

**THE DANISH
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HUMAN RIGHTS**

**PUBLIC PARTICIPATION:
CASE STUDIES ON
EGYPT'S RIGHT TO
INFORMATION DRAFT
LAW AND NATIONAL
PLAN**

DISCUSSION PAPER

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DRAFT LAW AND NATIONAL PLAN
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ABSTRACT

Public Participation is emphasized as a genuine and inseparable human right in multiple international conventions, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

However, public participation should not only be perceived as a human right, but also as a precondition and a necessity for all-inclusive, informed and sustainable development.

This discussion paper sheds light over two examples of public participation processes that were carried out in Egypt post to the 25th of January Revolution.

It points out the strengths and weaknesses in two community dialogues, which were carried out over the Right to Information (RTI) Draft Law and social justice in the National Plan, in an attempt to explore the lessons learnt and offer relevant policy recommendations for public participation attempts in the future.

1 INTRODUCTION

” Every citizen shall have the right and the opportunity ... to take part in the conduct of public affairs
- International Covenant on Civil and Political Rights, article 25.

1.1 WHAT IS PUBLIC PARTICIPATION?

Public participation refers to processes and series of activities and actions, in which individuals, groups, and organizations engage and their input in the process is taken into consideration.

They engage in public affairs that either affect them or they have an envisaged interest in. Such public affairs or decision-making can be legislative, executive or administrative.

1.2 WHY PUBLIC PARTICIPATION?

Public Participation is emphasized as a genuine and inseparable human right in international conventions, such as the Covenants on Civil and Political Rights (Art. 25) and Economic, Social and Cultural Rights and the Conventions on the Elimination of All Forms of Discrimination against Women (Art. 7), the Right of Child (Art. 12) and the Rights of Persons with Disabilities (Art. 4 & 29):

Public participation can be applied either from a human rights perspective where it is a goal in itself to ensure citizens' right to participate or from a functional perspective where it is a principle and a method for better decisions.

Unlike non-participatory approaches of decision-making, participatory decision-making:

- Gives voice to a wider range of stakeholders;
- Reflects the diverse views of stakeholders, thus, providing more informed, representative responsive, rich and agreed upon outcomes, especially when public participation is being perceived as a method for better decisions;
- Facilitates communication and deepens mutual -two-way- understanding of oneself and others, especially regarding issues like needs, aspirations, gender, culture, requirements of cooperation and of consensus-building, etc...;

- Ensures a greater sense of legitimacy, ownership and buy-in from stakeholders;
- Re-builds mutual trust among stakeholders.

1.3 WHAT ARE THE FORMS OF PUBLIC PARTICIPATION?

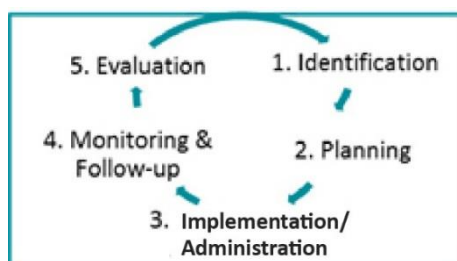
Public participation in decision-making takes different forms according to the level and size of participation, the degree of actual influence in decision making and whether that influence by the people is direct or indirect. As a result, forms of public participation may include:

- Voting or running for elections (direct participation);
- Being represented through local or national representatives (indirect participation);
- Informing the public (one-way & lowest level of public participation if considered one at all);
- Holding hearing sessions and public testimonies or sending comments, complaints or suggestions to decision makers, which does not usually involve intense and two-way discussions among different parties;

Public or stakeholders' committees, debates or consultations and citizens' or community dialogues which all involve two-way discussion;

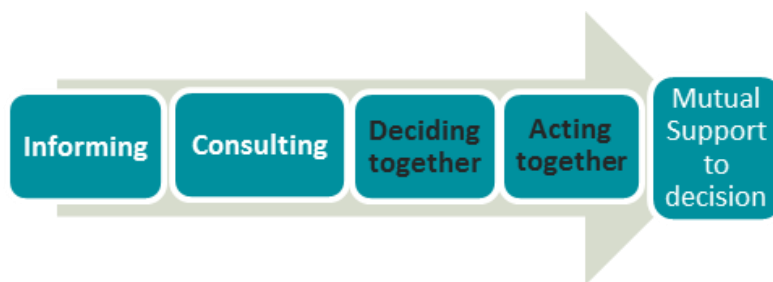
In general and according to the required degrees of collaboration between decision makers and the public, public participation can be found in some or all of the phases of decision-making or of development, including:

- The identification of a problem or an issue;
- Planning (defining and assessing options, etc.);
- Implementation;
- Monitoring and follow-up, which is followed by holding decision-makers accountable;
- Assessment and evaluation.



In each of these phases, participation usually starts with availing information and informing the public about the situation; consulting with them over different options and possibilities; deciding together; enacting decisions together and this ends up with supporting that decision.

Of course, the degree, size and form of participation can differ at each step. For example, while the 'informing' step can be directed to the bigger masses, 'consultations' can be done with a wide array of stakeholders or the public in community dialogues or workshops. On the other hand, the 'deciding together' step can be achieved during stakeholder and expert committees where more analysis and deeper discussions can be made over the options/suggestions posed by the people or the wider stakeholders in earlier stages.



1.4 WHAT IS THE EXPECTED IMPACT OF PUBLIC PARTICIPATION?

Active public participation should succeed to:

- Improve democratic governance;
- Change the balance of power so that everyone's needs and rights are acknowledged and used as the basis for dialogue;
- Raise the awareness of local stakeholders and build their capacity to make decisions or take initiatives under a unified /agreed upon vision.
- Generate shared understanding of problems and priorities;
- Reach informed, representative, responsive and richer decisions or agreements;
- Strengthen the social contract among the different stakeholders & members of society.

2 PUBLIC PARTICIPATION IN THE RTI DRAFT LAW

2.1 THE CONTEXT OF PUBLIC PARTICIPATION IN THE RTI DRAFT LAW

” Freedom of Information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated

- UN General Assembly, Resolution no. 59, 1st session, 1946

- Freedom and access to information enhances accountability and the fight against corruption simply because citizens become more informed about: their rights; the channels and procedures they can use in order to fully and equally attain their rights; the incidences when their rights are violated; who to go to when this happens; and what to do in order to hold responsible people accountable.
- Freedom and access to information is, in itself, an essential requirement for stronger, transparent and much informed public participation.
- A ‘Right to Information’ (RTI) act or legislation that reflects high degree of freedom and accessibility to information, in that sense, would be expected to improve the good governance of all public affairs through achieving more transparency, greater participation, better accountability and less corruption. As a result, it would enhance democracy, development and economic, political and administrative reform.
- Ninety three countries worldwide - including three Arab countries, which are Jordan, Tunisia and Yemen - have passed RTI laws.
- For the last three years, Egypt has been struggling with its RTI draft law. After the 25th of January Revolution, the Egyptian government has shown an interest in drafting a RTI law in consultation with civil society organizations (CSOs). At the same time, some CSOs were devoted to producing their own RTI drafts, such as the United Group Law firm and National Coalition for Media Freedom.
- During 2011, Egyptian CSOs worked alongside with the Cabinet of Minister’s Information and Decision Support Center on a draft law that was submitted later to

the parliament. However, the work on that draft law was frozen with the dissolution of the parliament in 2012.

2.2 PUBLIC PARTICIPATION PROCESS IN THE RTI DRAFT LAW

- With the formation of a new cabinet, the Ministry of Justice (MOJ) assumed responsibility for drafting a RTI law.
- The Social Contract Center (SCC) - which is a think - tank and a mutual initiative between the UNDP and the Cabinet of Ministers- facilitated a wide-range community dialogue between MOJ and other relevant stakeholders from media, NGOs, trade unions, syndicates, academia, statistics and research centers, private sector and relevant ministries (e.g. Ministry of Communication and Information Technology).
- In the first step of the community dialogue “informing or availing information”, SCC informed CSOs about the current situation with regards to the RTI draft law through distributing prints of the most recent version of the RTI draft law indicating the comments and remarks made earlier by CSOs and tracking changes and modifications made to the draft law in response to such comments.
- In the second step of the community dialogue “consulting”, SCC attempted to stimulate an open and free flowing discussion among all parties through dividing the dialogue into a set of sessions tackling a cluster of articles from the draft law at a time. One cluster addressed the articles pertaining the roles and formation of the National Council for Information, which is the institutional body managing the RTI law enforcement. The other cluster addressed access to information procedures, exceptions and penalties. SCC organized the two clusters in that manner to address orderly the earlier comments and remarks made by CSOs over RTI draft law.
- Consultations with the representatives from media, NGOs, syndicates, academia and research centers were very rich and reflected diversified, and sometimes contradicting, views which nevertheless had some merit. Debates broke out over some of the prominent issues that usually surface whenever a RTI draft law is being discussed, including:
 - The list of exceptions from the law which some CSOs argued is long and contains vague and broadly defined terms excluding information that might endanger “national security”, economy, international relations, commercial relations or military affairs.
 - The formation and memberships of the National Council for Information, which some CSOs argued most of its suggested members represent governmental or semi-governmental institutions, which can threaten its independence and efficiency.

- The draft law emphasized penalties if unpermitted information were availed but provided no incentives or protection to whistle-blowers, which will ultimately discourage reporting acts of corruption.
- Some NGOs, on the other hand, such as Egyptian Association for Scientific and Technological Development, disagreed with the above mentioned comments and argued there is a merit in defending national security and called for approving the law as a first step to transparency in Egypt.
- Similarly, World Bank expert Toby Mendel, who was invited to the community dialogue, argued CSOs should not seek complete perfection, but rather take advantage of the momentum and push for the law as a first and primary step to Egypt's transparency. Despite that Mendel admitted the law has some defects with regards to the appeals system and provision of clear definition to national security or protection of whistle-blowers, he emphasized the "progressive nature" of the law, which according to his global assessment RTI rating would rank Egypt the 8th globally among the 93 countries who passed RTI laws.
- Deciding together: As a sign of positive engagement and good intentions from the side of the government, which was unexpected even by civil society, MOJ asked for a smaller but expert civil society group meeting in the MOJ premises, in order to take discussions and analysis into a more advanced and in-depth level and decide together on how to improve the draft.
- The two parties discussed a long list of comments and suggestions and many of them were accepted by the MOJ. However, the same issues remained problematic: exceptions, definition of national security, emphasis of penalties over incentives and the formation of the National Council for Information.
- At the end of the discussions, it was not clear at all what is the final content of the draft law or what are the next steps. In that sense, the process ended without fully deciding together or finalizing the RTI draft law.

2.3 OBSERVATIONS

- In the first step of community dialogue, which is 'informing or availing information', there were no clear ground rules about: a. how the consultation process will move ahead; b. what is the role of each party in the process, his commitments, responsibilities and subsequently lines of accountability; c. the next steps and how a decision is going to be reached; d. how the outcomes/conclusions of the process are going to be disseminated.
- The deficiency in setting ground rules or the 'informing' step had many consequences. For example, the role of the facilitator was misinterpreted to involve a

commitment for a change in the draft law while his real responsibility was bringing partners together and ensuring free-flowing discussions. The MOJ's responsibility, on the other hand, was to revisit the draft law and make amendments based on the consultation with CSOs and the study of the CSOs' suggestions.

- In the 'consulting' step, inviting a wide array of stakeholders in a topic, like the right to information, that affects and interests everyone is very tricky. Some stakeholders are always going to be missed out.
- Dividing the dialogue by the facilitator into a set of sessions tackling a cluster of articles/issues at a time was helpful because it created a framework for the discussions, allowed both government and CSOs to rationalize the debate and address all issues that were relevant together at the same time.
- It was clear in the consultations that participation meant different things to different parties and was sometimes misinterpreted. To CSOs, participating in the consultations meant changing the draft law to match their full expectations. On the other hand, to MOJ, involving CSOs in the consultations/discussions meant hearing them but without a clear commitment to act upon the outcomes of consultations/discussions.

In the 'deciding together' step, despite the fact that the MoJ's initiative to meet again with the CSOs in an expert group meeting was unprecedented, this move by MOJ did not end up in 'fully deciding together' with civil society because both sides were reluctant to make concessions or find middle grounds. As a result, the public participation process stopped at that point and did not progress to the acting together or the mutual support to the decision.



- MOJ did not share the results of the consultations or the expert group meeting. Lack of transparency and limited sharing of results, of what inputs were incorporated or reflected in the final decisions and of what have not been incorporated and why can jeopardize the whole process despite that some real input and compromises from public participation (consultations) might have been adopted but nobody knew about them.
- Allowing the public to engage in decision making inevitably transfers some powers back to the people, who were initially the source of power. However, not all decision makers -especially at MOJ - are at ease with giving up some of what they perceive as

their powers and authorities to the people. Therefore and due to the absence of the 'power-sharing' culture in Egypt, some processes that attempt to be 'participatory' can still be dominated, in the heart, by elites and top-down methods where opinions have been shared but power and decisions are minimally shared if ever.

3 PUBLIC PARTICIPATION IN THE NATIONAL PLAN

3.1 THE CONTEXT OF PUBLIC PARTICIPATION IN EGYPT'S NATIONAL PLAN

- Two of the 3 concepts mentioned in the slogan “Bread, Freedom and Social Justice” held by Egyptians during the 25th of January Revolution correlated directly or indirectly to social justice, which emphasizes the degree of injustice they suffered on many levels (health, education, job opportunities, housing, etc...).
- Feeling under pressure, the Ministry of Planning (MOP) decided to address social justice in the Economic and Social National Plan, which it is mandated to prepare annually.
- Through specifying a set of guidelines within every sector (i.e. education, health, agriculture, housing, etc...), Egypt’s Economic and Social National Plan is designed to outline or plan the projects and steps needed in order to achieve economic and social development.
- Over the years, national planning in Egypt has been conducted, in the first place, in a centralized, monolithic and top/down manner. Despite that MOP calls local districts – affiliated to the Ministries – to submit their needs every year, MOP gets to decide which needs shall or shall not be fulfilled. In addition, it does not take into consideration the perspectives of different non-state actors including civil society and private sector.
- But MOP was increasingly aware of: a) the massive need for social justice, b) social justice is a heavy burden and a crosscutting issue that cannot be achieved solely by the government, and c) social justice is not a clear or homogeneous concept but rather means different things to different groups.
- As a result, in late 2012, MOP decided to start public consultations over “Social Justice in the National Plan” in an attempt to: a) understand stakeholders’ perceptions of what social justice is, b) how to implement it, and c) reflect the consultations’ outcomes in the 2013/2014 National Plan, which would grant it more public legitimacy and support.

3.2 PUBLIC PARTICIPATION PROCESS IN THE NATIONAL PLAN

- As MOP decided to undertake participatory planning and open consultations for the first time in Egypt, it called upon SCC to start up and facilitate the consultation process, which SCC decided to implement over 8 sectors: education, health, water and sanitation, agriculture, environment, transportation, housing and employment.
- SCC agreed with MOP on the following terms: a) products and outcomes of discussions – which are agreed upon or consensual – will be collected by SCC, b) MOP should be responsible of transforming the outcomes and products into a substance that can be easily integrated into the national plan, c) the final product should be published and made available to the media and the public.
- SCC decided to carry out consultations on two sequences:
 - a) Firstly, holding wide-range community dialogues in the MOP premises between the relevant stakeholders including relevant civil society (representatives from academia, research centres, trade unions, syndicates, and NGOs relevant to the sector in discussion) in addition to the private sector and all relevant ministries crosscutting with the designated sectors.
 - b) Secondly, holding much smaller expert and specialized group meetings (following the community dialogues) designed to consult over the outcomes of the earlier community dialogues and come up with concrete issues and projects to be included in the National Plan.
- In the stage of “informing or availing information”, SCC undertook 3 steps:
 - a) It held a conference with the presence of the Prime Minister and Minister of MOP in the Cabinet of Minister to declare to the masses through media the beginning of the consultation process over the National Plan and the objective behind it;
 - b) It devoted a slot at the beginning of each sectorial consultation to introduce the rationale behind the process, the steps of the process, the objectives, stakeholder’s mission, and the expected outcome of the process or where it is going to lead;
 - c) It prepared and distributed prints of sectorial background papers describing the legislative framework, current situation/ problems with regards to the sector in hand and some proposed solutions and policies. The background papers aimed mainly to start up the discussions.
- In the stage of “consulting”, public figures affiliated to civil society (academia and NGOs) were asked to moderate the sectorial (sector-based) discussions over how to

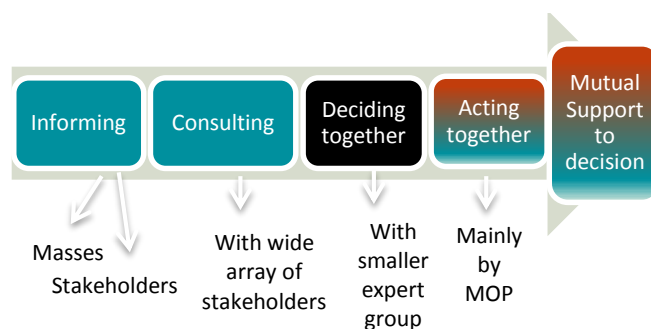
integrate social justice in the 8 sectors in a manner that can be reflected in the national plan.

- Stakeholders agreed social justice in that phase of Egypt's history where the country suffers deficits and forced to deploy austerity measures should aim to improve the quality of services while targeting the poorest groups, which they agreed can be best done through targeting the marginalized and poorest governorates and through targeting middle classes as well so that they do not deteriorate because of inflation or austerity.
- Despite that the outcomes of the discussions varied according to the sector in discussion, one can classify the products of the discussions into the following:
 - a) Suggesting new policies and initiatives;
 - b) Asking to continue, discontinue or reform current ones;
 - c) Setting criterions for the government determining which projects to implement and where to implement them (e.g. "poorest governorates" criterion, high density classrooms criterion, etc.);
 - d) Suggesting a new set of performance and monitoring and evaluation indicators that are closer to the citizens (e.g. good governance indicators including quality, satisfaction, participation, transparency).
- In the third step of public participation "deciding together", the smaller expert and specialized group meetings went in depth into the policies, initiatives and criterions suggested in the community dialogues and ended up confirming most of them.
- However, in the "acting together" step, MOP never declared how it is going to integrate the suggestions into the National Plan and when!

3.3 OBSERVATIONS

- In the first step of community dialogue, which is 'informing or availing information', introducing the ground rules, the objective of the consultations, how the process will move on; what is expected from the participants or the stakeholders and the anticipated results/ outcomes of the process was very useful in bringing the participants on the same ground and shaping their roles and expectations.
- In the 'consulting' step, the excellent choice of stakeholders or participants based on their backgrounds or relevance to the discussed sector, their geographical representation or their affiliation to civil society, private sector or one of the related ministries produced fruitful discussions and rich suggestions which were re-emphasized in the small expert groups or the 'deciding together' step.

- Clearly, in the case of public participation over the National Plan, the size and level of participation varied at each step. While the 'informing' step addressed the masses and later the stakeholders, the 'consulting' step addressed only the wide array of stakeholder and the 'deciding together' step addressed the smaller expert group where more analysis and investigation is possible.
- Carrying out the community dialogues in the premises of MOP created a sense of trust among civil society, who had the opportunity to enter MOP and discuss the National Plan for the first time, and stressed the commitment of the MOP to the outcomes and results of the discussions.
- In the 'acting together' step, similar to the community dialogues over the RTI draft law, time constraints led into rushing the process. MOP did not have enough time to reshape the outcomes of the consultations in a format that better matches the structure of the National Plan. Therefore, the 2013/2014 National Plan came with limited reference to the consultations over social justice.



- However, the 2014/2015 National Plan came with strong reference to the consultation process over social justice and included multiple suggestions proposed earlier by the stakeholders in the consultations. Yet, there were very little knowledge of this since MOP never communicated back with the facilitator or the participants and did not publicly explain or declare the suggestions that were integrated to the Plan. Again, like the RTI consultations, lack of transparency and limited sharing of results can threaten the trust in the whole process despite some real input might have been adopted but nobody knew about it.
- However, consultations over integrating social justice in the National Plan were extremely significant because they changed the norms and rules of planning in Egypt. They connoted the start participatory planning for the first time in Egypt though institutional channels.

4 LESSONS LEARNT AND RECOMMENDATIONS

4.1 FOR CIVIL SOCIETY

Being part of a community dialogue does not necessarily mean all Civil Society's input will be adopted. Civil society is not one homogenous group (it includes for example different NGOs, academia, trade unions, syndicates, media, etc...) and is not also the sole stakeholder. Relevant ministries and the private sector are complementing stakeholders. Therefore:

- Civil society's perspectives, though enriching, might sometime be contradictory with one self or with another stakeholder. Therefore, it is very important for civil society to be open minded & flexible and seek middle grounds and consensus building or find acceptable compromises.
- CSOs should be more understanding that the culture of power-sharing in Egypt is still new. Therefore, this requires delicacy from the side of CSOs in assuring that they are not competitors but rather partners and their role is to collaborate with and assist the government in responding to the different needs of the people.
- CSOs have suffered multiple disappointments with the government. This should not mean withdrawing all kinds of trust in all governments or all decision makers, especially when decision makers take initiatives or call for public participation which remarks a change in mind sets, behaviours and culture of decision-making.
- It is important to allow a space for trust, share fears and earlier disappointments and ask for guarantees or commitments to road maps.
- It is civil society's mission, however, to follow up on the outcomes and the results of the consultations and the progress made to the roadmap or other commitments.

4.2 FOR FACILITATORS

- It is the duty of the facilitator to disseminate information about: i) the objectives of the consultations, the expected outcomes and the criterion for participants' selection; ii) the road-map for the entire public participation process including a timetable; iii) the type/mode of participation required at each step of the road map (e.g. in reaching the final decision); iv) the topic in discussion; v) the roles of the participating parties; vi) how the final outcomes will be publicly communicated.

It is crucial that the facilitator clarify to the participants his own roles and responsibilities which should revolve around facilitating the participation process and providing a safe space for communication and free flow of ideas. It should be clear a facilitator's role is not to guarantee adopting the outcomes of the process, which is the decision makers' role.

4.3 FOR DECISION-MAKERS

- Decision-makers should understand that Public participation is an ongoing process, not a single event, meaning that: 1) it should consist of a series of activities and actions before, during and after the participation; 2) it should be undertaken on different levels (identification, planning, implementation and administration, etc...); 3) it could be carried out in different sizes of participation or intensity at every point/level.
- Decision-makers should perceive public participation mechanisms as chances to both inform and explain (to) the public and obtain input from them. It is a two-way channel that should end again with explaining to the public how the final decision was taken and why.
- Decision-makers should not be worried that seeking public input would necessarily mean doing 'what the public wants' because there is no single public and there are spectrum of stakeholders holding an array of views and concerns over every issue. Thus, input should be gathered and a balance among views and concerns needs to be reached and reflected in the final decision. It is also worth noting that if public participation is being applied only as a right and not a method for better decisions, it is decision-makers' privilege to reach decisions.
- In public participation processes, the value that is cherished the most is 'transparency'. Therefore, information about the following issues need to be communicated directly or through the facilitator to the people or stakeholders: the objectives and steps of the public participation process (road map and time-table); the issue in discussion; the outcome of the process and how it will be reached or disseminated, etc.

In doing this, it is important to remain honest and realistic, discuss limitations along with opportunities and not to raise public expectations, intentionally or unintentionally.

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