

## MAJALAT - Brussels Civil Society Forum CONCEPT NOTE & RECOMMENDATIONS *Governance and Rule of Law*

When considering the NS countries, governance and rule of law are notably weak. This weakness is particularly pronounced in areas such as transparency, civil liberties, media freedom, participation and political accountability. As a consequence, overall government accountability is weak and public sector service delivery does not meet the expectations of civil society and citizens. Good governance and the rule of law, however, lie at the heart of the EU's relationship with NS countries. Improved governance requires an integrated, long-term strategy built upon cooperation between formal institutions and civil society. The Rule of Law, Accountability, and Transparency are technical and legal issues at some levels, but also interactive to produce government that is legitimate, effective, and widely supported by citizens, as well as a civil society that is strong, open, and capable of playing a positive role in politics. Inclusion of civil society in the monitoring and evaluation of cooperation programs has been recognised by the EU as fundamental for their successful implementation. However, EU's rule of law promotion policy has often been criticised for being either inefficient or self-interested.

Since Governance and Rule of Law are complex and multifaceted notions, two main entry points of discussion has been prioritized during 2019 activity cycle:

1. Shrinking Space for Civil Society
2. Fight against Corruption

This concept note is the result of the discussions that took place during the thematic Workshop on Governance and Rule of Law in the Southern Neighbourhood held in Lecce (Italy) in May 2019 and, of the subsequent reflections resulted from the South Seminar held in Tunis, in September 2019. Subsequently, in order to refine the recommendations resulted from the Majalat activity cycle, an independent expert active in the civil society sector in the Southern Neighbourhood countries, has been recruited. The main objective of the work done by the expert was to better specify and develop the recommendations using specific provisions, policies, EU instruments, mechanisms and actions in order to make the recommendations operationalizable and actionable specifying the targeted EU institution - and, therefore, place recommendations in perspective with EU policies in the specific thematic area discussed.

*The content and political message of the report and the recommendations have not been altered. Additional points will be validated with the discussions with the participants during the Brussels Civil Forum.*

## Entry points

### 1. Shrinking Space

Shrinking Space for Civil Society is a term used to describe the space civil society needs to operate but is repressed or restricted, essentially to be understood as shrinking. It is a term coined by international human rights institutions as many governments are adopting measures and policies to curtail civil society activism and muzzle critical voices. This shrinking space is commonly described as the failure to observe three fundamental rights<sup>1</sup>: 1) Freedom of association, 2) freedom of assembly, and, 3) freedom of expression. However, Shrinking Space should not to be confused with there being a less active Civil Society. In fact, while the space is shrinking, there can be more CSOs forming and becoming more active.

On top of the above-mentioned freedom of expression and assembly, freedom of association, other relevant criteria to be taken into account when evaluation space given to civil society include the right to establish, run and close an association, access to funding; access to decision makers; access to information; and freedom of movement. Any infringement to these rights is considered to be a shrinking space for civil society.

In the Neighbourhood south, these infringements are practiced by national governments and encompass legal restrictions, trials against CSOs and HRDs, prosecutions, judicial harassments, travel bans, freezing assets, rise of GoNGOs (Governmental NGOs), ad hoc articles published to undermine CSOs credibility, pressure on independent journalism, public defamation campaigns, infiltrations, restrictions on militancy/activism.

However, as it could have been more traditionally linked to the NS and authoritarian regimes, the shrinking space is also stretching to democratic governments in the EU. For example, with the criminalization of solidarity preventing Civil Society to intervene when it comes to migrants and refugees coming to Europe.<sup>2</sup>

#### **1. Recommendation directed to the EU Delegations in the region & the Inter-Institutional Steering Group (IISG):**

The independent nature of CSOs is at the core of the EU Communication COM(2012) 492, therefore EU Delegations are asked to:

- engage as soon as possible discussions with genuine CSO to find concrete mechanism adapted to each national context to identify GoNGOs.
- In parallel, each sector of CSOs will strengthen peer-to-peer mechanisms to establish who are part of genuine Civil Society. Then, EU Delegations as well the international community will be invited to support and give credit to this self-regulation of the sector as it is the case with many self-regulations initiatives of the private sector.
- Based on this process, the European CSOs Road Maps and other internal documents on civil society should be updated accordingly.
- Finally, the IISG should organize a specific meeting with the European Union Units responsible of the relations and partnerships with Civil Society at central level to raise specifically those issues and the propositions from MAJALAT.

#### **2. Recommendation to the EU Delegations in Israel, Lebanon & Jordan, and to the European Parliament:**

The European Union must reinforce its efforts to provide access and funding to local CSOs in Palestine and, in Palestinian and Syrian Refugee camps wherever they are. Existing funding mechanisms should be

<sup>1</sup> <https://euromedrights.org/theme/shrinking-space-for-civil-society/>

<sup>2</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578039/EXPO\\_STU\(2017\)578039\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578039/EXPO_STU(2017)578039_EN.pdf)



promoted and publicized at grass roots levels. The too-long dramatic situation of Palestinian refugees in the region request permanent diplomatic initiatives from the EU. MAJALAT encourages the EU to not take the pretext of the other current challenges in the region (States fragility, security stability, fight against terrorism, Syrian refugee situation, etc.) to downgrade the priority that the Palestinian populations, inside Palestine and outside, deserve. In addition, the fact that some independent CSOs in Europe and locally are promoting boycott measures against Israel and products coming from colonies shouldn't be used as an argument to stop or limit funding or visas. Calling to the boycott has always been part of the democratic and pacific means of action for civil society. Even States have officially used this approach against other countries for example from many European Member States to increase the pressure against South Africa during the Apartheid. The EU must ensure vis-à-vis partners governments that CSOs are not subject to pressure and specific counter-measures because of the choice they make in terms of non-violent strategies of action. On the same line, civic and pacific disobedience are means of action chosen by some organisations which deserve to be protected and defended by the EU.

### **3. Recommendation to the IISG and EU Budget authority (EC & European Parliament):**

To reinforce the capacity of Civil Society to fully play an independent watchdog role in general and vis-à-vis the European Union, it is urgent to improve the strategic impact of EU capacity development programs with a specific focus on local actors as well as to increase the access to official budget information for CSOs;

### **4. Recommendation to the IISG:**

In line with the Busan principles and the Letter of Mission to M. Borrell from the new President of the Commission, transparency and mutual accountability should be silver threads which run through the whole process of programming, from initial reflections and analyses to final decision on each multi-annual programme and its financing. To ensure this to happen, the EU services involved - mainly the EEAS and its EU delegations, DG DEVCO and DG NEAR - should systematically and periodically make available relevant and useful information about the process and its development - eg: announce opportunities/venues for civil society to engage, in a timely manner.

### **5. Recommendation to the EEAS:**

Based on the existing provision of the Lisbon Treaty on Policy Coherence for Development, and considering the recent priorities set by the new commission and the ongoing discussions on the new NDICI instrument (target of 85% of expenditure on SDGs), Human Rights, civil society participation and Gender must be increasingly mainstreamed in each external instrument and priority of the EU. Therefore, MAJALAT proposes to work with the leadership of EEAS and DG NEAR to identify an institutional mechanism which will allow CSOs to monitor the instruments and policies on Fight Against Terrorism, Security and export of Weapons in the Neighbourhood South region on a regular and transparent basis.

### **6. Recommendation to IISG & MAJALAT**

MAJALAT proposes to the IISG a specific & light process to either test a pilot report in 2020 to assess the country by country situation regarding Shrinking Space (if additional resources are made available) or to develop a precise plan for such report to be implemented during a next phase of MAJALAT.

The following best practices of CSOs could be suggested i.e.:

- [Enabling Environment Monitoring Matrix implemented by ECNL](#)
- [CIVICUS CSO Index](#)
- [Social Watch Gender Index](#)

### **7. Recommendation to IISG:**

MAJALAT proposes to the EU to consider and assess the feasibility of using crypto money in countries where access to funding by local CSOs is restricted due to legal provisions (especially in undemocratic context).



### **8. Recommendation to the European Parliament Committee of Control of the European Budget (COCOBU):**

Call the EU to apply the same fiscal standards for grants to governments and NGOs in relation to VAT. As a reference find hereby the [report issued by European Civil Society in 2005](#) for the COCOBU which led to an initiative of the European Court of Auditors.

### **9. Recommendations for MAJALAT & the political leadership of the EU (EEAS & Home Affairs)**

Considering the new provisions for mainstreaming HR through all external relations instruments and the ongoing evaluation/assessment led by the EU on Protect Defenders, MAJALAT is suggesting to reinforce its connections with the specialized networks leading the field of “protection for Human Right Defenders” such as HRDN (European Human Right & Democracy Network), Amnesty International Europe or Front Line Defenders.

The current trend from the International Community is to encourage asylum or protection to HR defenders at regional level. This pragmatic approach applies to the Middle East region but presents the inconvenient to underestimate the capacity of several regional intelligence services (Egypt, Israel, Turkey, Saudi Arabia, Iran, etc.) to track and threat Human Right defenders in the whole region. Therefore, MAJALAT requests the EU to offer facilities to HR Defenders from the region to settle in the European Union.

The EU provides short-term visa (3 to 6 months for the moment) or longer ones for asylum (2 years) to protect Human Rights Defenders (HRDs) at risk. But the request for asylum for many HRDs is often equivalent to a situation of “no return” in the country. Therefore, MAJALAT proposes to the EU to analyse the possibility to provide visas for a duration of one-year for HRDs at risk from the South Neighbourhood region.

## **2. Corruption**

Despite the political changes that shook the South Mediterranean region seven years ago, the hope for these countries to fight corruption and end impunity has not seen any progress yet. On the contrary, the majority of South Mediterranean countries have failed to fulfil the will of the people to build democratic systems allowing for greater transparency and accountability. Corruption indicators remain unfortunately stubbornly high. Political corruption remains a central challenge: new forms of corruption to keep the political class in power are put in place and an institutionalized immune system that prevent citizens from combating has been set up. Political corruption destroys the political will to address the problem, which impedes a genuine breakthrough in anti-corruption efforts, despite the availability of tools, legal environment and official national anti-corruption bodies. Without strong political will to combat corruption in the public sector, countries across the region are also undermining the political rights of their people. To this regard, cross analysis with global democracy data provided by Transparency International reveals a link between corruption and the health of democracies<sup>3</sup>: the results indicate that countries with the least protection for press and civil society tend to have the worst rates of corruption.

Without an effective anti-corruption strategy, a genuine collaboration between internal and external actors, checks and balances or political rights in place to challenge autocratic tendencies, anti-corruption efforts will be constantly undermined. For the region to fulfil part of its anti-corruption commitments in collaboration with the EU, the following recommendations has been suggested by the participants:

<sup>3</sup>[https://www.transparency.org/news/feature/cpi\\_2018\\_global\\_analysis](https://www.transparency.org/news/feature/cpi_2018_global_analysis)



### **1. Recommendations to EEAS, DGNEAR & European Parliament**

The ongoing discussion on the new single Instrument (NDICI) and the following programming process must reinforce internal mechanisms for the EU to promote best practices, to identify bad practices and to sanction institutions and persons responsible for miss-management and corruption involving EU funding in the External Relations. This period offers a unique opportunity for the EU and CSO to advance this important agenda for citizens within the EU and in partners country. High level political will must lead the process. The absence of concrete results in 2-years (when programming is completed) could lead to the conclusion that European institutional and political leadership were missing and should be denounced loudly by CSO inside and outside the EU.

More precisely the EU is asked to be more proactive in its financial and audit controls vis-à-vis public institutions in partners countries channeling resources from the EU (regardless of the instruments). As soon as legitimate doubts exist on the side of the EU some fast control mechanism should be sparked. Detailed information on EU budgets, grants and blending credits going to public institutions must be disclosed on the EU Delegation Website. Works books of each entity should be accessible by CSO and Journalist on simple request. Public contracting procedures should be periodically disclosed for each EU Budget Support. Information on procurements should also be accessible. CSO should be invited to join monitoring mechanisms which overlook public procurements.

### **2 Recommendation for EEAS, DG NEAR & EESC**

The European Union increasingly calls the private sector to come into the Aid framework through blend financing instruments which mostly aim to guarantee and subsidise private investment (through the EIB for example). Therefore, budget support is increasingly oriented to blended investments with a final output which must include “impact”, re-orienting investment toward rentable infrastructures. This approach is aligned with the domestic concept of “Green New Deal for European economies”. In this evolving context, MAJALAT calls the EEAS and DGNEAR to create an open space for CSOs to monitor these new modalities and concrete opportunities for civil society to take part of these mechanisms as important actors for social justice.

### **3. Recommendations to the EEAS and DG NEAR**

The ongoing negotiations on instruments and next programming (starting with the ongoing review of current priorities - 2019) should be used by the EU to strengthen the implementation monitoring tools of Neighbourhood South agreements with a specific attention on three aspects which deserve proper assessment & monitoring: good governance of EU funds, fight against corruption through budget support and transparency vis-à-vis civil society CSOs and journalists.

### **4. Recommendations to the EEAS and to the President of the new Commission**

The EEAS is invited to use/extend the recent EU mechanism against individuals responsible of HR violations (which allow to track and ban those individuals from Europe), to the persons who escape their countries for corruption (once it is formally established by national authorities and justice). Actually, many corrupted leaders then settle in Europe and reinvest their corrupted assets into the European economy. On the same spirit the EU should check that those corrupted persons see their access to the golden visas offered by few European Member States preventively denied (see specific section further).

### **5. Recommendations to the EC leadership and to Member States**

The High Representative of the EU is asked to push vis-à-vis its peers within the Commissioner Collège for increased good governance and transparency in the publication of the names of citizens who obtained golden visas. This current modality is increasing the miss-trust of citizens in Europe and in the Neighbourhood regarding double standards and the rule of law within the EU.

### **6. Recommendation to the EEAS**

Regarding HR violations committed by public institutions and governments, the EU is encouraged to use



EuroMed Rights  
EuroMed Droits  
الأورو-موسوية لحقوق  
الأورو-موسوية لحقوق

solidar



annd  
Arab NGO Network for Development  
شبكة المنظمات العربية غير الحكومية للتنمية



Ref



a progressive set of sanctions starting by a “less for less approach” which includes to cut 10% of country envelops as a political signal sent to the authorities before activating the more official “HR suspension” provision attached to each country instrument but that is in practice very slow and complex to activate. Other intermediary steps could be identified to reinforce the capacity of the EU to implement its own provisions and political decisions (refer to the mission letter of the President of the Commission to HR J. Borrel)

### **7. Recommendations to EEAS and EU Delegations**

- Contribution of civil society is fundamental in pushing governments to adopt laws to protect whistle-blowers and the EU is invited to provide particular attention and support to these initiatives.
- Some participants pointed out that sometimes laws exist, but they are not fully or correctly implemented, instead they are used as a cover to be presented to International Organizations. For this reason, the monitoring process from CSOs is fundamental to promote effective implementation.
- The EU is invited to support and promote the work done by those organizations at national level.
- The new domestic European Union directive on Whistle blowers provide also an interesting momentum for EU Delegations to push for similar initiatives with partner countries.

### **8. Recommendations to EEAS, DG Justice, DGNEAR & OECD**

- The EU should provide technical support to partner countries when asset recovery is involved, through a new EU initiative aiming at mobilizing the best practices and norms existing at international level. This initiative should include standard procedures applying in different contexts.
- When a partner country engages official procedures for asset recovery from a European country, the EU Delegation should provide fast capacity building to reinforce the national institutions involved in such recovery processes (i.e. the justice sector).
- The EU could take a political initiative to assess the existing routes of money transfers to EU from the MENA region.



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