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Evaluation of chapter 1 part 5 from the local authorities draft law regarding participative democracy

Note of evaluation

I Assignment

This assignment is part of the support that CILG VNG International provides to the committee of the organization of administration and armed forces within the Tunisian people assembly.

It is part of a set of technical support activities to the committee that are planned to accompany it in “the local authorities’ draft law” discussion. It is more specifically an evaluation of chapter 1 part 5 from the local authorities draft law regarding participative democracy. It should enable the committee members making an evaluation based on comparative law and benchmarking of international experiences of the chapter regarding participative democracy from article 28 to article 34.

The law is intended to develop the new concepts and principles included in chapter 7 of the 2014 Constitution entitled: “Local governance”.

II Short justification of the methodology

1. A close reading of the text of section 5 in English and French and find out the juridical embedment: the constitutional context and the the draft Law as a whole. 2. A short orientation on the Tunisian recent history¹ and a more extended orientation on internet (and more) on participatory practices worldwide. 3. Design of the note of evaluation (structure, headlines), followed by a first draft, discussion with Sami Yassine Turki, elaboration of the comment. 4. Definite note of evaluation (21-11- 2017)

¹ I could make use of my work in 2012 and 2014 e.g. commenting chapter 7 of the Constitution (VNG I and CILG), the study visit of the Parliamentary Committee in June 2012 etcetera.



III General remarks

Democratic institutions world wide are constantly in move. A set of deep rooted values about communal life and the political framework to organize this ordely is a dynamic relation. And it is important to realize that in different parts of the world this is influenced by cultural (including religious) and social variety between nations, within nation between regions and also in historical perspective.

In “The origins of political order”² Fukuyama shows that in a history of more than 2000 years of mankind the development of statebuilding is always caracterized by:

- ❖ Leadership
- ❖ Representation & accountability
- ❖ The rule of law

Every time leaders (a king, an emperor, a president) disregarded one the three an imbalance was generated and a downfall followed. This has been a lesson even for great dictators. No effective leadership without forms of representation and accountability, a codification (rule of law) in one form or another is always necessary to ground a regime over time (religious texts, symbolic signs etcetera). With the further growth of humanity, abolishment of slavery, establishing Human Rights all over the world this has become more and more valuable.

Nowadays it is a general idea that every citizen has the same political rights. It will always remain a situation with tensions, power and the control over power are not an easy thing. Democratic development is dynamic and never accepted unquestioning.

² Francis Fukuyama 2011 (Dutch Translation)



The dynamic situation which is ground for the recent development of democracy in Tunisia (the Arab spring) is an outstanding expression of the world wide search to keep the values of democracy alive.

UNDEF is a United Nations General Trust Fund to support democratization efforts around the world. In the 2014 State of Participatory Democracy the following statement has been made:

“The central lesson of this year’s State of Participatory Democracy Report is that in many countries where national-level democracy and respect for human rights may be fragile, the roots of democratic values are being deepened and seeing new legislation. This expansion of participatory local democracy has yielded improvement of public services and inclusion of an active civil society in the formation of new laws.”³

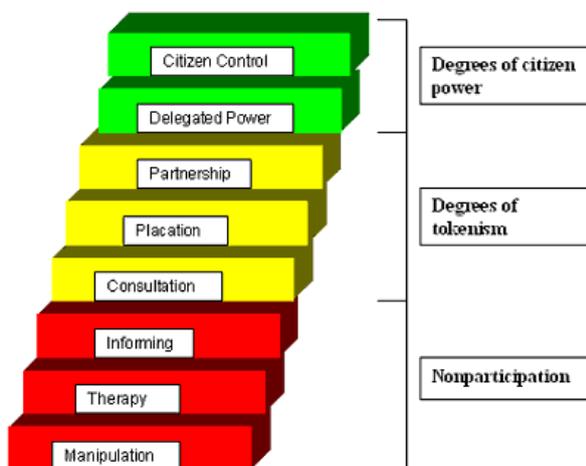
Democracy is fragile but vivid. The work of the People Assembly on the Tunisian law of local authorities is part of the job to empower democratic development. UNDEF is working on that worldwide in the EU we see the same approach especially about what is called the participative innovation of democratic institutions and democratic culture.

Participatory democracy should be an integral part of the (European) model of society. The Lisbon Treaty enshrined the complementarity between representative democracy and participatory democracy confers upon citizens «the right to participate in the democratic life of the Union» and stipulates that «decisions shall be taken as openly and as closely as possible to the citizen», a reference to the requirement to comply with the subsidiarity principle. Thus, participation becomes a civic right and subsidiarity becomes a pillar of participatory democracy.

Also political and social scientist work on methods to look for improvements of the democratic systems. There is the famous theory of Arnstein, already published in 1969 but still going strong in the practice of modern participatory democracy.

³ UNDEF 2014 State of Participatory Democracy Report, pg. 3

It indicates a hierarchy of growing control of citizens in their role in the public domain. It starts at low level with no participation just manipulation and therapy (people are not taken serious). Then slowly the position becomes better from just being informed to consultation up to forms of citizen control.



In the last years there is more attention for social processes and the impact on communities.

“Theories of participatory democracy, deliberative democracy and social capital assert that citizen involvement has positive effects on democracy: it contributes to the inclusion of individual citizens in the policy process (inclusion), it encourages civic skills and civic virtues (civic skills and virtues), it leads to rational decisions based on public reasoning (deliberation) and it increases the legitimacy of the process and the outcome (legitimacy).”⁴

In this evaluation report we use this kind of thoughts en indications as points of reference, even as an inspiration to support the members of the committee of the organization of administration and armed forces within the Tunisian people assembly.

A last general remark in duplo is about technology⁵.

⁴ Local Government Studies, 43:6, 875-881 Ank Michels & Laurens De Graaf (2017) Examining citizen participation: local participatory policymaking and democracy revisited

⁵ Political order and political decay, book II, Francis Fukuyama 2014 chapter 2 (Dutch Translation pg. 60)



1. In the world of today information supply is going very fast and it can be used by a lot of people in mutual communication. One moment you get a message on your phone, the next minute you can give a personal reply that will attain hundreds of people on great distance and still a minute later this message can be multiplied a thousand times. This kind of technological innovation have a direct influence on the specific subject of “participatory democracy”, it opens new opportunities at one side at the other side it creates instruments to undermine open and transparent communication by spreading false messages, fak news etc. It makes the work for all members of parliament more difficult, it gives more and deeper responsibility and is also a great and inspiring challenge. Never a dull moment in working in and on democracy.

2. Technology can offer a lot of new opportunities to citizens: in the use of voice (deliberation), in mobilizing support (scaling up influence), in co creation (sharing ideas). Referendums are more easy to initiate. In some countries complete IT boxes are available to operate. On the other side government may use APP’s and games to gather ideas voor good policy, to generate creative power in finding solutions in complex situations and in the end social support for decisions coming forth from all kind of activities in meeting citizens.

“The recent, rapid rise in the use of digital technology among citizens and civil society organizations offers the possibility of strengthening citizens’ voice in politics, carving out new political space for activism and promoting more government accountability.”⁶

The research of NDI from 2013 is concluding with a very important statement. Although technology offers new opprtunities it remains an key assignment of politicians to determine the way this technology shall be put into practice. Even almost stronger counts the way (how) political authorities go about with the contributions of citizens and civil society

⁶ Citizen participation and technology NDI study 2013 (The National Democratic Institute (NDI) is a nonprofit, nonpartisan, nongovernmental organization that responds to the aspirations of people around the world to live in democratic societies that recognize and promote basic human rights).



organisations. Technical means remain technical means, political behaviour and leadership are a choice.

“Technology can be used to readily create spaces and opportunities for citizens to express their voices, but making these voices politically stronger and the spaces more meaningful is a harder challenge that is political and not technological in nature.”⁷

IV Findings

In this paragraph, the core of the evaluation, we examine the juridical framework based on a range of findings. We focus on the texts of the draft law on local authorities. In the end in making up a definite evaluation we will make more use of contextual data.

1. Constitutional embedment

A strong asset is the constitutional embedment of participation and citizenship which is established already in the preamble: ***“En vue d’édifier un régime républicain démocratique et participatif, dans le cadre d’un État civil ...”***. Democratic and participative go hand in hand within a republic regime. This first frame is amplified in article 2. as is stated that citizenship is the first basic pillar of the civil state: ***“La Tunisie est un État civil, fondé sur la citoyenneté, la volonté du peuple et la primauté du droit.”***

This kind of formulations are a true recognition by the People Assembly that citizens all individually are a funding element in making a state complete. In European countries like the Netherlands this is a missing component. And now adays experts in democratic legislation and constitutional change in the old democracies are discussing this point.

This is still getting more emphasis in article 14. of the Tunisian constitution with the statement that the state is committed to strengthen decentralisation: ***“L’État s’engage à renforcer la décentralisation et à la mettre en œuvre sur l’ensemble du territoire national,***

⁷ See note 4 (NDI)



dans le cadre de l'unité de l'État.” This means that in the transfer of competences principals of citizenship and democratic values are within.

This is completed in chapter 7 of the constitution where in article 139 participation itself is fundamentally embedded, codified: ***“Les collectivités locales adoptent les mécanismes de la démocratie participative et les principes de la gouvernance ouverte, afin de garantir une plus large participation des citoyens et de la société civile à l’élaboration des projets de développement et d’aménagement du territoire et le suivi de leur exécution, conformément à la loi.”***

This chapter 7 of the constitution is regulating local authority. It is about communes, regions and districts and it establishes their legal personality and their administrative autonomy. Furthermore chapter 7 arranges free elected councils, local competences and the steering of financial sources.

There is no doubt about a legal framework to establish civil participation in the way governing entities levels should operate on different. As said this is a strong democratic asset.

This is also a true obligation to work this out in working methods. The state and the local collectivities should enable people to participate. We will work this out later on.

2. Legal framework

Section V is part of the draft law on local government. ***“Avant-projet de loi organique relative au code des collectivités locales”.***

In the “expose des motifs” of the draft (a kind of preamble) it has been made clear again that in implementing the principles of the constitution the decentralisation is based on the idea of local autonomy in combination with elaborating civil participation.

“La décentralisation suppose aussi la consolidation des collectivités locales par des ressources humaines qualifiées ainsi que la mise en place de juridictions administratives et financières à l’intérieur du pays dans les plus brefs délais pour exercer le contrôle et



résoudre les litiges conformément à la constitution. Ce programme ambitieux commande l'adoption d'un plan d'action méthodique et global pour concrétiser le processus de la décentralisation fondée sur la participation et la coordination entre les différentes parties concernées ; à même de garantir l'appropriation collective de ce processus."

This statement is emphasizing the relevance of section V. But also in following the other textparts of the draft law the elaboration is clear and consequently applied. For example in article 114 where the principle of participation is bound to important work in the public domain (the use of space etc.). This kind of subjects are often sensitive in communities and it is legally very relevant that peoples rights to participate is arranged thoroughly by law.

Last example is art. 201 regulating the work of commissions of the local council. Also in this article the elaboration is consequently applied.

In the heart of the draft law the full application of participation based on article 139 of the Tunisian constitution is codified.

3. Section V of chapter 1 ('Avant-projet de loi organique relative au Code des collectivités)

1. Some substancial remarks

However political will never can be limited by definition, it may be an advantage legally when participation can be determined by a definition with legal status. It is possible that in the parliamentary debate members and government can offer some evidence. An important aspect in this debate is whether participation is an instrument to build up confidence and social support for plans of local government or a value with democratic implications. Do you want to make clear that contributions of inhabitants and co creators of community are welcome. Of course it is important to recognize that local government needs sources of autonomous authority and in the end the council decides about crucial regulations (budget, use of public space etc.) legal demands ask for that. But



making use of participation local authorities should be aware that participation is more than an opportunity to give your opinion as a citizen. Visible impact can be important. In the European local practice (Freiburg, Germany, Dutch programs Democratic Challenge and In action with citizens), but also in the US (Portland, Oregon) we have seen a lot of experiments with “co creation” between citizens, civil society and local government. Government is giving room for citizens to organize forms of public services themselves. Regard it as a form of self organisation. And local government tries to share roles in developing plans for the commune. Always limited by rules and legal demands on orderly public decision making. Participatory methodology is it top down or bottom up? Just another instrument to rule or an opportunity to strengthen local democracy.

2. Legal conditions

Art. 28 is the principal base of local participatory democracy. It is focussed on development programs. This should be interpreted broadly (public policies). A range of local government activities can be understood as development. Different stages of decisionmaking are included (elaboration, follow up, execution and evaluation).

The council is in the position of gate watcher of local democracy as it is bound herself to legal indications that decisions on development programs shall pass only if procedures to citizens and civil society organizations are fulfilled in all stages.

3. Conditions practically

Information supply is a strict prior condition in implementing a dynamic practice of citizen participation. Without adequate information people are not capable to make use of their legal rights. A second condition is that it should be clear that all



contributions out of the community (individuals and civil society organizations) will be registered. So article 29 is very relevant.

Questionable is the term of 15 days, sometimes in complex situations this could be short. In the elaboration of the working processes at local level a longer term should be regarded. The formulation leaves room for that “fifteen days at least”, more than fifteen days is in some situations better.

4. Instrumental opportunities

We consider in this paragraph the instrumental aspects of section V.

The opportunity for initiatives to organize a referendum is arranged in article 30 and 31. This is in addition to the regular principle of participation and will not replace the procedures necessary on the ground of article 28. The right to initiate a referendum by residents living within the community is limited. The limitation of 10% is a low threshold, the limitation of an approval by the council is on the contrary a heavy condition. The elaboration of this instrument in local and regional practice should be followed thoroughly. 10% is not too high, this suggests a true will to make this possible. The approval of the council gives the political stakeholders a powerful mean to stop the referendum. Consider to change the article and drape this competence with some limitations: an disapproval is bound by legal conditions.

In addition to article 29 in article 32 the access to information is more thoroughly and comprehensively codified. As said before this is a prior condition in elaborating participative democracy. It is a strong obligation not only for the council but also for the professional staff of local government. “by all available means” is more than a technical indication. Information should be understandable, written in language for ordinary people. Professional language is sometimes unavoidable but information can be presented in a kind of translated



document for the broader public. It is even possible to give some extra attention with public meetings just to inform (see article 33.)

The combination in this article with auditing and monitoring mechanisms is very useful. It emphasizes the public dimension of a main task of the council at the backside of policymaking: accountability. An open and transparent informationline from local authorities to the community can be of great impact in keeping up confidence in local democracy. Internationally transparency and accountability still are an important aspect of the the rule of law in democratic states. By making the linkage to participatory democratic procedures at local level people in the community can get a better idea of this side of the work of councils.

The relation with the National Statistic Institute is important in terms of validation.

In article 33 the set information instruments is enlarged and enforces by introducing the right for citizens to initiate an information session on certain subjects. It is important that in the communication to the population this provision is an explicit instrument for people who want to be informed better. Especially on regional level this needs attention, because the identification with regional authorities is often lower and the road to organize a meeting is longer (sometimes literally).

V. Does it work and how

“A wise saying goes: “all politics is local.” It reflects the wisdom that those issues that really matter in people’s daily life – water, sanitation, primary health care, primary education, year-round access to affordable and nutritious food, access to



markets and employment opportunities, basic safety and social justice – must be resolved locally. This requires responsive, effective local governance.”⁸

Till now we focussed on the text of the law. In this part we have look at the practicability. Does it work, do you achieve what you want with the substance of section V.

First, as stated: the Constitution, the draft Law on local authorities as a systemical legal framework and specifically section V of chapter I of this draft law are a strong asset. In terms of benchmarking Tunisia has an ambitious juridical framework to elaborate a working participative democracy in cities, villages, regions. There are challenges for communities all over the country. What is the perspective of citizens? Citizens and civil society organisations who are well informed and well educated can make use of clear legal options to participate in public decisionmaking. These conditions (well informed and sufficiently educated) do not work for all people. This means that making it work all inclusive there is the legal obligation to support people. Democracy is not an elite affair, it should serve every citizen to keep it alive.

Some questions to work out in the finalization of the Law on local authorities.

- **How will citizens be equipped**

Citizens have rights. They should be informed rather extensively. They can initiate public information sessions. They even can initiate a referendum. All these rights are not always easy to be put into practice. You need some organisational competences, you need communication instruments, you need some training and some education to step inside and you need time and money. So to make use of your constitutional rights you need support, you need equipment. **The**

⁸ UNDEF 2014 State of Participatory Democracy Report, pg. 5



conditioning of local implementation needs attention. It is an option to add an article or an extra sentence in article 28. Make a link with article 114 of the Law chapter IV.

- **Youngsters and education**

Special attention should be given to the new generations. Young people should get extra attention in the period of implementation. This counts in general for the approach in daily practices at local level. At national level the government can consider to have a discussion with experts and decisionmakers in the national education system to make this new democratic practice part of the curriculum. Especially in the phase of second education there are opportunities to link it with subjects as history, social studies, economy and even (national) language (to make yourself clear, to understand texts, to learn debating competences).

Preparing young people on democratic citizenship is of national, regional and local interest. The new law could foresee in a program of implementation also in terms of informing, educating and training.

- **How does it work out in big cities vs. isolated communities on the country side.**

In implementing a living participatory democracy on local level a special point of attention is the difference between bigger cities and country side villages. Both need their own approach in terms of communication and working methods. In bigger cities a communication infra structure is often more developed and the accessibility for a greater audience is higher. On the other hand the distance with local authorities may be greater because of the scale of operations.



In country side communities it is just the other way round. Infrastructure is more vulnerable, the distance with local authorities can be less great, again because of scale.

In the proces of implementing a new democratic practice executing authorites, professionals at national and local level and MP's and councilmembers should **take into account the interest of various approaches**. Exclusion of groups of citizens will undermine a valuable proces of democratization.

- **How does it work out differently for regions and municipalities**

Executing section V. to realise a vivid practice of participative democracy demands a differentiation in approach between the different scales of public administration. Regions are further away from daily live, the regional authorities either. This means that decisionmaking is at a certain distance. That means that more efforts should be made to inform people seriously. The role of the regional council members is crucial in this. Access through internet is an important modus. Also the municipalities can offer information at the townhall about regional affaires.

- **The maintenance of citizenship**

The act of making continue an innovated, participatory democracy is part of the job of the national parliament as well of the councils on decentral level. It is also a "duty" of members of the different communities all over the country: the citizens and and also the civil society organisations. Execution at this point can be hardly forced. Some countries have guaranteed the obligation to vote legally but that is not the same thing. Besides in a democracy people have also the right to refuse to participate. In modern democracies the obligation to vote has been skipped for that reason.

However it is important to make clear to people that it is worth while to participate. Convincing people to make use of the right to vote and convincing



people that it is valuable to contribute to life in the community in terms of being informed, to inform local government itself and to deliver knowledge to improve the work of the local government. In the paragraphs about how to equip citizens and about the role of education we already pointed out instruments how to put in this kind of social action.

VI. Evaluation at glance

1. Recommendations

- Show that Tunisia may be proud of his democratic ambitions.
- Support the pride with a national campaign to introduce the new opportunities in participation
- Make a parliamentary review after three years and open the opportunity to reconsider practical regulations (monitoring)
- Ask for a program of implementation with interactive information supply (websites, app's, social media), education and training, at schools, universities, training institutes. Take care of citizen's equipment to participate.
- Consider an extra sentence in article 28 about the interest of equipment of citizens after the 3rd phrase, like: "Local and regional government supports this actively with programs of equipment, together with civil society organisation". Make a link with article 114.
- Consider in article 28 a provision about experiments (experience) with the new democratic practice.
- Consider another timeframe in article 29, it is 15 days at least now, that gives room but mentioning reasons to take more time gives citizens and civil society organisations a more stable, legal basis for initiative.



- Consider to change article 30 about the approval of a referendum as an initiative of citizens. Drape the competence of councils with some limitations, like: “only when risks of security, severe budgetproblems etc. threaten the stability of the local authority”.

2. Implications

Article 28. Two possible changes:

An extra sentence about **programs of equipment**

An extra sentence about **experiments in the local and regional context**

Make a link with **article 114**.

Article 29. Change the **timeframe**

Article 30. Give **limitations to the competence** of regional and local councils to refuse a referendum as an initiative of citizens and/or civil society organisations

Parliament gives an order to the national government to make an **implementationprogram**

The committee of the organization of administration and armed forces within the Tunisian people assembly plans in the first three years active **monitoringsessions** with all stakeholders to follow the development of implementation of the Law on local authorities, especially the excution of section 5, chapter V.