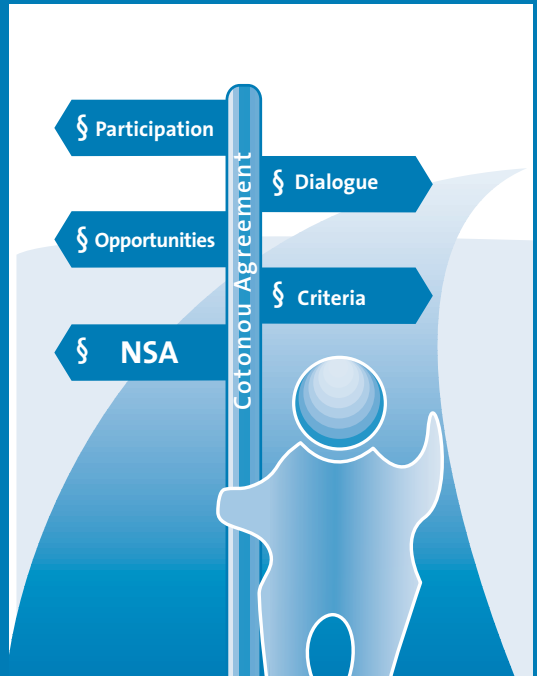


3

- 3.1 Participation as a fundamental principle
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Opportunities for participation under the Cotonou Agreement





The Cotonou Agreement recognises the essential role that non-state actors can play, alongside governments, in fighting poverty, promoting growth, delivering social services and fostering democracy and good governance. For the first time, the ACP countries and the European Community have legally committed themselves to involving non-state actors in all phases of the cooperation process. This chapter looks in more detail at the specific provisions in the Cotonou Agreement to ensure the participation of non-state actors.

'The government has signed the Cotonou Agreement and is committed to effectively implementing all its provisions, including those related to the participation of non-state actors.

We hope that this can improve the overall impact of cooperation while helping us to achieve the performance required to be able to attract additional EC support'.

NAO official

'In civil society there is good and bad. At all levels, genuine change agents co-exist with opportunistic or fake organisations attracted by donor resources. How will ACP-EC cooperation manage to select the real non-state actors?'

Civil society representative from West Africa

3.1 Participation as a fundamental principle

From a legal perspective, the Cotonou Agreement offers a promising framework for the participation of non-state actors. The importance that both the ACP and the EC give to the issue of participation is clearly reflected throughout the text of the Agreement. In particular,

- Article 2 defines participation as a 'fundamental principle' of ACP-EC cooperation. This clearly underscores the political weight given to participation.
- A separate chapter on the 'Actors of Partnership' (Articles 4-7) sets out the basic rules and principles for the participation of non-state actors.
- Article 33 recognises the need for institutional development of non-state actors.
- The Agreement includes mechanisms to check whether parties are adhering to their commitment to involve non-state actors (*see box*).

3.2 Legal framework for non-state actor participation

We now take a closer look at the entry points for non-state actor participation that are foreseen under the Cotonou Agreement.

Compared with the previous Lomé Conventions, the most important innovation in the Cotonou Agreement is that the participation of non-state actors is no longer restricted to the implementation of projects.



How is participation monitored?

There is no ombudsman to whom non-state actors can appeal if their government does not value and uphold the principle of participation. However, there are a number of institutions and processes that may provide a helping hand:

- The joint ACP-EC institutions (*see Annex III*) will assess the progress achieved in implementing the Cotonou Agreement. The issue of participation can be discussed at high political level, for instance in the ACP-EC Council of Ministers, which meets once each year.
- A particularly important body is the ACP-EC Joint Parliamentary Assembly. It can call upon the official parties to account for their policies towards non-state actors. There are also opportunities for non-state actors to attend meetings of the Assembly as observers.
- The European Economic and Social Committee (*see Annex II*) oversees the involvement of economic and social actors in ACP-EC cooperation.
- The quality of participation by non-state actors (including levels of financial support) will be one of the performance indicators used in the review process.

Relevant non-state actors are now to be involved in all of the important areas of the cooperation process. In the language of the development sector, this is referred to as 'mainstreaming' participation.

The Cotonou Agreement provides three entry points for non-state actor

participation, based on the three pillars of the ACP-EC cooperation: development cooperation, trade and the political dimensions (see section 2.3). The box below provides a basic (but not exhaustive) overview of the legal provisions in the Cotonou Agreement that deal with non-state actor participation.



Provisions of the Cotonou Agreement dealing with non-state actors

Development cooperation

Article 4: 'Non-state actors shall, where appropriate:

- be informed and involved in consultation on cooperation policies and strategies, on priorities for cooperation especially in areas that concern or directly affect them, and on the political dialogue;
- be provided with financial resources, under the conditions laid down in this Agreement in order to support local development processes;
- be involved in the implementation of cooperation projects and programmes in areas that concern them or where these actors have a comparative advantage; ...'

Article 19: 'Governments and non-state actors in each ACP country shall initiate consultations on country development strategies and community support thereto.'

Article 33: 'Cooperation shall span all areas and sectors of cooperation to foster the emergence of non-state actors and the development of their capacities; and to strengthen structures for information, dialogue and consultation between them and national authorities, including at regional level.'

Trade

Article 4: 'Non-state actors shall, where appropriate, be informed and involved in consultation on cooperation policies and strategies, on priorities for cooperation especially in areas that concern or directly affect them (....).'

The Cotonou Agreement does not specify non-state actor involvement in the EPA negotiations. However, a policy paper issued by the ACP Committee of Ambassadors in late 2002 states that:

- Non-state actor participation and involvement could complement the ACP Group's negotiating obligations, position and strategy. Non-state actors should also be seen as partners that possess a wealth of knowledge, experience and expertise, and a strategy for the participation for non-state actors must include the possible utilisation of non-state actors to enhance the ACP Group's negotiating and lobbying capabilities and capacities.
- Non-state actors are important partners that could be effectively utilised to communicate the positions of the ACP Group to other interest groups, lobby for support, and to inform the grassroots levels of society.

Political dimensions

Article 8: '...representatives of civil society organisations shall be associated with this [political] dialogue.'

Article 10: '...greater involvement of an active and organised civil society and the private sector' [are seen as] 'contributing to the maintenance and consolidation of a stable and democratic political environment.'

3.3 The dual role of non-state actors

On the basis of the legal provisions listed above, the Cotonou Agreement foresees two major roles for non-state actors in ACP-EC cooperation:

- as service providers (or implementing agencies), and/or
- as partners in dialogue (or advocacy agents).

Non-state actor organisations may play either or both of these roles (*see figure 1*).

Non-state actors as service providers

In many ACP countries, non-state actors have built up a tradition and considerable experience in the delivery of social services in sectors such as health and education. The Cotonou Agreement acknowledges this potential and seeks to promote stronger linkages between the efforts of non-state actor organisations and of central and local governments.

One form of collaboration is the **public-private partnership*** (PPP), in which a public agency such as a ministry links up with a private agency (either a company or a non-state actor organisation) to implement a project or strategy. Jamaica's Integrated Drug Abuse Prevention Programme (*see box*) provides an example of a PPP in the education sector.

Non-state actors as partners in dialogue

The Cotonou Agreement invites and encourages non-state actors to participate



The Integrated Drug Abuse Prevention Programme (IDAPP) A public-private partnership in Jamaica

Under the 8th European Development Fund, the EC has sponsored the Integrated Drug Abuse Prevention Programme (IDAPP) in Jamaica, totalling EUR 1.2 million. This is the first national project in Jamaica that is being implemented jointly by a government agency, the National Council on Drug Abuse, and an NGO, the Addiction Alert Organisation.

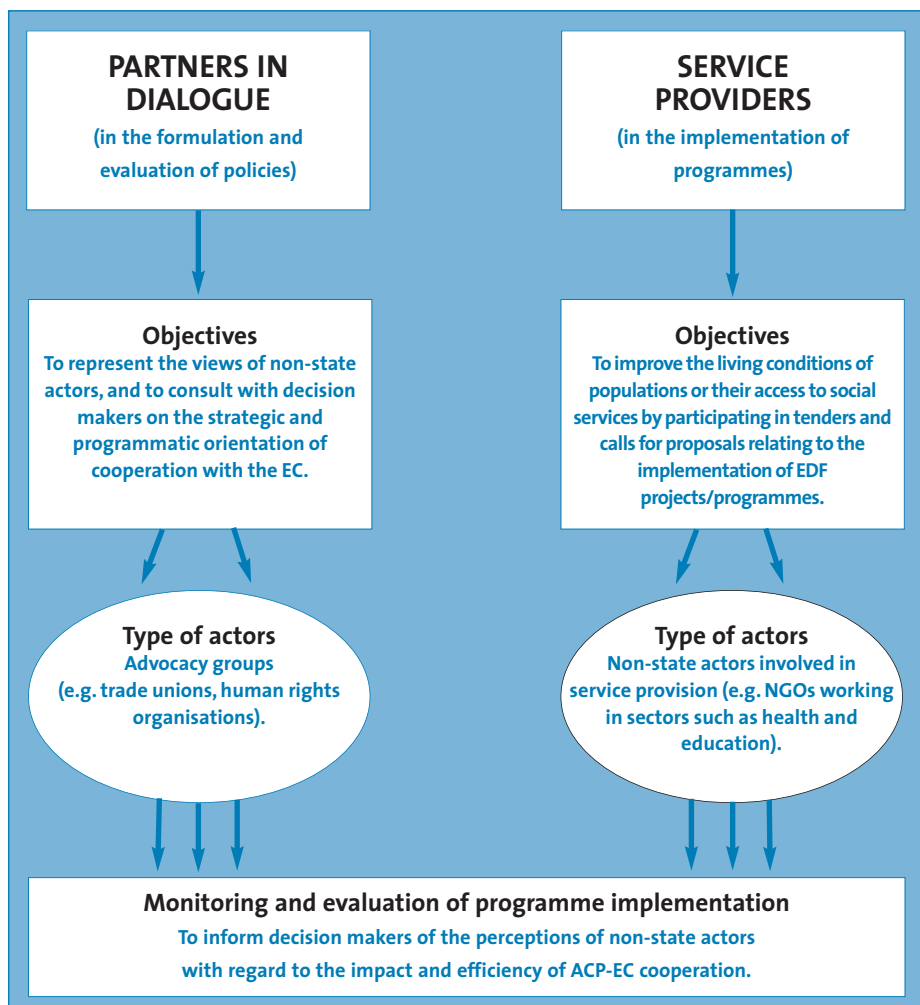
Set up in April 2000, the IDAPP focuses on education in schools (in collaboration with the Ministry of Education), rapid assessment surveys, telephone lifeline counselling, peer education, and counselling through the Adolescent Programme. In addition, six Community Drug Awareness Action Committees have been established to provide leadership and drug awareness training in collaboration with schools, churches, health centres and other related agencies, involving more than 3000 people.

in dialogue with their governments and with the EC on their country's development strategy, and on the contribution the EC will make to support that strategy. In this process, non-state actors are expected to advocate the views of the group they represent (for instance, the representative of a banana growers' association would raise the concerns of banana farmers with regard to government policies).

Opportunities for non-state actors to participate in policy processes are a recent phenomenon. They are the outcome of the wave of democratisation that swept across ACP countries in the 1990s. During that decade all kinds of civil society organisations suddenly emerged, and the

private sector also had more opportunities to operate. These 'new' actors have now started to make their views heard, to express their demands and to pressure for changes in the policies that affect their lives - in other words, to engage in 'advocacy' work.

Figure 1: The dual role of non-state actors in ACP-EC cooperation



3.4 Who can participate?

The Cotonou Agreement does not address in detail the question of who can participate in ACP-EC cooperation, but provides for a flexible approach. The Agreement includes a set of basic rules that apply

across the ACP, but the decision on the best way to apply them is left to each ACP country or region.

The figure below summarises the main principles defined in the Cotonou Agreement (Article 6) with regard to the type of actors that can participate in ACP-EC cooperation.

Figure 2: Who can participate in ACP-EC cooperation?

Who are the actors?

- State actors, including actors at local, national and regional levels;
- Non-state actors: the private sector, economic and social partners, including trade union organisations and civil society in all its forms.

What eligibility criteria* apply?

To be 'eligible', non-state actors must:

- address the needs of the population;
- have specific competencies;
- be organised and led democratically and transparently.

Who selects non-state actors?

Recognition of non-state actors will be done by the official parties (ACP governments and the EC).

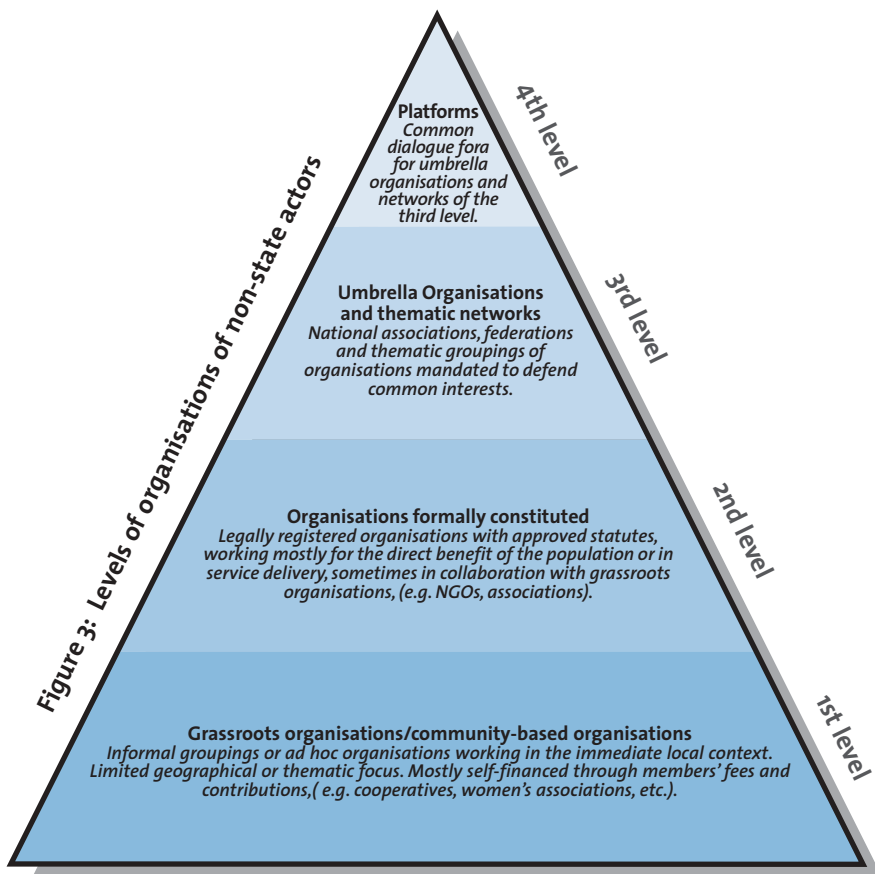
How should one read and understand these legal provisions? Five points are worth noting:

Non-state actors are broadly defined

The Cotonou Agreement provides a very broad definition of 'non-state actors' that encompasses, in addition to non-governmental organisations (NGOs), many different categories of actors, including private sector organisations, economic and social actors, as well as a diverse group of actors that fall under the general heading of 'civil society'.

The Cotonou Agreement does not provide a clear-cut definition, let alone categorisation, of civil society actors. However, it explicitly recognises their diversity when it refers to 'civil society in all its forms' (Article 4).

It will be a major challenge to respect this diversity in the practice of participation. A better understanding of the complex world of civil society actors is a first pre-requisite. There is no single model that can capture the reality of civil society, but some tools are available, such as the pyramid below.



Selection will take place at national/regional level

The decision of the negotiators of the Cotonou Agreement to provide a minimal legal framework means that the process of identifying and selecting non-state actors will largely take place at either the country or the regional level. Thus, non-state actors should try to be part of that process, in order to influence it. Non-state actors can be identified at several stages:

- during the overall country and regional programming process (in several ACP countries the programming process has been used to define, in dialogue with non-state actors, country-specific eligibility criteria);
- when EC support programmes to the focal sectors in a NIP/RIP are being designed; and

- when specific EC support programmes for non-state actors are being designed. Usually this is done following a so-called 'mapping study' at the beginning of the process and/or a feasibility study (*see box*).

Guidelines on 'eligibility criteria' to access EDF funding

As part of an ongoing effort to clarify the modalities for non-state actor participation, both the ACP and the EC have recently agreed upon a set of eligibility criteria for access to funding for non-state actors under the EDF. These guidelines should not be seen as a rigid framework. They simply provide additional recommendations on how best to identify and select non-state actors in a given ACP country. It is suggested that, in each ACP country, the general criteria are adapted to country specific circumstances following a consultative



What is a mapping study?

In order to understand 'who's who' in the world of non-state actors in a given ACP country, it is useful to undertake a mapping study. As the name suggests, the aims of such an exercise are:

- *to 'map out' and identify the different categories of non-state actors;*
- *to understand the roles they play;*
- *to assess how they function and identify their capacity constraints; and*
- *to analyse the relationships between non-state actors and the government.*

A mapping exercise also provides an opportunity for all stakeholders to agree upon country-specific eligibility criteria for selecting non-state actors.

Mapping studies are initiated either by the NAO or by EC Delegations, and are conducted by independent local and/or international consultants.

approach involving the NAO, representatives of non-state actors and the EC Delegation.

For the full text of the 'Eligibility Criteria for Non-State Actors under the EDF', see Annex VI.

The country's development cooperation priorities also determine who participates

In most ACP countries civil society is a booming sector, with many hundreds of organisations working in all possible areas. ACP-EC cooperation cannot hope to involve all of them, but will seek to work primarily with those non-state actors that can contribute to the development cooperation priorities that have been defined for the country or region, and on which EC

aid will be concentrated. Just as these priorities will differ from country to country, so will the choice of non-state partners.

Do European non-state actors have a role to play?

European non-state actors are not included in the formal definition of the 'actors of partnership'. This is consistent with the overall philosophy of the Cotonou Agreement, which puts local actors in ACP countries at the centre of their own development process. This does not mean, of course, that European actors have no role to play. The Cotonou Agreement recognises the support they can provide, and stresses the need for partnerships between non-state actors from the ACP and from the different Member States of the EU.



What types of capacity support are possible?

The Cotonou Agreement (e.g. Article 4) provides examples of the types of capacity support that non-state actors could receive. Assistance could be envisaged to support non-state actors in critical areas in order to reinforce their capabilities, particularly with regard to:

- *organisation and representation;*
- *the establishment of consultation mechanisms, including channels of communication and dialogue;*
- *the maintenance of non-state actor networks; and*
- *strategic alliances among non-state actors.*

3.5 Facilitating participation

The Cotonou Agreement recognises that it will be very difficult for many non-state actors to participate fully and effectively without capacity support. For the first time, both the ACP and the EC have explicitly committed themselves to providing resources for strengthening the capacity of non-state actors to enable them to play the new roles assigned to them.

The purpose of such support is not simply to fund capacity building projects here and there, but to contribute to the emergence of an active and viable civil society, with organisations that will be independent

and credible partners in the development process. This support may take different forms (*see box, page 34*).

Most of the non-state actors consulted in the compilation of this guide clearly saw capacity building as essential for ensuring their effective participation. Their list of 'top ten' capacity needs is presented in the box below.

Capacity building may also be required for ACP governments and European Commission officials. For many of them pro-

moting participatory development approaches are a fairly new experience. They may lack the knowledge, experience, skills and tools to establish balanced partnerships with a variety of non-state actors. For instance, in most EC Delegations, a junior person is in charge of relations with non-state actors (under the supervision of a senior official). This can be risky, as issues of participation are often highly political and complex. It may also hamper the 'mainstreaming' of participatory approaches in other parts of the EC Delegations (e.g. among sector specialists).



Top ten capacity needs

1. *Better and up-to-date information on the Cotonou Agreement, as well as on WTO rules and the EPA negotiations.*
2. *Management skills (e.g. organisational management; financial accountability; planning ahead, etc.).*
3. *IT skills (e.g. how to find information on the Internet; how to disseminate information, etc.).*
4. *Motivational skills (e.g. how to motivate people to get involved; how to convince them that being united means being stronger).*
5. *Networking skills (e.g. how to link up with other organisations).*
6. *Leadership/dialogue skills (e.g. how to take the lead on an issue; how to link up with the authorities; how to present a case to political leaders, and to follow it up).*
7. *Representative structures (e.g. how to build platforms that take into account diverse organisations' views, and represent them in a common voice vis-à-vis the authorities).*
8. *Literacy training, writing skills (e.g. particularly in writing project proposals).*
9. *Analytical skills (e.g. what do policy papers/legal texts actually mean; how to improve an organisation's strategy).*
10. *Encouraging institutional learning (e.g. how to avoid the situation that if key persons leave, a large part of the organisation's knowledge goes with them).*

While capacity building for non-state actors is a priority (*see box below*) it is not clear how best to provide capacity building for non-state actors. There is a danger of creating aid-dependent non-state actor structures, with limited legitimacy (in terms of representation) and viability.



Why is capacity building so critical?

- Community-based organisations are unlikely to be able to make their voices heard on issues such as poverty reduction unless they are organised.
- Economic and social actors may fail to provide relevant inputs to the crucial negotiations on the Economic Partnership Agreements if they lack the capacity to analyse the proposals and develop alternatives, or if they lack the resources necessary to participate in consultation processes.
- Non-state actors are increasingly being invited to engage in dialogue with governments and donors on a wide variety of policy issues at different levels (local, national and regional). In order to organise such dialogue efficiently, non-state actors need to work together and to set up representative structures, such as a forum or a platform, with minimal funding and secretarial capacity. All of this costs money and time as well as expertise – resources that many non-state actors do not necessarily have.
- Many non-state actors may find it difficult to obtain funding for projects if they lack the capacity to understand the procedures, to write proposals, or to provide guarantees that the money will be properly accounted for.

3.6 Some observations

Three concluding observations can be made on the legal framework for participation under the Cotonou Agreement.

Participation is not a matter of choice

The Cotonou Agreement is a legal text with binding provisions, which ACP governments and the EC have signed and ratified. This also applies to the commitment of the parties to facilitate the participation of non-state actors. In principle, this means that participation is not a favour that governments may or may not grant to their civil society or private sector organisations. It is a legal right to which non-state actors are entitled (under certain conditions).

There is no 'one size fits all' approach

The Cotonou Agreement does not provide detailed provisions on how participation should be organised in each and every ACP country. The negotiators decided to formulate general principles regarding the participation of non-state actors rather than to provide exact guidelines for organising that participation. It was thought that this would make it possible for each ACP country to find the most suitable way to implement these general provisions. In view of the sometimes very different circumstances in the 77 ACP countries, such flexibility was believed to be essential.

Some of the ACP countries are well-established democracies, with efficient and accountable governments and a well organised civil society, while others lack both of them or are involved in armed conflict. Yet other ACP countries have little tradition or experience with dialogue and cooperation between state and non-state actors. In this context, it would have made little sense to adopt a 'one size fits all' approach, and to impose on all countries a single set of fixed rules and procedures to organise the participation of non-state actors.

Non-state actors see a risk of non-compliance

Several non-state actors, consulted during the compilation of this guide, have voiced their concern that the Cotonou Agreement gives too much leeway to governments in dealing with participation issues (*see box*). The absence of a legal possibility to fund non-state actors directly, without government interference, is a common criticism. Such flexibility brings with it the risk that some ACP countries may fail to comply with the Agreement.



Concerns of non-state actors participating in the NSA User's Guide interactive web space

During the compilation of this guide many non-state actors were able to contribute via an interactive platform on the web (www.dgroups.org/groups/nsaguide), where they voiced a number of concerns:

'The assertion that participation is not a favour but a legal right to which non-state actors are entitled could be rather hollow, as these conditions appear to be dependent on the goodwill of the parties - ACP governments and Delegations of the European Commission. If the government or the Delegation do not want certain categories of non-state actors to participate, their exclusion will follow. It will therefore be a favour, not a right.'

A non-state actor from Swaziland

'All money (including for capacity building) is not directly available to non-state actors. Individual non-state actors will have to lobby their governments for funds for capacity building, projects, etc., in every ACP state. All has to be incorporated in the Country Strategy Paper and the National (or Regional) Indicative Programme ... Is participation really a right if every penny will have to be negotiated?'

A non-state actor from Suriname

Personal notes

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