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Contribution on the Draft Code of Good Practice for Civil Participation in the Decision-Making Process

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I. INTRODUCTION

1. The draft Code of Good Practice for Civil participation in the Decision-Making Process has been prepared by the Conference of International Non-Governmental Organisations (INGOs) following the conclusions of the meeting of the 2007 Forum for the Future of Democracy (FFD) in Stockholm and Sigtuna, and Resolution 1589 (2007) of the Parliamentary Assembly on co-operation between the Parliamentary Assembly and the Conference of INGOs.
2. The following comments are in response to the request of the Conference of INGOs addressed to the FFD's stakeholders including the PACE, the Committee of Ministers and the CoE Congress for Local and Regional Authorities to give their respective views on the draft Code prior to its final adoption foreseen for September 2009.
3. The principal objective of the Code is to establish, at the European level, a set of principles, tools and mechanisms which would, on the one hand, contribute to the creation of favourable conditions for civil participation, and on the other hand, provide useful pointers for NGOs - from local to international level - in their dialogue with parliament, government and public authorities.
4. The Parliamentary Assembly has devoted a good deal of its work to the questions of democracy and civil participation. The debates on the state of democracy in Europe, held every two years, launched in 2007, are of particular relevance¹. The above mentioned report on the co-operation between the Parliamentary Assembly and the Conference of INGOs² is also an obvious reference. Furthermore, a report on e-democracy³ and Resolution 1653 (2008) directly refer to questions included in the Code. Reference can also be made to the report on the Code of good practice for political parties⁴; indeed, a number of questions regarding external and internal conditions for the proper functioning of the democratic process and practices are common to both political parties and NGOs.

II. GENERAL REMARKS

5. One of the major concerns of contemporary democracies is the alienation of citizens from political processes. Representative democracies tend to limit citizens' participation to the act of voting every four or five years. In this context, civil society constitutes an important element of the democratic process. It provides citizens with an alternative way, alongside those of political parties and lobbies, of channelling different views and securing a variety of interests in the political decision-making process.
6. Civil participation cannot replace representative democracy in favour of participatory democracy. But it can enhance and strengthen representative democracy, and it can largely contribute to increasing citizens' empowerment. However, in order to achieve this goal, a number of external and internal conditions must be met.
7. The Code of Good Practice for Civil Participation in the Decision Making Process should, in my view, firstly identify the conditions of a legal, political, economic and social nature, which have to be established in order to ensure that NGOs and other actors of civil society can function properly and accomplish their tasks in the democratic process. The recommendations in this respect should be addressed directly to the legislative and executive authorities at different levels, be it regional, national or international.
8. In addition, the Code should draw up a set of principles and guidelines on the conduct which could be recommended directly to NGOs in Council of Europe member states with a view to promoting internal democracy, accountability and transparency, thus increasing their legitimacy in the political process. They should be addressed by the NGOs themselves, either in a statutory manner or through examples of good practice.

¹ See Docs 11202 (2007) and 11203 (2007)

² See Doc. 11441 (2007)

³ See Doc. 11783 (2008)

⁴ See Doc. 11210 (2007)

9. In my view, the draft Code fails to address exhaustively these two essential issues and its present structure is somewhat vague and confusing.

III. FRAMEWORK FOR CIVIL PARTICIPATION

10. The draft Code points out that “ NGOs and organised civil society are essential contributors to the development and the realisation of democracy and human rights”. While this is very true, it should also be stressed that they cannot exist and accomplish their role without the existence of democracy and respect for human rights.

11. Indeed, in order to enable independent civil society to constitute an important element of a democratic system, adequate conditions must already be established in every country.

12. Firstly, a number of core principles and basic standards of democracy have to be implemented. These include individual freedoms (freedom of expression, freedom of assembly and freedom of association). Unfortunately, there have been worrying accounts of restrictions of these basic rights in Council of Europe member states. The Code should make it clear that they constitute the necessary precondition for the functioning of civil society.

13. Similarly, the legislation imposing excessive state control over NGOs, which is the case in some Council of Europe member states, constitutes an obstacle to the democratic process and should be revised. The Code fails to underscore this point.

14. Equally, the State has an obligation to introduce rules which would create adequate legal conditions for the independence and legitimacy of an organised civil society. This refers primarily to the financing of NGOs and their independence, and imposing on them certain rules ensuring internal and external transparency and institutional accountability.

15. The draft Code identifies four gradual levels of civil participation, from the least developed to the most participatory. These are: information, consultation, dialogue and partnership. By way of a general remark, I feel that recognition of the importance of the e-dimension of these processes is missing in the draft Code.

16. Indeed, as it was acknowledged at the 2008 FFD held in Madrid, e-tools offer great potential for improving democratic practice and participation of an organised civil society. They can largely contribute to the transparency, accountability and responsiveness of institutions, as well as to the promotion of citizens' engagement and to increasing empowerment and the accessibility and inclusiveness of the democratic process.

17. In order to fully benefit from their potential, e-tools should be integrated by all participants of the political process, including the authorities at all levels and organised civil society.

18. Of course, this requires a good deal of commitment by all stakeholders, including the development of political vision for the application of Information and Communication Technologies (ICT) in the political process, the introduction of relevant legislation, the establishment of good practices, the promotion of social networking activities, with a view to building on the ideas of e-democracy developed within civil society and, last but not least, ensuring that adequate financial resources are set aside.

19. The most important question is to what extent the political participation of organised civil society is translated into genuine influence on the decision-making process.

20. The draft Code defines well the different steps in the political decision-making process and elaborates on them. However there is a highly political question which seems to have been overlooked in the text, namely the right of citizens to launch new laws or influence the existing ones. Such a possibility is foreseen in some national legislations, but, does not exist in the majority of Council of Europe member states.

IV CONDUCT OF CIVIL SOCIETY PARTICIPANTS

21. Good practices for internal accountability and transparency within NGOs are particularly important as they enhance the credibility of organised civil society and its legitimacy in the democratic process. In parallel to the external legislation on this subject, good practices should be introduced by NGOs themselves. There are frequent loopholes and shortcomings in the law which enable its circumvention if organisations do not voluntarily adopt certain measures in this respect.

22. The internal rules of NGOs should be guided by clarity, transparency, accountability and independence.

23. The interaction with society at large should be based on respect for democratic values and dialogue. NGOs should be sensitised regarding the responsibility they bear in this respect. The increase in violent actions encouraged by some NGOs is of utmost concern.

24. Similarly, good practices with regard to the media and information flow should be established.

V. CONCLUSIONS

25. The Assembly should welcome the elaboration of the draft Code of Good Practice for Civil Participation in the Decision Making Process. There is a clear need for guidelines and good practices in this field. The Conference for INGOs should therefore be commended for having undertaken the difficult task of drawing up this text.

26. The Assembly should also express its satisfaction at the decision of the Conference to consult all the stakeholders in the FFD process before the text is finalised. This is very much in line with the spirit of co-operation and dialogue which should prevail in the political process.

27. That said, I consider that the draft Code could and should be completed. At present, it focuses on ways of influencing the political decision-making process. In my view it overlooks the conditions which have to be met in order to successfully apply the matrix of civil participation within the political process. These conditions include a number of basic elements for an enabling environment and the conduct of civil society participants.

28. Furthermore, the question of the implementation of e-tools should be given more recognition as an important factor for potentially increasing civil participation in the decision-making process.

29. Finally, I think that the structure of the Code should be revised with a view to making it clearer and more readable.