

DRAFT LEGISLATIVE GUIDELINES:

BASIC ELEMENTS ON CIVIL SOCIETY PARTICIPATION

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INTRODUCTION

These guidelines refer to the basic elements that should be included in legal frameworks related to civil society participation mechanisms. As the title suggests, the elements contained herein are the basic elements that should be included in such a legal framework, and accordingly, the list of elements is not exhaustive.

The guidelines are divided into four separate sections, corresponding to (1) Access to Information; (2) Mechanisms for Consultation; (3) Mechanisms to Stimulate Civil Society Participation in Public Administration; and (4) Mechanisms to Stimulate Civil Society Participation in the Follow-Up to Public Administration.

1. ACCESS TO INFORMATION

The basic elements in this part of the guidelines deal with provisions to regulate access of civil society and nongovernmental organizations to information on the work done by those who hold public jobs or administer state resources, taking into account that access to this information is indispensable for them to take part in efforts to prevent corruption.

1.1. General Provisions

Provisions which specify that any person has the right to request information or to consult or obtain a copy of documents concerning official conduct of all of the bodies or individuals that perform official duties or administer resources of the state.

1.2. Compliance

Provisions which specify which official or agency is responsible for compliance.

1.3. Oversight

Provisions which specify which agency is responsible for oversight of the access to information system.

1.4. Requests for Information and Exceptions

1.4.1. Procedures for Requesting Information

Provisions which establish formal procedures for presenting petitions or requests for information or for consulting or obtaining copies of documents. These provisions should not be so restrictive that they result in inhibiting or frustrating would-be requests for information, and therefore care should be taken when imposing requirements such as the following:

- a. the need to make the request in person.
- b. the need to identify oneself.
- c. the need to demonstrate a certain nature or interest.
- d. the need to use certain forms.
- e. the need for the request to be submitted making use of certain formal language.
- f. the need for payment for the costs of copying the information or document requested.

1.4.2. Means of Requesting Information and for Responding to Requests

Provisions which contemplate the possibility that the petitions or requests for information, or for consultation or copying of documents, can be accomplished and responded to through means such as:

- a. Mail
- b. Telephone

- c. Fax
- d. The Internet

1.4.3. *Deadlines for Responding*

Provisions which establish deadlines by which the authority or agency that receives the request for information, or for consultation or obtaining a copy of documents, must have made a decision on the request and communicate the answer to the requester.

1.4.4. *Exceptions to Providing Information*

Provisions which provide specific, limited and detailed exceptions wherein the authority or agency that receives a request for information, or a request to consult or obtain a copy of documents, may deny the request solely on the grounds of the confidential nature of the information or documents requested, such as those related to the following categories:

- a. National security
- b. Documents related to legal proceedings
- c. Private company data
- d. Individual privacy rights

1.5. Justification of Denial

1.5.1 *Legal Basis for Refusal*

Provisions which require that any refusal to deny a request based on reasons of confidentiality must be specifically and explicitly provided for by law.

1.5.2 *Written Justification of Refusal*

Provisions which require that a decision to deny a request must be justified in writing.

1.5.3 *Explanation Provided to Requester*

Provisions which require that the justified reason for the decision to deny a request be provided to the requester.

1.6. Challenge and Appeal Mechanisms

1.6.1. *Challenges*

Provisions which establish mechanisms for the requester to challenge the decision, as well as procedures detailing how those mechanisms operate.

1.6.2. *Appeals*

Provisions which allow the requester to appeal the decision to a higher or different level, both at the administrative and judicial levels.

1.7. Publication of Official Actions and Exceptions

1.7.1. Obligation to Publish

Provisions which specify the obligation of bodies that perform public duties or administer state resources to publicize official actions of a general nature on matters within their sphere of competence within a specified time period following the action.

1.7.2. Exceptions

Provisions which create specific and limited exceptions to the foregoing publication requirement.

1.8. Sanctions or Consequences for Non-Compliance

1.8.1. Non-Compliance with Deadlines

Provisions which establish penalties and consequences for noncompliance, including:

- a. Sanctions or penalties against those who have not complied.
- b. The inability to refuse to comply with a request after a certain time period has elapsed.

1.8.2. Improper Denial of Request

Provisions which establish consequences in the event that confidentiality is improperly invoked as grounds for refusal by an authority or agency to honor a request for information or for consulting or obtaining a copy of documents, such as:

- a. Sanctions or penalties for those responsible.
- b. Nullification of the act denying the request.
- c. Other measures.

1.8.3. Non-Compliance with Publication Requirement

Provisions which establish consequences for unjustified noncompliance with the publication requirement, such as:

- a. Sanctions or penalties against those responsible.
- b. Nullification of the action.
- c. Other measures.

1.9. Compliance/Monitoring of Sanctions

Provisions which make a specific official or agency is responsible for monitoring the application of these sanctions or measures.

2. MECHANISMS FOR CONSULTATION

The basic elements in this part of the guidelines deal with provisions to enable people who exercise government functions or administer state resources to request and receive reactions from civil society and nongovernmental organizations, taking into account the valuable contribution of these consultation mechanisms to efforts aimed at preventing corruption.

2.1. General Provisions

Provisions which establish mechanisms for those who exercise government functions or administer state resources to consult civil society and nongovernmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating corruption.

2.2. Consultation Before Decision-Making

Provisions which establish mechanisms for consultation before making decisions on public affairs, so that the authorities or public bodies that make them have sufficient background for adopting decisions more rationally, and civil society and nongovernmental organizations can express their opinions and recommendations concerning them.

2.3. Specific Provisions

Provisions which provide details on:

- a. The subjects on which consultation can take place.
- b. The criteria for determining who is to be consulted.
- c. The weight given to the information or results from the consultation.

2.4. Compliance

Provisions which make a specific official or agency responsible for ensuring compliance with the provisions related to mechanisms for consultation.

2.5. Means of Consultation/Communication

Provisions which contemplate the possibility of consulting civil society and nongovernmental organizations in order to facilitate communication between them and the bodies that exercise public functions or administer state funds, by means of:

- a. Mail

- b. Telephone
- c. Fax
- d. The Internet

2.6. Mechanisms for Informing Civil Society

Provisions which require bodies that exercise public functions or administer state resources to have mechanisms that permit them to inform civil society and nongovernmental organizations on how to make recommendations or suggestions to improve their performance and guarantee the probity of their service. These provisions should require the public bodies to have mechanisms which allow them to properly consider recommendations or suggestions received.

2.7. Forms of Consultation

2.7.1. Requirement to Publish Drafts of Official Actions

Provisions which establish the obligation for bodies that exercise public functions or administer resources of the state to publish drafts of official actions of a general nature on matters within their competence in a given period before the actions are taken, so that during that period civil society and nongovernmental organizations can make observations, recommendations, or suggestions concerning them. These provisions should require observations, recommendations or suggestions received to be taken into account when actions are taken.

2.7.2. Requirement to Publish Draft Legislation

Provisions which establish the obligation on public bodies to publish drafts of legislation which touches upon

2.7.3. Referendum & Plebiscite

Provisions which allow citizens to directly participate in decision-making through referendum and plebiscite.

2.7.4. Town Hall Meeting

Provisions which contemplate the holding of public meetings on specific issues, so that issues of interest to the general public may be discussed, and for the opinions of members of the public to be gathered.

2.7.5. Council and Committee Membership

Provisions which give civil society and nongovernmental organizations an opportunity to belong to advisory or consultative councils or committees of public bodies. These provisions should also establish the weight to be given to participation by private citizens in those councils or committees.

2.7.6. Public Hearings

Provisions which require the holding of public hearings by those who exercise public functions or administer state resources, in which civil society and nongovernmental organizations can express their opinions, complaints, and recommendations with regard to public actions. These provisions should also establish the weight to be given to what is heard in these types of hearings.

2.8. Sanctions and Consequences for Non-Compliance

Provisions which establish penalties and consequences to be applied for failure to comply with the obligations related to mechanisms for consultation, such as:

- a. Sanctions against those responsible.
- b. Nullification of the actions.
- c. Other types of action.

3. MECHANISMS TO STIMULATE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION

This part of the guide refers to mechanisms enabling the active participation of civil society and nongovernmental organizations in processes for the adoption of public decisions, as part of the efforts aimed at preventing corruption.

3.1. General Provisions

Provisions which establish the obligation for the bodies that perform public functions to have mechanisms that enable them to stimulate civil society and nongovernmental organizations to file recommendations and suggestions to improve their performance and guarantee the integrity of their administration.

3.2. Complaints

3.2.1. Right to Submit Complaints

Provisions which provide for complaints and claims filed by persons in respect of the performance of the functions pertaining to their post, to be received, processed and resolved.

3.2.2. Deadlines for Responding

Provisions which require substantiated decisions regarding the above complaints and claims to be issued within a specified time limit.

3.3. Compliance

Provisions which require a special officer or body to monitor compliance with the foregoing obligations.

3.4. Sanctions and Consequences for Non-Compliance

Provisions which establish sanctions and consequences for noncompliance with the provisions related to stimulating the active participation in public administration, including:

- a. Sanctions or penalties against those who have not complied
- b. The inability to refuse to comply with a request after a certain time period has elapsed.

3.5. Periodic Reporting

Provisions which require bodies that perform public functions to issue periodic reports about the processing of petitions, recommendations or suggestions made by civil society and nongovernmental organizations regarding their administration and the measures that were adopted as the result of the evaluation of those functions.

3.6. Training Programs

Provisions related to training programs for members of civil society and nongovernmental organizations, in order to encourage and facilitate their participation in the public administration.

4. MECHANISMS TO STIMULATE ACTIVE PARTICIPATION IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

The basic elements in this part of the guidelines deal with provisions that permit the active participation of civil society and nongovernmental organizations in the follow-up to the taking of public decisions, as part of efforts intended to prevent corruption.

4.1. General Provisions

4.1.1. Follow-Up, Control and Evaluation of Public Performance

Provisions which establish mechanisms to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the follow-up, control, and evaluation of public performance by persons who exercise public functions or administer state resources

4.1.2. Cooperation between Public Bodies and Civil Society

Provisions which provide mechanisms so that civil society and nongovernmental organizations that carry out activities of follow-up, control, and evaluation of public performance to prevent corruption, may work in cooperation with the state organs and bodies responsible for preventing, detecting, investigating, punishing, and eradicating acts of corruption.

4.1.3. Cooperation between those Who Exercise Public Functions and Civil Society

Provisions which require those who exercise public functions or administer state

resources to permit, facilitate, and cooperate with civil society and nongovernmental organizations for the execution of their work of follow-up, control, and evaluation of their public conduct in the framework established by law.

4.2. Forms of Participation

4.2.1. Organization of Civil Society and Non-Governmental Organizations

Provisions which specify how civil society and non-governmental organizations may exercise the mechanisms established for their participation in the follow-up, control, and evaluation of public performance by persons who exercise public functions or administer state resources.

4.2.2. Formal or Informal Citizen Participation

Provisions which permit participation by an individual or an informal group of citizens or formally organized citizens.

4.2.3. Requirements for Participation

Provisions which lay out requirements for participation by an individual or an informal group, such as registration with a specific authority.

4.3. Reporting Acts of Corruption and Protection Mechanisms

4.3.1. Obligation to Report Acts of Corruption

Provisions which encourage civil society and nongovernmental organizations to report to the public bodies responsible for preventing, detecting, investigating, punishing, and eradicating acts of corruption, any cases of corruption of which they have knowledge.

4.3.2. Protection Mechanisms

Provisions which require upon those public bodies to protect those who report acts of corruption in good faith.

4.4. Conflicts of Interest

Provisions addressing situations such as conflicts or interest in which some members of civil society or nongovernmental organizations might find themselves by virtue of having familial, business, or friendship ties, or relationships of enmity, involving someone who exercises public functions that are the object of follow-up, control, or evaluation.

4.5. Compliance

Provisions which require a specific official or agency to ensure compliance with:

- a. The existing protection mechanisms related to the reporting of

acts of corruption.

- b. The existing conflict of interest provisions related to civil society participation.

4.6. Sanctions and Consequences for Non-Compliance

4.6.1. Non-Compliance with Protection Obligations

Provisions which provide sanctions and consequences for noncompliance with the protection obligations, with respect to those who report acts of corruption.

4.6.2. Non-Compliance with Conflict of Interest Provisions

Provisions which establish sanctions and consequences for noncompliance with existing conflict of interest provisions related to civil society participation.

4.7. Challenge Mechanisms

4.7.1. Petitions or Lawsuits

Provisions which allow actions to be taken by civil society or nongovernmental organizations to participate effectively in preventing corruption, such as petitions or suits to set aside, alter, or correct an improper public action or one that runs counter to the common good or damages state assets.

4.7.2. Procedures for Petitions or Lawsuits

Provisions which detail the procedures required for filing petitions or suits to set aside, alter, or correct an improper public action or one that runs counter to the common good or damages state assets.

4.7.3. Processing of Petitions or Lawsuits

Provisions which detail how the foregoing petitions or suits are processed.

4.8. Citizen Oversight Groups

Provisions establishing mechanisms so that citizens can participate directly in vigilance and evaluation of public actions, such as the formation of citizen oversight groups to monitor the execution of public works, or citizen audits of public performance.

4.9. Periodic Reporting

Provisions which require bodies that perform public functions or administer state resources to make periodic reports concerning their handling of petitions, recommendations, or suggestions from civil society and nongovernmental

organizations concerning the course of their work, and concerning the measures that have been adopted as a result.

4.10. Training Programs

Provisions related to training programs for members of civil society and nongovernmental organizations, in order to encourage and facilitate their participation in the follow-up of public administration.

4.11. Cooperation Mechanisms

Provisions related to mechanisms that encourage and facilitate cooperation with the following, in order to carry out studies on issues involved in the prevention of corruption:

- a. Academic organizations
- b. Research centers
- c. Journalists' groups
- d. Other organizations of civil society with national or international scope in your country.

4.12. Dissemination Requirements

Provisions related to mechanisms intended to make citizens conscious of the importance of participating in the follow-up of public actions by reporting corrupt acts and eliminating tolerance or encouragement of them, including:

- a. Awareness campaigns through the media.
- b. Information in educational centers and public bodies.