MENA AND PUBLIC CONSULTATIONS

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Introduction: Civic engagement, in its most basic form, is about participative decision-making. It is anchored in the belief that: (i) people have the right to define the public good and to shape related public policies and that (ii) this process will lead to better and more sustainable outcomes. The idea of civic participation is as old as the idea of democracy and has existed in many different cultures throughout history, from ancient Mesopotamia’s Sumerian civilization and initial moves towards a simple “democracy” to the sophisticated political analysis of the ancient Greeks (especially Plato and his student Aristotle but others as well). This early thinking on the rule of law, voting, free speech, the right of assembly and equal representation has evolved to form the basic pillars of democratic systems worldwide. Today, international experience reaffirms the importance of maintaining an ongoing dialogue between the government and citizens as an integral part to efficient policymaking.

The Benefits of Participative Decision-Making: The intrinsic value of public consultation is evident as it strengthens citizenship and enables a more inclusive civic engagement. The extrinsic value of consultation, while difficult to quantify, also has an important impact on a wide-range of government functions. The integration of consultation mechanisms throughout the policymaking process has proved to be a valuable instrument to help strengthen government-citizen interaction and improve the quality of government policies on key development areas by leading to better designed development projects, more effective service delivery, and improvements in the targeting of benefits. By making preliminary policy analysis available for public scrutiny, stakeholders are provided with a means to inform the development of a policy or its implementation. Consultation also helps regulators to balance opposing interests and to identify unintended effects while ensuring transparency to minimize administrative burdens and reduce corruption and rent-seeking. When successful, public participation can have a transformative impact by providing citizens with a platform for active engagement in the development process, and allows citizens to hold governments to account and to better influence decisions that affect their lives.

Legal Frameworks for Public Consultation: Legal frameworks for public consultation vary greatly across different countries. Public consultation is enshrined in the constitutions of South Africa and Switzerland, and as a statutory duty in other settings. One example of the latter is agency rulemaking in the United States. Legislation on public consultation may be broad (e.g. establishing petition rights or consultative referenda) or restrictive in scope (e.g. requiring consultation with trade unions,

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professional associations or indigenous peoples during policy-making). In other contexts, consultation mechanisms are not bound by a legal force or punitive law enforcement measures and many countries have adopted codes of practice to set basic criteria for conducting consultation on draft laws and regulations. One example is the code of practice on consultation adopted by the United Kingdom which presents criteria and guidelines on good consultation practices for government policy development. This also aims to improve the transparency, responsiveness and accessibility of consultations by providing clear basic guidelines to reduce the burden of engaging in policy making. Similar consultation guidance documents can be found in Canada and the European Union (EU). Several EU members require public consultation on new regulations in the context of regulatory impact assessment procedures (RIA) in line with the 1995 OECD Council Recommendation on Improving the Quality of Government Regulation.

Implementation Issues: In terms of implementation, there are a range of tools that can be useful in promoting public consultation on draft laws and regulations. The most effective approach is dependent on who is to be consulted and the communication tools to be used. Governments have introduced different methods to receive feedback on policy issues and draft legislation including through opinion polls and surveys, or through comment and notice periods. Some methods provide greater levels of interaction for consultation than others such as public hearings, focus groups, citizen panels and workshops, which are most effective with smaller groups of citizens. Furthermore, with the greater use of ICT, some governments utilize ICT to receive feedback and consultation on draft laws and regulations utilizing e-mails posted on government websites, email lists, and online forums. In some contexts, there may be special procedures for specific groups, such as NGOs, industry representatives, and constitutional/statutory bodies like Equality and Human Rights Commissions (UK and South Africa), the Conseil d’Etat (France) and the European Economic and Social Commission (EU).

MENA and Public Consultations: While the benefits of public consultation are widely recognized, the MENA region still lags in the domain of public engagement, especially in regards to providing citizens with mechanisms to engage effectively in the design, implementation, and evaluation of public policy. A brief overview of the MENA region across a wide-set of governance indicators clearly indicates significant weaknesses, and particularly on issues of accountability, public engagement and transparency, when compared to world averages. According to most recent Global Integrity indicators, an assessment of selected MENA countries reveals that, on average, countries perform substantially worse than comparable global averages in virtually every category. Country scores range from 13% lower on anticorruption and rule of law to 24% lower on civil society, public information and the media. Linking key findings of this index with recent uprisings in the MENA region sheds light on the political, economic and social dynamics which, coupled with significant governance inefficiencies, have shaken up the existing political and economic structures in the region. The current transitions in MENA present an opportunity to push forward reforms in the area of public engagement in response to demands for greater public participation in the development process.

Moving Forward in Jordan and Morocco: Greater government accountability and public participation will be essential elements for strengthening institutions and government

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2 For more see globalintegrity.org. Countries covered in this analysis include Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Qatar, Syria, Tunisia, the West Bank & Gaza and Yemen.
functioning. Through its efforts on open government reform in line with the Open Government Partnership³, Jordan has established a dedicated interactive website at the Legislative and Opinion Bureau/Prime Ministry by which the public and civil society can access and express views on pending legislation, regulations, and policy issues. In Morocco, increased citizen engagement in government decision-making is solidified through articles 12-15 of the new Constitution revised in 2011, which introduce principles of democratic participation and provide a platform for civil society to be an integral part in state consultations. This right extends across different stages, from pre-planning to the evaluation of public policies. The new Constitution also provides for the creation of an organic law determining the conditions of the right to citizen petitions. Current efforts include the launch of a national dialogue to build public consensus on translating new constitutional rights into a legal and policy framework for CSO engagement.

Conclusion: While Morocco’s Constitutional reform and Jordan’s e-gov initiatives are important in enhancing transparency and accountability, the challenge is translating these efforts into institutionalized mechanisms for participatory planning and public consultation. This will necessitate a move towards a mode of governance focused on citizen satisfaction and government performance. This will also provide an opportunity to strengthen dialogue between government and civil society and to strengthen the consensus around the implementation of reforms. Furthermore, expanding the scope of consultation will also expand the scope for social accountability and result in better targeted policies in line with citizen demands.

In implementing consultation processes, many countries in MENA and beyond are faced with challenges relating to public confidence in government. This broad mistrust can translate into weak confidence in the credibility of a consultation process. There will be questions on whether government efforts are sincere in taking public views into account and whether the consultation process will indeed result in better outcomes. Lessons from international experience can help shape and inform the development of a systematic and trusted public consultation mechanism. For example, engaging citizens from the onset of a policy process will help to build momentum for change. Ensuring that consultations are followed by feedback mechanisms to illustrate constructive outputs will help to instill confidence in the process and ensure that expectations are met on both sides.

³ The Open Government Partnership is a new multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a steering committee of governments and civil society organizations. Currently, Jordan is the only member country of the OGP represented from the MENA region, though with World Bank support Morocco and Tunisia are working towards meeting eligibility criteria. www.opengovernmentpartnership.org