civil society to promote accountability and transparency, such as civil participation in procurement processes, oversight of social programs and collaboration with audit institutions. He further provided an overview of existing social accountability tools allowing local communities to participate in public audits, public hearings and “Community Score Card”. He underlined that participation in accountability and transparency initiatives should be accompanied by political and legislative initiatives to promote integrity and access to information.

Ms. Ang discussed opportunities and challenges to strengthen equal and meaningful participation using technology and social media. She provided some examples showing how technology provided opportunities to increase participation, for example through online platforms for people to formulate and discuss policy proposals. She noted the relevance of those tools for difficult-to-reach and low-income communities. She explained how technology could also inhibit participation, particularly through censorship, surveillance and shaping public opinion online, including through fake news. She further provided some examples of how Artificial Intelligence and fake news affected the exercise of the right to participate insofar as they compromised information, and the ability to make informed decisions. She explained that filter bubble created an “echo chamber effect” where exposure to different views and information was limited if not nullified, therefore increasing polarization and limiting plurality of voices. Finally, she highlighted that more robust regulatory frameworks should address the economic and political implications of private IT companies managing and buying personal online data.

Mayor Yoon discussed his experience on the implementation of the right to participate at local government level. He emphasized that local government should support direct democracy understood as participation outside the electoral process, and beyond the level of simple collaboration or consultation. He explained that, in the city of Guangju, “Citizens Assembly” and “Community Support Team” allowed city government officials to collaborate closely with village organizations on planning, budgeting and implementation of projects. He explained that his city tried to combine off-line and on-line strategies to develop or strengthen existing avenues for participation, particularly for the most marginalized.In order to promote equal participation, 40 percent quotas for women were introduced in all City Committees, a youth committee was established, and mandatory participation of persons with disabilities applied to any policy-making and implementation processes. Participatory budgeting was said to strengthen transparency and fairness of the budgeting process, but noted that increased devolution of budgetary planning powers from central government was needed in order to expand the positive impacts of participatory budget systems. Mayor Yoon explained that the implementation of the Human Rights Impact Assessment System required officials to adopt a human right based approach to any major policy development and implementation. Finally, he emphasized the importance of international cooperation and initiatives to support efforts towards strengthening civil participation, such as through the World Human Rights Cities Forum.

In the ensuing discussions, participants noted the negative effects of corruption on the right to participate, particularly at the local level and correlated need to ensure protection of whistleblowers. Participants noted the importance of combining bottom-up and top-down approaches to strengthen synergies between central and local government, and maintain local communities engaged in participatory processes. In addition to an appropriate legal and institutional frameworks specifically protecting and allowing participation, they identified genuine political will as a precondition for participation at all levels. Participants recognized that good practices of local participatory mechanisms should be replicated taking context into account. Restrictions on foreign funding for CSOs were recognized as having a negative impact on the right to participate. Discussions highlighted the risks for political activists and human rights defenders related to the use of technology, including through hacking. Issues of accessibility of internet were also discussed, particularly in the context of indigenous communities, and participants recalled Goal 9 of the SDGs and its emphasis on universal and affordable access to internet. Participants agreed on the importance to support local government in their initiatives to promote participation and noted the positive impact of institutionalized cooperation on human rights issues between the central and local government.

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

The speaker for this session was Urantsooj Gombosuren, Chairperson of the Asian Forum for Human Rights and Development (FORUM-ASIA).

She discussed opportunities for civil society to participate at international level, including in Human Rights Council (the Council) sessions, UPR and Special Procedures. She explained the importance of combining capacity building of CSOs with coordinated advocacy efforts, noting that networks of NGOs were more successful in influencing discussions on resolutions adopted at the Council and the formulation of recommendations adopted by the UPR and Treaty Bodies. Engagement with human rights mechanisms empowered organizations to use their jurisprudence as a tool to claim respect for human rights obligations at the national level. She further described the positive impact of a cross-national initiative by CSOs aimed at monitoring and reporting the performance of National Human Rights Institutions in their respective countries, based on the Paris Principles and Belgrade principles. She emphasized the correlation between participation in decisions made at regional and international level and the capacity to translate those into laws, policies, and practices at the local level. She underlined that participation in UN fora was also crucial, including to establish cooperation, and build mutual understanding and trust between States and CSOs. She emphasized that often language barriers prevented CSOs in the region from participating in those fora, which, coupled with the lack of adequate funding, resulted in the impossibility for most affected communities to participate. Finally, she highlighted that the risk of reprisals against those CSOs that criticized the government constituted an obstacle to participation at international level.

In the ensuing discussions, participants emphasized that greater access to intergovernmental organizations, including in the Asia-Pacific region and the UN system, was needed, for both individuals for marginalized groups, and developing countries. Participants reiterated the importance of participation as a cross cutting principle that should inform the implementation of the 2030 agenda. They noted that the UN should reflect further on measures to protect CSOs that engaged with the various UN bodies and mechanisms from reprisals. Allowing Special Procedures mandate holders to access a country, and therefore their engagement with CSOs and local communities, was also identified as an element of the effective enjoyment of the right to participate at international level.

**Closing session**

During the closing session, participants reiterated some of the main points raised during the discussions, including: the need to understand participation as a continuum in the decision-making cycle and the importance of intersectionality, both with regards to civil and political rights and economic, social and cultural rights, and that of different types of discrimination; the interconnectivity between national authorities, business and intergovernmental organizations and its impact on participation; the importance of combining the adoption of good laws, policies and action plans with the establishment of implementation/enforcement tools; civic education and capacity building; access to justice and remedy for human rights violations; building mutual trust and multi-stakeholder initiatives/partnerships; and the inclusion of non-citizens in decisions that affect their lives.

\* \* \*