



RMALC



## **Mechanisms for the Participation of Civil Society within the framework of the Global Agreement between the European Union and Mexico**

### **For the integration of a Joint Consultative Committee**

#### **1. Framework of the proposal**

The Agreement on Economic Partnership, Political Consensus and Cooperation between Mexico and the European Union, which entered into force in October 2000, was initially considered to be exemplary because it included a democratic clause. While the inclusion of this clause is undoubtedly important, the analysis that we, a group of civil organisations who are interested in development and economic integration have carried out, indicates that it is necessary to give content to the clause through concrete proposals that would contribute, on the one hand, to monitoring the impacts of the Agreement with regard to human rights in both regions, and on the other hand, to the establishment and formalization of mechanisms for participation by citizens that could possibly give rise to commitments between government and civil society.

Before and after the signing of the Global Agreement we, as European and Mexican civil society organisations, have monitored the process and, among many other proposals, we have demanded that the political dialogue as stated in the Agreement be implemented.

In light of this, we want to present a set of observations that give support to the proposal favouring participation mechanisms for Mexican and European civil society, which if analysed and discussed, would demonstrate the political will, not only to recognize civil society as a political actor, but also the will to maintain dialogue, meetings, exchanges, and to engage in commitments that institutionalise these relations.

As of June 1999, in the Civil Society Forum for European-Latin American and Caribbean Dialogue, held in Rio de Janeiro, we declared, among other issues that "... the mechanisms for social dialogue cannot be used merely as an instrument to legitimise agreements, which lack the efficient participation of our societies in the decision-making process. The development of democratic institutions of citizen participation should be the starting point to any agreement. Citizens, men and women, should have the right to participate in the decisions and also in the process of formulating and implementing decisions and cooperation policies. Parliaments and local governments should be included in all stages of negotiations."

In this regard, the European Parliament, through different resolutions on Latin America, has been even more explicit, requesting the establishment of consultative forums with civil society and proposing the participation of the latter in the various regional processes of dialogue, through the organisation of periodic conferences, granting their representatives status as observers in the different ministerial conferences, and facilitating their participation in the corresponding forums and sector-related commissions and sub-commissions.

The Global Agreement between Mexico and the European Union grants the Joint Council all decision making powers, meaning that only the executive can participate in and can modify the Agreement. The members of Parliament have been able to follow up the process but have been limited to only being able to

give their point of view. In the case of Mexico, it constitutes a breach of the Constitution, which stipulates that issues of international scope, such as agreements between States, should be ratified by the Senate. Due to this, the proposals that we are presenting take into consideration changes in the composition and scope of the aforementioned Council.

In the area of political dialogue and operational mechanisms of the Global Agreement, the following issues stand out:

- Institutionalised political dialogue refers to Article 1, which regards all bilateral and international matters of common interest.
- Political dialogue contributes to the promotion of the principles stated in the Joint Declaration by the European Union and Mexico on political dialogue (referred to in Article 3).
- The dialogue should contribute to the stability and prosperity of the respective regions, strive for the implementation of the process of regional integration and encourage a climate of understanding and tolerance among the populations and their respective cultures.
- The dialogue should open up paths towards new forms of cooperation aiming at common objectives.
- The dialogue shall be implemented through contacts, information exchange and consultations among the various Mexican and EU bodies.
- The key body of ministerial political dialogue will be developed within the Joint Council, a non-exclusive space, given that the Joint Council is able to establish regular dialogue in the field of cooperation (Art. 13) as well as to examine issues arising within the framework of the Agreement and any other bilateral or international issue of mutual interest. (Art. 45)
- The Joint Council is assisted by the Joint Committee; it can delegate to the Committee any of its powers.
- The Joint Council may decide to set up any other special committees or bodies to assist it in the fulfilment of its duties. (Art. 49)

Nonetheless, up until now, dialogue has been limited to the executive powers and possibly to the legislative branch. The dialogue between the European Parliament and the Mexican congress remained at a secondary level with no real possibility of influencing decisions.

On the other hand, as it has been already highlighted, there are no formal mechanisms to guarantee the participation of civil society in the follow-up of the Agreement which would contribute simultaneously to its progress. Currently, dialogue and consultation depend on the political will of the executive powers of both parties.

*We are interested in strengthening participative democracy that will enable efficient social control over public authority, based on the effective contribution of defending peoples' rights and ensuring that they are integrally respected.*

We aim to influence the spheres of negotiation and decision-making in the European Union as well as in Mexico, so that the economic, social, cultural, environmental, political and civil rights of Mexican and European citizens are guaranteed and promoted within the framework of the Global Agreement.

As a result of the two birregional consultative forums with the civil society on the 28<sup>th</sup> November of 2002 in Brussels and on the 1<sup>st</sup> March of 2005 in Mexico, making concrete these initiatives turned into a necessity; due to this, in the EU-Mexico Agreement's Joint Council fifth meeting, held in Santo Domingo, the 19<sup>th</sup> April of 2007, it was established the following in the Joint Release:

“19. The parties repeated their support to an institutionalization of the dialogue with the civil society and they showed their aim to go on exploring the most convenient ways of this institutionalization.

“20. The parties agreed that the Third Dialogue Forum with the Civil Society Mexico-EU will be taken in Brussels during the first semester of 2008.

## **2. Mechanisms for the participation of civil society**

Proposing the integration of a Joint Consultative Committee (JCC), such as the proposal for the Social Observatory, is undertaken within the principle of giving a positive dimension to the Democratic Clause which underlines: “The respect of democratic principles and fundamental human rights, as they are expressed in the Universal Declaration of Human Rights, inspires national and international policies of the Parties and constitutes a key element of the Agreement.”<sup>1</sup>

As members of the Mexican and European civil society, our interest is not only focused on guaranteeing our ability to influence issues at governmental level or those that are produced by the Global Agreement. We are interested in overcoming the current monopoly of political dialogue by the executive and the State, fragmented as it is, which does not contribute to promoting the principles on political dialogue stated in Article 3.

Proposing this does not mean we are no longer questioning the lack of true social participation in all this process, but rather it reflects a desire to go beyond this. It is about demanding greater compliance with the principle of coherence which the EU promotes at all levels.<sup>2</sup> Therefore, it is essential to search for new ways to institutionalise participation at all levels that are viable and compatible

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<sup>1</sup> The Mexican part set a unilateral declaration (included in the Final Act) which mentions the principles of democracy and human rights as they are stipulated in the Mexican Constitution.

<sup>2</sup> Protection of human rights, encouragement of multiparty democracy, consolidation of the Rule of Law and the fight against poverty are amongst the EU's fundamental objectives. For the respect of human rights and democracy to become a reality, the definition of the remaining EU policies must be taken into account. The EU is interested in setting up a global strategy that will guide the whole of its instruments of diplomacy, trade, development, etc. Human rights and the process of democratisation constitute extended topics which cover many different fields of activity such as common foreign and security policy, financial cooperation, trade and immigration. Therefore, it is important to coordinate the efforts of the EC to those of the UE and, at a bilateral level, with those of the member states in order to obtain synergies and to guarantee a coherent policy.

with the complexity of our governments' social and State organisations and of the Global Agreement.<sup>3</sup>

Within this context, our objective is **to ensure the participation of European and Mexican civil society in the monitoring, compliance, control and evolution of the Global Agreement, as well as to propose criteria, strategies and instruments that allow the creation of mechanisms appropriate to guarantee their participation.**

The more participative democracy is institutionalised, the more co-responsibility of the population can be reinforced, the latter being organised at different levels through mechanisms that enable it to influence decisions that could possibly modify the Agreement, such as cooperation priorities, trade rules, protection policies, instruments of follow-up and control among others.

These mechanisms would help to:

- Permit transparency regarding information, as well as access to data and statistics regarding the Global Agreement and its implementation.
- Find ways to overcome and/or compensate for the imbalances and the negative impacts (foreseen or not) relating to the Agreement. At the same time, reinforce positive dynamics and their repercussions.
- Extend and diversify consultations with civil society and political powers with a view to overcoming the discrepancies in the Agreement.

Within the framework of Political Dialogue, we feel it would also be appropriate to consider expanding the Joint Council to the legislative branch of both parties (EU Members of Parliament and Senators of the Mexican Republic).

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<sup>3</sup> Currently, EU-Mexico Inter-parliamentary meetings are taking place and non governmental organisations are being consulted. It is therefore necessary to intensify debate and cooperation between the EC and the EP and to formalize the meetings by clearly expressing the voice of civil society.

We believe it is necessary to foster a participation **process**; this means to go beyond a Consultation Forum. Therefore, mechanisms for a **continuous dialogue** between the executive and legislative powers and the organisations of civil society need to be established.

The Consultation Forum for Civil Society, planned –yet not formalised- to be held once a year, constitutes a good principle. However, after each meeting, follow-up --concerning the fulfilment of the commitments or concrete actions from which they derive-- should be guaranteed. The Forums should be composed of the participating organisations who set, in advance their content, scope and type of commitments that can be addressed by governments of both parties.

### **3. The Joint Consultative Committee**

#### **Definition**

As European and Mexican civil society organisations, we propose the creation of a **Joint Consultative Committee**, supported by Article 49 of the Global Agreement<sup>4</sup>, which was supported during the 1<sup>st</sup> Consultation Forum for Civil Society, held in Brussels, November 2002. (refer to Report of the Final Plenary Session)

We define the Joint Consultative Committee (JCC) as a political body representing Mexican and European civil society, for institutionalised dialogue with the Joint Committee about the three axes of the agreement.

The JCC would be an autonomous body included within the Agreement; it will be composed of members of the social, economic and civil sectors of Mexico and of

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<sup>4</sup> Within this, several mechanisms can be considered, which are those described in the Opinion of the European Economic and Social Committee on organised European civil society –Contribution to the drafting of the White Paper; particularly the lay-out of the legal basis for participation and consultation, in the broadest sense of conceptualisation developed in the opinion, by means of social dialogue, civil dialogue, public assemblies, hearings and opinions.

EU member states. It would serve as an advisory body for the Joint Committee and would allow the opening up for participation and dialogue by social and civil organisations from Mexico and Europe.

As an area for direct debate by civil society with State representatives, the governments will have to consider it as such (i.e. as a full party of the debate). Since it is an institutionalised mechanism of social participation, it is expected that the recommendations will be binding to governmental bodies which will have to support them by taking the necessary measures for their realisation.

Through the JCC, a legal basis would be established to ensure that rights recognised by the International Covenant on Civil and Political Rights (ICCPR), signed by Mexico and EU Member State as well as stipulated in Article 25 that any individual has the right “to participate in public affairs, directly or through freely elected representatives” are guaranteed.<sup>5</sup>

We interpret the positive dimension of the democratic Clause as the disposition of States to take affirmative action as far as human rights are concerned. Promoting such positive dimension is focused on the demand for human rights, considered in their entirety –particularly within the framework of the impact of the Global Agreement-- which will be monitored through the creation of a body representing civil society, the Joint Consultative Committee.

## **Composition**

For the European civil society there will be 12 representatives, 10 of them will be chosen by the European Economic and Social Committee, in the following way: 4 syndicalists, 4 businessmen, 2 of the third sector. The other two one will be elected among the environmental, human rights or development nets that can not be taken part into the EESC due to their international or European character.

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<sup>5</sup> Quotation from the Opinion of the European Economic and Social Committee on organised European civil society – Contribution to the drafting of the **White Paper**.

For the Mexican parties there would be, in the same way, 12 representatives from the various social and economic sectors, who in order to taking part in the JCC will have to be elected by those organisations interested in the follow-up of the Global Agreement; and to achieve this, the criteria and opportunity for their election within a democratic process should be defined.

In this regard, a system of substitutes capable for replacing unavailable people would be considered for a meeting and a preliminary meeting system that allow to consulte to other sectors depending on the agenda.

Therefore, the JCC will be created through an official announcement by the Joint Committee to all sectors interested in the Global Agreement, in Europe as well as in Mexico, so that its selection is democratic and transparent.

The number of representatives of civil and social organisations will be determined so as to guarantee the balance of powers and sectoral representation within the JCC, in a proportional manner. The principle of the right to equality will be respected; therefore no social sector should be excluded from the official announcement.<sup>6</sup>

## **Functions**

The JCC will have, as its main function, the role of official organ of dialogue between the civil society and the States party to the Agreement. States should consult the JCC at the time of decision-making and, at the same time, it can also exercise its right to take initiatives, i.e. the JCC will be able to take action without the express consultation of the States.

When exercising the right to take initiatives, the JCC will have three main competencies:

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<sup>6</sup> In order to avoid under-representations of civil and social organisations in comparison to business and public sectors, they will list, in detail, the sectors and actors that must be represented in the JCC.

a) To encourage various demonstrations of participative democracy such as social dialogue, political dialogue, opinions, debates, etc; being understood that these activities do not substitute nor institutionalise lobby activities that civil and social organisations carrying out and will continue to carry out.

b) To be the tool to inform the Joint Committee, meeting annually, concerning the Social Observatory (SO) assessments on the impacts of the Agreement.

c) The JCC will draft a procedure for handling cases to determine what to do and whom to appeal to, should any violation of human rights occur, particularly in the field of trade and investment.

d) To put forward recommendations to governments about dynamics and features of the Agreement that might violate human rights. These recommendations will be based on the work of the SO and will be brought to the Joint Committee through public hearings. It is proposed that they have a binding character. States can also be requested to commit themselves to follow-up exercises and to respecting their international obligations as far as human rights are concerned.

Moreover, and in order to reaffirm the principles of indivisibility and universality of human rights, the JCC will ask the States to report, each year during public hearings in the EU and Mexico. The reports from the intergovernmental and specialised civil organisations hearings, on the progress achieved to address human rights violations in the EU will serve as a base to assess progress. Under exception circumstances, the JCC will consider, according to the specific importance, the possibility of handling serious cases of human rights violations during the public hearings before the Joint Committee.

## **Sustainability**

The JCC will be assisted by a Secretariat-General and the financing will be the responsibility of the signatory States of the Global Agreement, as stated in Article 49. Therefore it is an institution organically bound to the Agreement, of which the governments must commit themselves to it functioning successfully.

The Secretariat-General of the JCC will be one of its own competences. Therefore, the JCC will draft its own rules and will present them before the Joint Committee.

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