

MAJALAT - Webinar Series
CONCEPT NOTE & RECOMMENDATIONS
Governance and Rule of Law in the context of COVID-19

Summary:

In light of the global COVID-19 pandemic, MAJALAT has developed a new activity plan for the years 2020-2021 that aims continue the work on the EU-neighborhood dialogue despite the restrictions on people's movement, using online communication tools. In this context, a series of webinars will be held in the upcoming months, building on the recommendations drafted and discussed in previous events, including the Civil Society Forum in Brussels last December. The first series of webinars to take place will offer a space for representatives of civil society organizations to reflect on the impact of the crisis on the recommendations that we have developed. In this context, EuroMed Rights will be hosting a webinar specifically on Governance and Rule of law during which participants will have the chance to look back on the recommendations presented at the Forum in this theme and review them in light of the recent developments.

Background and context

In most of the Southern Neighbourhood countries, Governance and Rule of Law appears to be 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 societal and local actors. The Rule of law, accountability, and transparency are technical and legal issues at some levels, but also interactive to produce a 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. Nevertheless, the EU's rule of law promotion policy has often been criticised for being either inefficient or self-interested.

With the outbreak and spread of the COVID-19 pandemic, Southern Neighbourhood countries are facing new forms of challenges on their way to democratise their political systems. This concept note therefore aims at identifying issues arising due to the current crisis while also formulating clear recommendations for the European Union's various actors who are active in these specific area and regional context.

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

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

The aim of this concept note is to continue those discussions which have taken place as part of the thematic Workshop on Governance and Rule of Law in the Southern Neighbourhood held in Lecce (Italy) in May 2019, the South Seminar held in Tunis, in September 2019 as well as the Brussels Civil Society Forum, held in December 2019, in light of the current sanitary crisis. The ultimate goal is to identify the new challenges which civil society in the Neighbourhood South region is facing in the mentioned areas as part of its work under these new circumstances.

Entry points

1. Shrinking Space

Shrinking Space for Civil Society is a term used to describe the space civil society needs to operate which is being repressed or restricted, essentially to be understood as “shrinking”. It is a term coined by international human rights institutions as a consequence of the adoption by many governments of measures and policies curtailing civil society activism and muzzling critical voices. This shrinking space is commonly described as the failure to observe three fundamental rights¹: 1) Freedom of association, 2) freedom of assembly, and, 3) freedom of expression. However, Shrinking Space should not to be confused with the emergence of a less 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 aspects, other relevant criteria for the existence of a legitimate civil society work environment 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.²

As governments around the world are declaring a state of emergency in response to the COVID-19 outbreak and taking exceptional measures to slow down the spread of the virus, it is of crucial importance that the above-mentioned aspects are being given an even closer look considering the political consequences of the outbreak of the COVID-19 pandemic. As the UN Special Rapporteur on the right to peaceful assembly and association, Mr. Clément Voule, recently emphasized in a written statement, the Covid-19 pandemic has posed unprecedented challenges to human rights around the world. He further expressed his concern for the fact that civil society organizations, who according to him should be seen as strategic partners in the fight against the pandemic, are currently facing numerous restrictions and limitations on their work³.

As a matter of fact, in the light of the current situation, the measures undertaken by governments in the Neighbourhood South region will inevitably encroach on rights and freedoms raising therefore, a number of questions which need to be considered. The Egyptian government, for example, has stepped up censorship via the Supreme Council for Media Regulation (SCMR) and the State Information Service (SIS). The SCMR announced that it was closing those news websites which were allegedly “spreading fake news” about the epidemic and that it planned to block webpages and the social media accounts of people “arousing public concern”⁴. Similarly, the Moroccan Council of Government approved a bill on the use of social networks, in particular regarding the criminalization of calls to boycott

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

² [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)

³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

⁴ <https://rsf.org/en/news/middle-east-governments-clamp-down-coronavirus-coverage>

commercial products, before withdrawing until further notice following pressure from a number of civil society organizations⁵, including the Forum des alternatives Maroc (FMAS) as well as EuroMed Rights⁶. In Israel, authorities have closed a number of neighbourhoods and towns and introduced digital surveillance for those diagnosed with COVID-19 or suspected of having been exposed⁷. Contrary to the stimulus package passed to support the Israeli economy and population under strain from public health measures, Israel has demolished 28 Palestinian agricultural and livelihood structures in Area C, exacerbating affected families' ability to provide for themselves and their communities⁸. Moreover, Israel has failed to prevent settler violence against Palestinians and their property, with the UN reporting a surge in attacks since the outbreak of Covid-19⁹. While some restrictive measures adopted by governments may be justified, it is crucial to assess the utility of any derogation while taking into account that certain rights do not allow for any derogation (such as the prohibition of torture and inhuman or degrading treatment or punishment, the right to a fair trial, etc). Furthermore, it is of primary importance to ensure the prevalence of the rule of law, especially in an emergency situation such as the current sanitary crisis. In fact, the unprecedented measures taken in response to COVID-19 may, not only affect human rights respect, but also alter the regular functioning of the judicial system. Moreover, with some governments in the Southern Neighbourhood choosing to increase tracking and monitoring activities towards their population under the pretext of the fight against COVID-19, the European Union as well as its civil society have to carefully monitor the situation and, where necessary, address these autocratic tendencies. Given that some experts fear government reactions similar to the ones chosen by the US after the September 11 attacks, EU authorities' activities should also be watched closely. Nationwide tracking apps, state websites to "monitor fake news" and other tools should without any doubt raise concerns amongst civil society actors and lead to reactions from their side.

The following recommendations are being made towards different EU actors:

1.Recommendation on GONGOs:

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 in discussions with genuine CSO to find concrete mechanism adapted to each national context to identify GoNGOs. Conclusions thereof should feed into an updated version of EU CSO Road Maps and other internal documents on civil society.

2.Recommendation on funding to Palestinian and Syrian refugee organisations:

The EU must reinforce its efforts to provide access and funding to local CSOs in Palestine and in Palestinian and Syrian Refugee camps wherever they are, as funding for these are diminishing with detrimental effect.

3.Recommendation on multiannual funding:

The EEAS and EU delegations, DG DEVCO and DG NEAR should systematically and periodically make available relevant and useful information to civil society about the process of programming - from initial reflections and analyses to final decision on each multiannual programme and its financing and

⁵ <http://majalat.org/news/morocco-under-pressure-civil-society-liberticide-bill-concerning-social-networks-backtracking>

⁶ <http://majalat.org/sites/default/files/2020-05/Communique%20FR%20-%20Projet%20Loi%2022-20.pdf>

⁷ <https://www.hrw.org/news/2020/04/15/covid-19-restrictions-offer-window-palestinian-experience>

⁸ <https://www.nrc.no/news/2020/april/israels-destruction-of-palestinian-property-undermines-efforts-to-curb-covid-19/>

⁹ <https://www.ochaopt.org/content/covid-19-emergency-situation-report-4>

development - e.g.: announce opportunities/venues for civil society to engage, in a timely manner.

4.Recommendation on the NDICI instrument:

Human rights, civil society participation and gender must be increasingly mainstreamed in each external instrument and priority of the EU under the new MFF. By extension, CSOs should be able to monitor the instruments and policies related to the fight against terrorism, security and export of weapons in the Neighbourhood South region on a regular and transparent basis.

5.Recommendation on shrinking space:

Majalat proposes to look into the possibility of conducting a pilot project to assess the country by country situation regarding Shrinking Space or to develop a precise plan for a report to be drafted during a next phase of Majalat.

6. Recommendation on crypto funding:

Majalat proposes that the EU considers 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).

7.Recommendation on fiscal standards:

The EU should apply the same fiscal standards for grants to governments and NGOs in relation to VAT.

8.Recommendation on conditionality regarding human rights violations committed by public institutions and governments: The EU is encouraged to use a progressive set of sanctions starting by a 'less for less approach' which includes to cut 10% of country envelopes as a political signal sent to the authorities before activating the more official 'Human rights suspension clause'.

In light of the current sanitary crisis, in order to ensure that the measures governments are currently taking do not undermine or worsen values of rule of law, good governance and human rights respect, additional aspects should be taken into consideration:

- Any legislation enacted during the state of emergency should also include clear time limits on the duration of these exceptional measures. The state of emergency and the emergency measures must be of limited duration.

- The freedom of expression, including free and timely flow of information, is a critical factor for the ability of the media to report on issues related to the pandemic and to monitor and report on governments measures

- The new technologies of access to – and the processing of – personal data have the potential to contain and remedy the pandemic surveillance through monitoring and tracking and anticipating. With the multiplication and over-abundance of available sophisticated digital technologies and tools, the intrusive potential of modern technologies must not be left unchecked and unbalanced against the need for respect for private life and data protection principles, especially in the light of the considerable lack of privacy laws in the region.

- Evidences are increasingly reported showing that the policy of isolation and confinement leads to increased levels risks for already vulnerable groups due to increased levels of domestic, sexual and gender-based violence and increased risks for victims of human trafficking. Such groups find themselves in an even more vulnerable position due to the limited capacities of law enforcement.

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 alarmingly 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 system which prevents citizens from combating the aforementioned aspects 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. In this regard, cross-analysis with global democracy data provided by Transparency International reveals a link between corruption and the level of democratisation¹⁰: 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. Just as much as the outbreak of the COVID-19 pandemic has affected the space given to civil society in the Neighbourhood South region, it is also increasing levels of corruption. During emergencies, the need to move quickly often overrides the need for oversight measures and can increase corruption risks. A working group of seven national chapters of Transparency International (Bahrain, Jordan, Kuwait, Lebanon, Morocco, Palestine and Tunisia) has therefore made recommendations to governments across the MENA region to adopt urgent and practical recommendations aiming at preventing corruption from undermining the response to the COVID-19 crisis. The recommendations focus on two areas of risk, namely public procurement and privately donated funds from wealthy individuals and companies, and provide preventive measures to address them. Among other things, Transparency International calls for the establishment or allocation of an online platform to provide information on public procurement and bidding to provide for transparency in procurement and the awarding of contracts. In the field of private donation funds, one of the key recommendations intends the publication of the value of donations along with the names of donors online through an official website¹¹.

For the region to live up to its anti-corruption commitments made as part of its collaboration with the EU, the following recommendations are being made:

1.Recommendation on financial and audit controls:

The EU is asked to be more proactive in its financial and audit controls vis-à-vis public institutions in partner countries that channel funds from the EU. As soon as legitimate doubts exist on the side of the EU some fast control mechanism should be initiated.

2.Recommendation on Civil society monitoring of blended investments:

Budget support is increasingly oriented to blended investments. This approach is aligned with the domestic concept of “Green New Deal for European economies”. In this evolving context, Majalat calls the EEAS and DG NEAR to create an open space for CSOs to monitor these new modalities and concrete opportunities for civil society to take part in these mechanisms as important actors for social justice.

¹⁰ https://www.transparency.org/news/feature/cpi_2018_global_analysis

¹¹ https://www.transparency.org/news/pressrelease/corruption_risks_in_middle_east_and_north_africa_threaten_national_response

3.Recommendation on the transparency of programming:

The ongoing negotiations on instruments and next programming should be used by the EU to strengthen the implementation of monitoring tools of Neighbourhood South agreements with a specific attention to good governance of EU funds and fight against corruption through transparency vis-à-vis civil society CSOs and journalists.

4.Recommendation on measures against individuals responsible for corruption:

The EEAS is invited to extend the recent EU mechanism against individuals responsible of human rights violations (which allow tracking and banning those individuals from Europe) to persons who escape their countries for corruption (once it is formally established by national authorities and justice).

5.Recommendation on whistle blowers:

Contribution of civil society is fundamental in pushing governments to adopt laws to protect whistle blowers. The monitoring process of CSOs is fundamental to promote effective implementation. The EU is invited to support the work done by those organizations at national level. The new domestic EU directive on Whistle blowers provides an interesting momentum for EU Delegations to push for similar initiatives with partner countries. Moreover, it is important to note that, due to the current implementation of emergency and defence laws, integrity commissions that operate to protect whistleblowers are not functioning these days.

6.Recommendation on asset recovery:

The EU should provide technical support to partner countries when asset recovery is involved through a new EU initiative aiming at mobilizing best practices and norms existing at international level. This initiative should include standard procedures to be applied in different contexts. In this regard, it is crucial that those countries where stolen assets can be found return back some of the concerned assets to their country of origin by accelerating this very process. As a consequence, receiving countries can use these funds to fight the current pandemic.

In light of the current sanitary crisis, in order to ensure that the resources intended for the Covid-19 crisis are used in efficient expenditures, information regarding public procurement and private funds donated from wealthy individuals and companies should be public, accessible and transparent.

7. Recommendation on new forms of corruption

In light of the new forms of corruption and political systems which are currently emerging under the circumstances that the pandemic brings with itself, parliaments are being dissolved by governments which are trying to extend the state of emergency as long as possible in order to keep their greater amount of power. This aspect requires special consideration in those countries which were planning to hold elections this year and are now forced to postpone or even cancel them until further notice.