

CIVIL SOCIETY in CYPRUS: Building for the future



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE
CONFÉRENCE DES OING
DU CONSEIL DE L'EUROPE



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ΕΒΕΛΟΝΤΙΣΜΟΥ
ΚΑΙ ΜΗ ΚΥΒΕΡΝΗΤΙΚΩΝ
ΟΡΓΑΝΩΣΕΩΝ

Ομάδα
Πρωτοβουλίας ΜΚΟ

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AUTHORS

EXPERT COUNCIL ON NGOS LAW OF THE COUNCIL OF EUROPE'S CONFERENCE OF INGOS

The Expert Council on NGOs Law of the Council of Europe's Conference of INGOS was established in 2008 with the aim to create an enabling environment for non-governmental organizations (NGOs) through examining national NGO legislation and its implementation and provide advice on how to bring national law and practice into line with Council of Europe standards and European good practice. Its contribution to the policy paper has been prepared by Mr. Jeremy McBride (Barrister, Monckton Chambers, London)

CYPRUS NGO INITIATIVE ON LAW REFORM

Cyprus NGO Initiative was established in 2007 as an informal group of 9 NGOs that had the same concerns regarding the reform of the legislation dealing with NGOs in Cyprus. NGO Initiative is consisted by the following NGOs: BirdLife Cyprus, Cyprus Family Planning Association, INDEX Research & Dialogue, Laona Foundation, Life Skills Development Association, NGO Support Center, PeacePlayers-Cyprus, Politeia-Renewal-Participation-Democracy and Terra Cypria.

OFFICE OF THE COMMISSIONER OF VOLUNTEERISM AND NGOS

The Office of the Commissioner for Volunteerism and Non Governmental Organizations was established in 2013 (1/6/2013). The main aim of the Commissioner, Mr. Yiannis Yiannaki, is to encourage the active participation of citizens at local level and promote the role of civil society at all levels of policy making. In general, the main objectives of the Office are to implement policies to encourage active citizenship at all levels, to create tools in order to strengthen and facilitate better contact between the government and citizens, to support and promote the work of voluntary organizations and NGOs and to create a meaningful culture of volunteerism by promoting the values and virtues of volunteerism.

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EXECUTIVE SUMMARY

This paper seeks to promote a discussion as to how the potential of civil society in Cyprus can be unlocked and energised, especially through measures to be undertaken by the Government of the Republic of Cyprus and civil society structures. It first reviews the nature of civil society in general and the various forms that it takes, explaining the different ways in which it is widely recognised as contributing to the well-being of society as a whole, both within individual countries and beyond their frontiers. It then sets out the international standards generally applicable to civil society and the specific requirements that these entail, in particular the need to create an enabling environment and to promote participation. This is followed by a review of the current state of civil society in Cyprus, with a particular focus on the various factors that inhibit its effectiveness and certain positive developments which could be built upon. The paper identifies six challenges that need to be tackled to facilitate the empowerment of civil society in Cyprus, namely, establishing a more positive perception of its value, developing a modern legal framework for it, securing sufficient access for it to resources, developing its capacity, promoting its participation and securing access to justice for it. Specific recommendations - directed both to the Government (at the national and local level) and to civil society - are made to address these challenges. There is also a list of key international documents and a select bibliography.

1. INTRODUCTION

1. Civil society can be a great asset in any country. It is a great driver for securing accountability, development and fulfilment. Unfortunately, its potential is still far from being realised in Cyprus. This failing is attributable to a number of factors but, while seeking to understand them, the real need is to find a way forward.

2. This paper seeks to promote a discussion as to how this potential can now be unlocked and energised in Cyprus. Achieving that goal undoubtedly requires various steps to be taken by the Government of the Republic of Cyprus and local authorities. However, those steps are no more than a beginning of the transformation that is needed. The real challenge will be for Cypriots to seize fully the opportunities which are presented to them to improve their lives and those of their fellows, both in Cyprus and abroad.

3. The paper first reviews the nature of civil society and the potential contribution that it can make to Cyprus' well-being. It then takes stock of the actual state of civil society in Cyprus and the factors that inhibit its development and impact, before considering the ways in which its functioning, and thereby the contribution that it can make, could be facilitated and enhanced in the future.

4. The initiative for this paper came after a suggestion of the NGO Initiative, a group of NGOs that came together in 2007 with a view to promoting the reform of the legislative framework for NGOs in the Republic of Cyprus. The authors of the paper are the Expert Council on NGO Law of the Council of Europe's Conference on International Non-Governmental Organisations, the Cyprus NGO Initiative on Law Reform and the Commissioner for Volunteerism and NGOs of the Republic of Cyprus.

5. The paper has been prepared following meetings with government officials and representatives of civil society and funding organisations, a public meeting on 9 December 2014 and a literature survey. It is the outcome of a process in which all the authors have been actively involved. The paper was finalised after taking into account comments received during an online public consultation and from ministries and other authorities.

2. CIVIL SOCIETY

6. "Civil society" is a term that encompasses the pursuit of collective interests in the public sphere but through structures that are quite distinct from those of the government and business sectors.

7. The interests pursued through civil society vary enormously. They can range from the cultural to the social, from the environmental to the scientific, from the ethical to the sporting, from the local to the international and from the self-improving to the socially beneficial.

8. The pursuit of these interests is an important contribution to the well-being of society. It is undertaken through a variety of structures which allow for different forms of participation. The objectives of all these structures must be not-for-profit and not anti-democratic.

Civil society is seen as a social sphere separate from both the state and the market. The increasingly accepted understanding of the term civil society organizations (CSOs) is that of non-state, not-for-profit, voluntary organizations formed by people in that social sphere. This term is used to describe a wide range of organizations, networks, associations, groups and movements that are independent from government and that sometimes come together to advance their common interests through collective action. Traditionally, civil society includes all organizations that occupy the 'social space' between the family and the state, excluding political parties and firms. World Health Organization (<http://www.who.int/trade/glossary/story006/en/>)

While politicians traditionally divide society into a polar spectrum running from the marketplace, on one side, to the government, on the other, it is more accurate to think of the society as a three-legged stool made up of the market sector, government sector, and civil sector. The first leg creates market capital, the second leg creates public capital, and the third leg creates social capital. Of the three legs, the oldest and most important, but least acknowledged, is the Third Sector [...]. Of the three forms of capital, social capital is the most environmentally benign. Unlike market or public capital, which use large amounts of the earth's resources, social capital uses relatively few resources, relying almost exclusively on the few thousand calories of energy each person requires to maintain a healthy mind and body. The point to emphasize is that the primary resource that makes up social capital is human energy extended to others to create a social good. Jeremy Rifkin, speech to Strasbourg Parliamentarians/NGO Conference, 31 May 1999-1 June 1999 (<http://www.jobslatter.org.nz/art/rifkin04.htm>)

2.1. CONTRIBUTION TO THE DEVELOPMENT AND WELL-BEING OF SOCIETY

9. The collective interests pursued through civil society have a common factor, namely, that they all contribute to the development and well-being of society as a whole, through contributing to the development and realisation of democracy, securing social and humanitarian objectives, resolving challenges or promoting well-being, providing assistance to those in need, elaborating technical and professional standards, advocating changes in law and policy, acting as a vehicle of communication both between the different segments of society themselves and between those segments and public authorities (both national and local), acting as a means of personal fulfilment, monitoring compliance with obligations under national and international law and promoting and defending interests shared with others.

10. The positive role of civil society can be seen particularly in its essential contribution to the development and realisation of democracy and human rights, especially through the promotion of public awareness, participation in public life and securing the transparency of public authorities.

11. However, civil society is also widely recognised as being able to make an essential contribution to important social objectives such as:

- achieving inclusion in education and youth development,
- assisting the work of National Human Rights Institutions,
- bringing about improvements in living conditions,
- combating discrimination, hate speech, racism and xenophobia,
- conserving nature and biodiversity,
- defending rights and securing remedies for violations of them,
- facilitating conflict prevention,
- monitoring implementation of constitutional, legislative and international standards,
- promoting employment, good governance, health and development and public participation,
- promoting health as a human right,
- promoting, recognising and realising children's rights,
- promoting reconciliation and peace,
- promoting sustainable development,
- protecting the environment, providing disaster relief and humanitarian assistance and
- tackling climate change.

12. Furthermore, it is accepted that civil society has a crucial role to play in addressing and resolving many other challenges and issues that are important for states and those living in them, such as:

- achieving social justice,
- empowering women,
- empowering youth,
- preventing crime,
- promoting peace,
- protecting consumers,
- relieving poverty and
- stopping human trafficking.

13. It is also important not to overlook the vital contribution that is made through civil society to the organisation of cultural and social life and the physical and spiritual well-being of the population.

14. Thus, without any form of civil society action within our communities, the quality of our lives would be significantly diminished.

2.2. STRUCTURES AND PARTICIPATION

15. The pursuit of the collective interests through civil society is normally organised through some sort of institutional structure. In Cyprus the usual legal forms are associations, foundations, not for profit companies - all of which may be separately certified as charities - and trade unions. However, other, less formal structures (including ones online) can also be used.

16. Apart from the specific legally recognised categories just mentioned, the more popularly used names for structures that constitute civil society include community groups, faith-based organisations, non-governmental organisations, professional associations and societies.

17. Whatever their name or nature, these structures are a manifestation by those involved of the right to freedom of association, which is protected by the Constitution and many international commitments undertaken by the Republic of Cyprus.

18. Some of these structures may just have a local focus but others may operate at the national level. Yet others still may have some, or even a significant, international dimension. Moreover, some may rely solely upon volunteers for their operation whereas others can be significant employees and engage in economic activities to support the achievement of their objectives (these objectives have one purpose only – the common good). However, whatever their

nature, these structures are quite separate from political parties since it is not part of their objectives to be elected to Parliament or to serve in government.

19. Those involved in these structures can be just a handful of individuals but many may attract the support and engagement of hundreds and even thousands of persons. Those can be children as much as adults and can even include corporate entities. The involvement of all these persons can be quite varied. It can take the form of running or working for a particular structure on a voluntary basis, becoming an employee of it and providing it with financial assistance and practical or emotional support.

20. The way in which these different interests are pursued can also take many forms. These can include acting as mediators, providing services on a voluntary or contractual basis, campaigning to raise public awareness, participating in the processes of law-making and governmental decision-making at all levels, undertaking research and producing publications.

2.3. NOT-FOR-PROFIT AND NOT ANTI-DEMOCRATIC OBJECTIVES

21. International standards only recognise three limits which civil society must observe.

22. Firstly, the interests being pursued should be not-for-profit in the sense that any income that is should only be used for the pursuit of those interests and not be distributed to the membership of the structures concerned. The income generated can (a) be limited or substantial, (b) come from public and private sources within and beyond the state in which they are established and (c) be in the form of cash, other forms of financial instruments, proceeds from the sale of property and goods or equipment belonging to the association, as well as in the form of other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities and property transactions).

23. Secondly, the interests being pursued, and the means employed for this purpose, must be consistent with the requirements of a democratic society.

24. Thirdly, all legal requirements applicable to the activities undertaken and the structures used for this purpose must be observed, although those requirements must themselves be consistent with international standards.

3. INTERNATIONAL STANDARDS

25. The immense value of the contribution that can be made by civil society is well-recognised by states, as is evident from the extracts below.

'The United Nations once dealt only with Governments. By now we know that peace and prosperity cannot be achieved without partnerships involving Governments, international organisations, the business community and civil society. In today's world, we depend on each other.'

Kofi Annan, former Secretary General

(http://www.unvienna.org/unov/en/ngo_liaison_service.html)

The Council of Europe's work, benefits extensively from contacts and co-operation with the dynamic elements of society, as represented by NGOs. One of the main challenges currently facing the Organisation is to strengthen NGOs and civil society and to develop participatory democracy on a pan-European basis. The Council of Europe's relations with NGOs focus on the following:

I. Relations with international NGOs (INGOs): this can be seen as the Council of Europe's statutory relations with NGOs through the INGOs holding participatory status, known collectively as the Conference of INGOs of the Council of Europe. Through this status INGOs are now actively contributing to the decision-making process

II Civil Society Initiatives and Programmes with partner NGOs: civil society initiatives and co-operation programmes aim at strengthening the role of civil society in a pluralist democracy, in particular to improving relations between NGOs and public authorities. http://www.coe.int/t/ngo/overview_en.asp

We recognise the important role that civil society plays in our communities and countries as partners in promoting and supporting Commonwealth values and principles, including the freedom of association and peaceful assembly, and in achieving development goals.

The Commonwealth (<http://thecommonwealth.org/commonwealth-charter-section/role-civil-society>)

Recognizing that no one sector can solve the world's major societal challenges alone, these roles are increasingly carried out through engagement in partnerships and collaborative frameworks across civil society, and with stakeholders from business, government and international organizations. The unique concept of civil society as "the space where we act for the common good" is expanding, as civil society actors frequently play the role of enabler in driving change in collaboration with other stakeholders.

World Economic Forum, *The Future Role of Civil Society* (2013)

One of the major concerns of modern democracies is the alienation of citizens from the political processes. In this context, civil society constitutes an important element providing citizens with an alternative way, alongside elections, of making their voice heard and working for the community.
Conference of INGOs of the Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process

26. The importance of this contribution is further evidenced by the array of standards and instruments which have been adopted by the intergovernmental and international organisations to which states belong with the objective of safeguarding and encouraging the existence of civil society.

27. In particular, the pursuit of the collective activity through which civil society manifests itself is guaranteed by the right to freedom of association under Article 11 of the European Convention on Human Rights, as well as by many other commitments, including Article 22 of the International Covenant on Civil and Political Rights and Article 12 of the Charter of Fundamental Rights of the European Union, which are set out below.

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 11, European Convention on Human Rights

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 22, International Covenant on Civil and Political Rights

4. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

Article 12, Charter of Fundamental Rights of the European Union

28. The key requirements for the implementation of the right to freedom of association have been elaborated in the case law of the European Court of Human Rights and the United Nations Human Rights Committee, as well as in the Council of Europe's Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (the Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (CDL-AD(2014)046).

29. These requirements entail:

- the freedom to establish civil society structures and to determine both their membership (if any) and sphere of operation;
- the presumption in favour of the lawfulness of the objectives and activities of civil society structures;
- the existence of a legal and fiscal framework that encourages the establishment and continued operation of civil society structures;
- the freedom to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken accords with government policy or requires a change in the law;
- the freedom from direction by public authorities;
- the freedom to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned;
- the freedom to seek, receive and use resources;
- the need for good administration in legislation, policies and practices affecting civil society structures;
- the duty of the state to respect, protect and facilitate the operation of civil society structures and those involved in them; and
- the ability to challenge acts or omissions affecting civil society structures in an independent and impartial court with full jurisdiction.

30. Such requirements are best summed up by the need for an enabling environment for civil society and the need to promote its participation in the legislative process and the decision-making of government at all levels (national and local).

3.1. AN ENABLING ENVIRONMENT

31. The need for an enabling environment has been recognised as essential for all forms of civil society since, in its absence, there will be difficulties firstly for the necessary structures to get established and secondly for them to be in a position to pursue their particular objectives and thereby make the fullest possible contribution in the ways just discussed.

32. There has, therefore, been particular concern at the international level when the foundations for civil society are seen to be especially weak, whether in general or particular types of organisations such as those concerned with minorities or the more vulnerable parts of the population. As the extracts below underline, establishing an enabling environment requires an extensive range of measures to be taken by states.

The Human Rights Council,

3. Urges States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity;

6. Urges States to acknowledge publicly the important and legitimate role of civil society in the promotion of human rights, democracy and the rule of law;

7. Also urges States to engage with civil society to enable it to participate in the public debate on decisions that would contribute to the promotion and protection of human rights and the rule of law, and of any other relevant decisions;

8. Stresses in particular the valuable contribution of civil society in providing input to States on the potential implications of legislation, when such legislation is being developed, debated, implemented or reviewed;

9. Urges States to ensure access to justice, accountability and end impunity for human rights violations and abuses against civil society actors, including by putting in place, and where necessary reviewing and amending, relevant laws, policies, institutions and mechanisms to create and maintain a safe and enabling environment in which civil society can operate free from hindrance and insecurity;

10. Calls upon States to ensure that provisions on funding to civil society are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the right and ability to solicit, receive and utilize resources for its work;

11. Urges all non-State actors to respect all human rights and not to undermine

the capacity of civil society to operate free from hindrance and insecurity; Human Rights Council Resolution 27/31, Civil Society Space, 26 September 2014

57. NGOs should be assisted in the pursuit of their objectives through public funding and other forms of support, such as exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credits.

58. Any form of public support for NGOs should be governed by clear and objective criteria.

59. The nature and beneficiaries of the activities undertaken by an NGO can be relevant considerations in deciding whether or not to grant it any form of public support.

60. The grant of public support can also be contingent on an NGO falling into a particular category or regime defined by law or having a particular legal form. *Committee of Ministers of the Council of Europe's Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe*

107. Further, regulations and practices concerning the operations of associations should be constantly reviewed in order to facilitate the exercise of the right to freedom of association in the ever-changing environment in which associations operate. This may, for example, mean that associations should be able to submit required documentation electronically and conduct their activities in the form and forum of their choice, including through online and electronic conferences. A regular review of regulations and practices should not, however, result in the need for re-registration of already registered associations.

191. Associations should, thus, be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorization being required, while at the same time being subject to any licensing or regulatory requirements generally applicable to the activities concerned. In addition, due to the not-for-profit nature of associations, any profits obtained through such activities should not be distributed among their members or founders, but should instead be used for the pursuit of their objectives.

194. Associations should, however, be able to use their income and assets to pay their staff and to reimburse any expenses incurred on their behalf. Many associations are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It is, therefore, legitimate for associations to use their property and assets to pay their employees and to reimburse the expenses of those who act on their behalf. While market conditions and/or legislation should influence the level of payments made to staff, the need to ensure that property is used

for the pursuit of an association's objectives could justify imposing a criterion of reasonableness for the reimbursement of expenses.

227. Reporting should be facilitated by the creation of, for example, online web portals where reports can be published, so long as this does not overburden the association. Reporting requirements should not be regulated by more than one piece of legislation, as this can create diverging and potentially conflicting reporting requirements and, thus, diverging liability for failure to fulfil them. Finally, associations should not, to the extent possible, be required to submit the same information to multiple state authorities; to facilitate reporting, the state authorities should seek to share reports with other departments of the state if necessary.

228. All regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association. As noted elsewhere in these Guidelines, the right to privacy applies to an association and its members; this means that oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue

267 Oversight and supervision of associations should not be invasive, nor should they be more exacting than those applicable to private businesses. Such oversight should always be carried out based on the presumption of lawfulness of the association and of its activities. Moreover, such oversight should not interfere with the internal management of associations, and should not compel associations to co-ordinate their objective and activities with government policies and administration.

Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (the Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (2014)

33. The most fundamental conditions for an enabling environment are the rule of law, adherence to fundamental democratic principles and political will but many other factors are also vital.

34. In particular, an enabling environment entails.

- acknowledging the legitimate role of civil society,
- providing measures of support,
- removing obstacles to functioning,
- avoiding unjustified restrictions on access to resources,
- establishing a conducive regulatory regime,
- ensuring access to justice,
- providing protection from harassment and worse.

3.1.1. Acknowledging the legitimate role of civil society

35. At the broadest level, positive support entails the demonstration of a positive attitude to the existence and contribution of civil society on the part of governmental structures at all levels. This can take the form of clear expressions of support for what civil society does, so that there is a wider understanding and appreciation of its value. In particular, a clear willingness both to engage directly with civil society - with clear procedures and structures for dialogue - and to explain why this is being done, will underline the legitimacy of its existence and operation.

3.1.2. Providing measures of support

36. However, more practical measures of support may also be required, whether in terms of the provision of facilities, financial assistance or capacity building. These may be necessary for civil society in general or for particular sectors of it.

37. The provision of facilities can involve making office space and premises for meetings available to civil society structures either free of charge or at a reduced rate. It can also involve allowing access to officially-owned equipment that might be needed or helpful for the achievement of a particular objective (e.g., printers and sound systems), as well as publicising details about certain civil society activities on public communications resources.

38. Financial assistance can take the form both of providing grants from public funds and adopting tax regimes which are designed to encourage donations from private sources. The latter encouragement can come from the donors being able to offset the amounts donated against any tax that they would otherwise be liable to pay or from the recipients being able to recover the relevant part of the donors' tax liability from the tax authority as a supplement to the donations. It can also involve exemptions from particular taxes or charges or the levying of them from civil society structures at a reduced rate.

39. Civil society structures can also be supported through capacity-building initiatives that are designed to develop or enhance the skills that they require both for the tasks that they wish to undertake or the responsibilities which they are required to discharge. Such capacity-building can be undertaken directly by public bodies or through the funding of suitable training organisations for this purpose.

40. However, it is essential that there be coherence and consistency in the approach to the provision of any such forms of support. Any differential treatment of civil society structures in their access to such support should always have a rational and objective justification.

3.1.3. Removing of obstacles to functioning

41. At the same time, it has also been recognised that there is a need to remove obstacles to the effective functioning of civil society. Such obstacles can take many forms. They can include, as has been seen in a number of countries, the unjustified criminalization and stigmatization of those involved in civil society structures.

42. However, many other impediments, obstructions or restrictions on civil society result from inappropriate legal frameworks, which make it especially difficult for such structures to be established and then operate.

43. These can take the form of restrictions such as exacting initial registration requirements for civil society structures (particularly where several public authorities need to be involved or there are unduly demanding requirements to be fulfilled), as well as repeated requirements for them to be re-registered, travel bans and burdensome requirements regarding the obtaining of governmental authorization prior to undertaking particular activities or receiving grants from donors.

44. It is especially important that difficulties are not put in the way of structures being established by those who come from minority groups or whose objectives, while lawful, are not generally popular.

3.1.4. Avoiding unjustified restrictions on access to resources

45. Indeed, restrictions on access to resources - including that which comes from outside the country - has been a particular focus of concern, with attempts in some instances to criminalize or delegitimize the activities of particular civil society structures solely on account of the origin of their funding.

46. It is increasingly accepted that access to funding, in terms of the ability of civil society to solicit, receive and use funding and other forms of resources, is an inherent element of the right to freedom of association and that there should be no discrimination in this regard to particular sectors. Indeed, without this possibility it would be impossible for them to be able to carry out their activities and discharge their functions. This freedom should be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.

3.1.5. Establishing a conducive regulatory regime

47. Additional difficulties can result from the way laws are applied, whether in terms of undue delay in decision-making or their application in an oppressive manner, such as by excessive scrutiny by regulatory and tax authorities. This does not mean that civil society structures should not be subject to the general law or accountable for any public support they receive. However, it does entail that there should be a presumption that their activities are lawful and supervision of them should in most instances embody a light touch approach,

48. Moreover, there should not be any unfounded intrusion in the internal management of civil society structures, as this should be a matter just for those involved in them. The tendency to interfere with choices made and to act purportedly to ensure compliance with the law thus needs to be resisted. This is not so much a matter of the law but of the way in which public authorities interact with civil society, for which the appropriate remedy may be appropriate training and guidance.

3.1.6. Ensuring access to justice

49. It is essential that any decision affecting civil society structures or those involved with it be communicated in a timely manner and be subject to review by an independent and impartial tribunal acting in accordance with the requirements for a fair trial under international guarantees such as in Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights. This is necessary to ensure that civil society organisations have rights that are practical and effective.

50. Moreover, civil society structures should be recognised as having the necessary standing to challenge government decisions concerned with the objectives that they are pursuing and not be subjected to burdensome costs in respect of proceedings brought by them in the public interest.

3.1.7. Providing protection from harassment and worse

51. Furthermore, there is a need to ensure that there is an environment in which civil society can operate free from hindrance and insecurity.

52. This requires effective action to be taken to deal with any harassment and intimidation - or worse - by public officials and private individuals and groups of particular civil society structures. This entails not just making calls to respect

and protect these structures and those involved in them, but also ensuring the prompt, effective, and impartial investigation of such acts, together with the prosecution of the perpetrators.

3.2. PROMOTING PARTICIPATION

53. A particularly valuable contribution that can be made by civil society is through the provision of input about the appropriateness and potential implications of legislation and governmental decision-making, both when ideas in respect of these are being developed and, debated and when they are being implemented or reviewed.

54. In addition, civil society can contribute to the implementation of law and policy as service providers, which in turn enhances their experience in contributing to future reforms.

55. Participation

- is important for democracy,
- is needed throughout the course of decision-making,
- requires a process to be established,
- should be facilitated and
- benefits from giving feedback but
- requires respect and cooperation.

56. Both the Council of Europe and the United Nations have emphasised the importance of civil society's participation, as is illustrated in the extracts below.

The Human Rights Council

7. Also urges States to engage with civil society to enable it to participate in the public debate on decisions that would contribute to the promotion and protection of human rights and the rule of law, and of any other relevant decisions;

8. Stresses in particular the valuable contribution of civil society in providing input to States on the potential implications of legislation, when such legislation is being developed, debated, implemented or reviewed;

Human Rights Council Resolution 27/31, Civil Society Space, 23 September 2014

76. Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people's opinions as to the functioning of society. This participation and co-operation should be

facilitated by ensuring appropriate disclosure or access to official information.
77. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.
Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe

WHAT CAN NGOS DO?

The Code can be used by NGOs in various ways: in their internal work when planning activities and finding ways on how to engage; in their discussions with public authorities on how to start co-operation or take stock of existing co-operation and identify areas for improvement. They can also use it to build awareness to their work, to promote the key principles for a good working relationship with authorities and to develop mechanisms for engagement.

WHAT CAN PUBLIC AUTHORITIES DO?

By referring to the Code and the different possibilities of participation and interaction that exist, public authorities can take stock of their existing procedures in their relations with NGOs, see where there is room for improvement and take the necessary steps to modify their practices to encourage increased NGO participation in the decision-making process.

Conference of INGOs of the Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process

3.2.1. The importance of participation for democracy

57. The participation of civil society structures in law-making and decision-making processes is a crucial feature of an open, democratic society. The engagement of the many individuals working through civil society - who are themselves generally voters - is an important complement to representative democracy.

58. It is vital to appreciate that civil society structures are in a position to bring their knowledge and independent expertise to the processes of law-making and decision-making, thereby enhancing both the quality of laws and decisions and the acceptance of their legitimacy.

59. This is a contribution that can be made not only at the national and local level but also at the European and international level. The significance of the latter continues to grow, especially following membership of the European Union since civil society structures can provide valuable national insights.

60. However, it is also important to bear in mind that the participation of civil society structures in matters of political and public debate, even though the

position taken is not in accord with government policy or involves the advocacy of a change in the law, does not render them into political parties. Such participation is part of the right to freedom of expression that everyone should enjoy.

3.2.2. The stages of participation

61. Such participation is relevant to all the stages involved in the political decision-making process, i.e., the initial agenda setting, the drafting of policy, the eventual decision or law-making, the implementation of laws and policies, the monitoring of their operation and effectiveness and the ultimate reformulation of law and policy in the light of what is established, starting the whole process once again.

62. Effective participation in such processes depends upon these being open and accessible, as well as being governed by agreed parameters.

63. In all cases, this necessitates access to relevant information and policy considerations in a timely manner so that any contribution by civil society can be genuinely meaningful.

64. Furthermore, the legislature and public authorities must be prepared to take the initiative in seeking the opinion of civil society on a specific matter.

65. However, it must also be recognised that civil society is itself in a good position to set the agenda as its experience may lead to the identification of particular problems or issues that need to be addressed through legislation or government policy.

66. In addition, it needs to be appreciated that engagement with civil society can often be an effective way of discovering the views and concerns of citizens.

3.2.3. The process of participation

67. The exchange with civil society can often be facilitated through a dialogue that is either broad or collaborative in nature.

68. The former is a two-way communication, relying on potentially shared objectives, involving a regular exchange of views through processes such as open public hearings to specialised meetings between civil society structures and public authorities. Such exchanges are likely to be wide-ranging and not explicitly linked to a current policy development process.

69. A collaborative dialogue will be more appropriate where there are mutual interests in a specific policy development and can often lead to a joint recommendation, strategy or legislation. Such a dialogue will consist of joint, often frequent and regular, meetings to develop core policy strategies which can lead to agreed outcomes.

70. However, where the stage of adopting specific laws or policies has been reached, there is then a need for formal consultation procedures to be followed.

71. Such procedures require a genuine openness to receive and take account of comments and suggestions. However, the latter requires more than the good will of the public authorities concerned. There is a need for them to use tools - procedural and technological - that will ensure both that all those who wish to be consulted are able to do so and that it is practicable to take account of the different views being expressed by them.

72. In ensuring effective participation by civil society it is especially important to exploit the opportunities afforded by e-tools as they can facilitate its engagement in an accessible and inclusive manner.

3.2.4. Facilitating participation

73. There is also a need to develop the capacity and skills of civil society to participate and contribute to policy formulation, project development and service provision.

74. In addition, the relationship between public authorities and civil society can be enhanced through developing structures to facilitate their co-operation, whether in the form of contact persons within Ministries and local authorities, coordinating committees and specialist working groups. This relationship can also be assisted by the conclusion of framework agreements that outline undertakings, roles and responsibilities and procedures for co-operation.

3.2.5. Giving feedback

75. Effective consultation also requires feedback as to why particular proposals were not acted upon.

4. CIVIL SOCIETY IN CYPRUS: TAKING STOCK

76. It should not be forgotten that the right to freedom of association under international standards is also guaranteed by Article 21 of the Cyprus Constitution. The need to secure the position of civil society and to ensure that its potential can be realised is thus not just an international obligation; it is also a constitutional commitment.

2. Every person has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. Notwithstanding any restriction under paragraph 3 of this Article, no person shall be compelled to join any association or to continue to be a member thereof.

3. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are absolutely necessary only in the 'interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person, whether or not such person participates in such assembly or is a member of such association.

4. Any association the object or activities of which are contrary to the constitutional order is prohibited.

5. A law may provide for the imposition of restrictions on the exercise of these rights by members of the armed forces, the police or gendarmerie.

Article 21, The Constitution of the Republic of Cyprus

77. However, as becomes clear from the reports and studies such as those cited below, civil society in Cyprus is far from flourishing, even though there are also some bright spots. Indeed, it has a relatively weak base. There are a number of different factors that explain the present situation, which is compounded by the limited scope for participation enjoyed by civil society. However, during the last two years, the Cyprus Government has demonstrated political will to strengthen the role of civil society and enhance its potential. Nonetheless, it is clear that these efforts need to be built upon so that the contribution which civil society can make is fully realised.

Civil society [...] has to cope with control from political parties, and clientilistic relationships between political parties and citizens. [There is a tendency] [...] to think that almost everything has a political cause and that is the role of politicians to deal with almost all issues facing society. Political power, as

exercised by the state and political parties, therefore assumes a hegemonic role, controlling not only the economy but also society at large, as is evident in education, the media, cultural production and volunteer organisations (mainly charities), and resulting in the underdevelopment of civil society.

The above conclusions agree with the ones of the 2005 CSI report, which states: "Civil society [...] is of a very particular sort because advocacy, notions of citizenship and social tolerance are still in the process of developing in an island that was only granted independence in 1960, was shaken by inter- and intra-communal conflict, divided by a war, and is still trying to find ways of building a lasting peaceful future for all its inhabitants. The Republic of Cyprus was a polity that was not accepted at the beginning by the majority of its citizens and political parties took some time to take the complexion of parties as we know them in Western democracies. When they did they dominated the entire fabric of social life. Indeed the dominance of the political upon civil society, in particular, and the wider society in general is crucial for understanding the shape of the former." An Assessment of Civil Society in Cyprus (Civicus, 2011)

The various laws do not contain specific provisions on legitimate sources of income or property for any type of NGO, nor establish any conditions under which they may engage directly in economic activities. Whilst this implies a commendably liberal approach, whereby any otherwise legal source of an organisation's income is legitimate, in practice a number of restrictions are made. These restrictions are imposed on a discretionary basis by officers at registration and especially, when applying for charity status.

[...]

Discretionary regulation runs counter to the spirit of the requirements of the [European] Convention [on Human Rights] and the recommendations of the Council of Europe. The high level of discretion exercised by government agencies in the regulation of NGOs in Cyprus is perhaps the most striking feature of the system. Numerous examples were found of government agencies failing to disclose the criteria for regulatory decisions. There were also many examples of government agencies failing to act with consistency [...]

This significantly hampers the effectiveness of the sector as well as its relations with the government in a number of ways, chiefly:

- It erodes both public and NGO sector trust and confidence in government, which may lead to perceptions that it is opaque, remote, inefficient or even corrupt;*
- It renders impossible education of the sector in compliance with regulations;*
- It prevents effective consultation with the sector over regulations and the development of self-regulation and regulatory partnerships;*

- *It makes attempts to comply with regulations unpredictable, and therefore more inefficient and costly;*
- *It erodes public trust and confidence in the NGO sector, which may be seen as unregulated and open to abuse;*
- *It hampers effective development and implementation of a government strategy for the sector;*
- *It enables a culture of favouritism and corruption to exist within government (however we should state that no evidence of either was sought or found in relation to the regulation of the NGO sector.*

European Center for Not-for-Profit Law, Assessment Report of the Legal and Regulatory Framework affecting NGOs in the Republic of Cyprus (2009)

NGOs have open links with the government but dialogue opportunities are rare and are limited to those people who have interpersonal relations with decision makers. Policy dialogue is not mentioned in any legislation or guidelines but each ministry recently organized its own NGO network with members that are working to support ministerial duties. In addition, public consultation is taking place before new legislations but still is not part of the culture of the government, so sometimes the opportunity for dialogue is not publicized.

Concord/Open Forum for CSO Development Effectiveness, CSO Enabling Environment Country Profile; http://www.concordeurope.org/documents/enablingenvironment/CyprusTemplate_Enabling%20Environment.pdf (2009)

4.1. A RELATIVELY WEAK BASE

78. The most well-established elements of civil society in Cyprus are to be found in its professional associations, its cultural, religious, sporting and welfare organisations and its trade unions. However, other elements of civil society - particularly those concerned with advocating changes in law and policy outside the party political process - are not only weaker but are also not fully understood and appreciated by society as a whole.

79. Membership in civil society structures remains very much a minority pursuit, with just under one-fifth of the population belonging to any form of them. The most popular structures in which people are engaged are professional and sporting associations and trade unions. Furthermore, there is a relatively low-level of engagement with civil society structures outside of membership so that volunteering in support of their activities is undertaken by only about one-eighth of the population (12.5%) whereas the average for the European Union is approximately 29%. Moreover, the level of participation is particularly low with respect to those who are poorer, belong to ethnic or linguistic minorities or are foreign workers.

80. A misleading impression of the extent of civil society is undoubtedly given by the fact that there are some 5,000 registered associations and clubs since many of these are in practice inactive. In addition, there are only 330 non-profit companies and just over 400 charities.

81. Nonetheless, those who are actually engaged with civil society often do so in a very active way. Moreover, the weakness of the base does not mean that civil society structures are not actually making a valuable contribution to life in Cyprus through the wide range of their initiatives and activities.

4.2. RELEVANT FACTORS

82. There are a number of different factors that contribute to explaining this situation. They include:

- the dominant role of political parties;
- the lack of recognition of civil society's contribution;
- a degree of hostility to, and some suspicion of, civil society
- the nature of the legal framework;
- the problems in obtaining funding;
- the size of civil society structures; and
- the boundaries created by civil society itself and/or governmental mechanisms and
- the limited professional input.

83. Many entities that would elsewhere form part of civil society and not be partisan in nature - such as student unions, women's organisations and youth associations - remain distinct from it as they are organised within the structure of particular parties and are thus shaped by the specific objectives of the party founding them.

84. Additionally, there is also a lack of recognition of the contribution that can be made by civil society structures and all those working in or through them, whether as volunteers or employees. This is true both of those that provide services and of those which engage in advocacy without being part of the party political structure. Often what is accomplished by civil society goes unnoticed.

85. There is sometimes hostility towards civil society structures where they, rather than public bodies, provide services, notwithstanding that the aim is to complement or enhance the role played by the public sector. Moreover, advocacy outside of party politics can be viewed as meddling in the affairs of state or even its enemy, even though the views being advanced are those of citizens with the right to vote. Furthermore, there is often suspicion about the

way civil society structures use their funds, with the view that the holding by them of ostensibly large reserves is unjustified rather than evidence of their good financial planning. At the same time, public understanding of the operation of civil society structures, if other than charities, would be improved if they published their accounts and reported publicly on their activities, as some do without any legal obligation in this regard.

86. The legal framework for establishing civil society structures is also ancient and reflects the high degree of regulation exercised by a colonial power. At the same time, the law does not promote the establishment of organisations that seek to undertake activities that would be of benefit to the public at large or a significant section of it, because of the present narrow scope of the activities which deems to be charitable.

87. Where funding is available for civil society structures from public sources, access to it is often restricted to particular entities or the criterion for decision-making lacks clarity. As a result, there is both a lack of transparency and an absence of competition which could help ensure the best use of public funds. At the same time, the grants available are often too small to make the effort of applying - which can be time-consuming - even worthwhile. For example, access to EU structural funding has been restricted until recently by a self-imposed, but unnecessary, requirement that a percentage of matching funds come from the Government, making it almost impossible for organisations in Cyprus to apply, since all government departments are short of funds.

88. Furthermore, many of the grants that can be applied are available only for the specific costs of individual project activities. This means that the core requirements for operating an organisation are never secure, notwithstanding any contribution to them from project activities. As a result the scope for civil society structures ever achieving sustainability is inevitably limited.

89. In the absence of any incentives - especially through the tax system - for private donations and with only limited entitlement to engage in economic activities, civil society structures are often left with subscriptions as their main source of funding, which necessarily limits the scale of their activities.

90. Unsurprisingly, individual civil society structures, outside of those which are most popular, are often small and there tends to be some duplication in efforts. The latter is a reflection of the unquestionable freedom of everyone to decide which entities they wish to establish and to which they wish to belong. Nonetheless, this can weaken the impact that such structures can have because

they lack the strength that comes with a larger base and, as a consequence, may not be in a position to pursue their objectives to any significant extent. In particular, the limitations of their size may mean that they cannot attract funding for this purpose since there may be a lack of confidence in their ability to manage projects that they would like to undertake.

91. Although volunteering is a crucial element of civil society, it is not always going to be a sufficient basis for it to function effectively. In many instances, the commendable efforts of volunteers can only be best exploited through full-time organisers. Moreover, the initiatives of those setting up civil society structures often need professional skills to be pursued and these are best provided through the recruitment of appropriately qualified employees.

92. However, the recruitment of such employees is problematic for at least three reasons. Firstly, there are not always sufficient candidates with the necessary skills. Secondly, there may not be the funding to hire those who are suitably qualified. Thirdly, there can be hostility to the idea of funding being used for such a purpose because the public does not really understand the important role of such employees in fulfilling objectives which it actually supports.

4.3. LIMITED SCOPE FOR PARTICIPATION

93. Arrangements for participation by civil society remain undeveloped. Although there are occasional general public consultation days - aiming to bring government closer to society and people - these are still a recent development and are not focused on any particular issue. Furthermore, they are directed to the public at large and do not seek to exploit the particular contribution that can be made by more formalised civil society structures. On the whole Ministries and local authorities have not developed any practice of general discussion with civil society as to the way in which policy might be developed, not even in respect of those structures that have garnered experience as service providers. Moreover, there is sometimes a failure to appreciate that civil society structures can actually make a useful contribution to policy development. This is unfortunate as a good consultation process leads to better outcome and is thus a 'win win' result for all concerned.

94. There are only very limited provisions in the law actually requiring consultation with civil society structures. In many cases these refer only to the consultation of just certain specified organisations. These provisions are thus far from inclusive. More importantly, however, the existence of such provisions means that account

cannot be taken of developments since their adoption and, as a result, there is no requirement to consult those organisations that may now have much greater relevance to the issue concerned. In addition, there may be ad hoc consultation by individual Ministries but they alone are free to determine when such consultation will be undertaken and which entities are to be involved.

95. Unfortunately, there is no general practice of giving feedback on any suggestions coming from civil society so that the reasons for not acting on them - which could be well-founded - are not understood

96. A recent exception to the foregoing is found in the arrangement for consultation on European Union matters, which enables interested organisations to register for the purpose of consultation (http://ec.europa.eu/yourvoice/index_en.htm). This is, however, something organised by the European Commission and the European Parliament. Furthermore, these arrangements also make provision for organising responses so that there is a clearer indication of the concerns and suggestions made in the various submissions about specific aspects of the matter under consideration.

4.4. THREATS

97. Although the lack of engagement and recognition are the main difficulties faced by civil society structures and those working with them, it should be noted that on occasion they do receive threats or are in other ways discouraged from continuing their work and activities.

4.5. SOME POSITIVE DEVELOPMENTS

98. Nonetheless, apart from the arrangements for consultation on European Union matters, there are a number of other positive developments relating to civil society in Cyprus.

99. Firstly, the opportunity for volunteering is being encouraged and facilitated by a number of initiatives.

100. These include, under the auspices of the Office of the Commissioner for Volunteerism and Non Governmental Organizations, the promotion of volunteerism within schools, the adoption of the Charter on the "Rights and Responsibilities of Volunteers" to improve the conditions in which volunteers work, the opening of the first - in Larnaca - of a number of "Volunteer Houses" to provide facilities from which volunteer organisations can operate

and efforts to promote the recognition by employers of the skills acquired by their employees through volunteering.

101. Also the Pancyprian Volunteerism Coordinating Council (PSEE) has, over the course of many years, been making various efforts to promote participation. In particular, it organises each year the Parliament of the Elders and the Summit of Civil Society. Both have 56 members; in the former the representatives, aged 63 and above, come from pancyprian organisations dealing with the elders and in the latter the representatives come from volunteering/non-governmental organisations. Both gatherings take place in the presence of the legislative and executive power and other observers. The overall aim of the Parliament of the Elders is to underline the contribution of elders to society and to create solidarity among the generations, whereas the Summit of Civil Society aims to give a “voice” to civil society and to identify and resolve its problems. One of the achievements of the second Summit of Civil Society was the adoption of the National Declaration for Volunteerism, which aims to promote active participation and support civil society. In addition, the House of Representatives, under the auspices of President of the House, holds yearly summits where issues of concern for the the elderly are discussed. The issues brought forward at the summits are based on reports drafted by the Committees of Health and Welfare of the Parliament of the Elders in consultation with the relevant regular Parliamentary Committees. Furthermore, the Ministry of Labor, Welfare and Social Affairs has been closely cooperating with PSEE for more than two decades.

102. In addition, a Parliament of Children has been organized since 2001 by the Pancyprian Coordinating Committee for the Protection and Welfare of Children (PCCPWC) under the auspices of the President of the House of Representatives, which aims at promoting the active participation of youth. The Parliament of Children discusses issues of concern for youth based on reports that have been prepared by the children “parliamentarians” with the assistance of the various Parliamentary Committees.

103. Moreover, in October 2004, the Youth Board of Cyprus organised the first Youth Summit, which took place under the auspices of the President of the House of the Representatives. This Summit also addressed issues of concern for youth and, reviewed the reports of the Parliament of Children.

104. Secondly, preparation is now under way to replace the Charitable Institutions Law and the Registration of Clubs and the Societies and Institutions Law by legislation that will aim to provide a more modern framework for the establishment and operation of civil society structures.

105. Thirdly, there has been an institutionalisation of a 'Public Consultation Day' under the auspices of the Office of the Commissioner for Volunteerism and NGOs. During these days - the second of which was held in 2014 - numerous consultations events were organised in which civil society structures and individual citizens met with the President of the Republic, Ministries and various Government offices.

106. Fourthly, the recent establishment of specific contact points within Ministries and other governmental bodies now provides a basis for developing their relationship with civil society structures.

107. Fifthly, the Ministry of Agriculture, Rural Development and Environment promotes dialogue with social groups and individuals locally and undertakes public consultation on all draft bills for which it is responsible.

108. Sixthly, the establishment of a Committee of Public Consultation, Youth, NGOs and Active Citizenship within each local administration, with a view to enhancing participation in decision-making, is being promoted within the context of the reform of local government that is now under way.

109. Seventhly, there have been some instances of co-operation between different civil society structures where these have recognised that their common interests could more usefully be pursued by working together. Furthermore, a number of organisations and networks have been established specifically to facilitate such co-operation.

110. Finally, Cyprus has ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) and thus has committed itself to a wide range of undertakings to ensure public participation concerning plans, programmes, policies and legislation relating to the environment.

5. BUILDING FOR THE FUTURE: REALISING THE CONTRIBUTION OF CIVIL SOCIETY IN CYPRUS

111. There are six challenges that need to be tackled before the potential contribution which civil society can make in Cyprus will be truly realised:

- establishing a much more positive perception of the value of civil society;
- developing a modern legal framework;
- securing sufficient access to resources for civil society structures;
- developing the capacity of civil society;
- promoting the participation of civil society; and
- securing access to justice for civil society.

112. There is no order of priority as to the tackling of these challenges as they are in many ways inter-related so that it is not enough for just one or two to be addressed. Thus, a modern legal framework is not in itself a guarantee of a more positive perception of civil society structure or that resources for their activities will be forthcoming. Similarly, promoting participation of civil society may not be enough if those working for its structures do not have the capacity to make use of the opportunities thereby afforded. It is important, therefore, for a comprehensive approach to be taken in order to ensure that the contribution of civil society can truly be realised.

5.1. IMPROVING THE GENERAL PERCEPTION

113. It is clear that the value of civil society and the way in which it operates are not properly understood and appreciated both within governmental structures and by the public at large.

114. Undoubtedly, the absence of a positive perception of the value of civil society stems from a variety of factors.

115. Firstly, those working within governmental structures at the national and local level are more comfortable working within the framework set by legislation and regulatory measures than working in partnership with independently established entities, even if that partnership has a contractual basis. There is, therefore, an instinctive assumption that 'outsiders' have nothing to offer those working in the public service.

116. Secondly, although members of the public do have some contact with civil society structures as either beneficiaries or volunteers, this remains very limited. As a consequence, they have no overview of what these structures are doing

and what can be gained from working through or with them. In addition, civil society structures can sometimes be mistakenly confused by members of the public with political parties or the government, which can be a disincentive to them becoming involved with the former.

117. Thirdly, this lack of awareness of what can be offered by civil society is compounded by negative experiences and reporting of the activities of civil society, whether as a result of misunderstanding as to how these are undertaken or of a genuine but uncharacteristic instance of wrongdoing. Moreover, there can be a failure to appreciate that civil society structures are initiatives from within the population of Cyprus rather than something externally imposed. The impression gained from such negative experiences and reporting or misunderstandings is not counter-balanced by the many positive achievements and explanations for establishing particular civil society structures, whether on account of there being no direct exposure to them or of these failing to be seen as being newsworthy and thus not covered either at all or only in a minimalistic manner.

118. There are various ways in which these factors can be addressed.

119. In the first place, there is clearly a need to educate those working within governmental structures at all levels as to the way in which civil society operates, the contribution that it has and can make and the advantages that can be gained from working with or through civil society structures and from drawing upon their expertise. Such education should be appropriately tailored to the particular responsibilities of different government structures - including local authorities - as, the way in which these can benefit from engagement with civil society will vary with those responsibilities.

120. Secondly, the Government should seek to promote a better public understanding and appreciation of civil society while emphasising its distinct nature from all governmental structures. In part, this can be achieved through efforts to draw attention to the role played by civil society structures, especially when the Government and local authorities are working in partnership with them or are providing finance or other support for their activities. Such promotion can also come through giving public recognition to the specific contribution of particular civil society structures or of individuals working in or with them. In all cases, it will be important to demonstrate the ways in which the role played by civil society is serving the interests and concerns of the people of Cyprus and is not to be seen as a burden on the state.

121. Thirdly, the Government could build on its existing efforts to encourage engagement with civil society, whether by volunteering or in other ways becoming involved with the activities of civil society structures. In part, this can be achieved by disseminating information about the possibilities of such engagement and the resulting benefits for all living in Cyprus. However, it is also important to do more to show the benefits accruing for those who actually engage with civil society. Although such benefits are often intangible, resulting from the personal fulfilment that comes from making a positive contribution to the lives of others, there is a need to increase and formalise the efforts that have begun to be made to highlight the acquisition or development of the skills that can result from such engagement. As the skills so acquired or developed are generally transferable - especially in employment - there is a need for this to be given more formal recognition, ensuring that this is then taken into account in recruitment and promotion decisions.

122. Finally, some civil society structures could undoubtedly do more to promote public understanding about the contribution that they are making, the rationale for their establishment and their distinct nature from governmental structures. This can be achieved through reporting in a public manner on their activities, financing and accounts and being ready to respond to questions from the public and the media, as well as by developing websites that explain who they are, what they do, how they do it and those benefiting as a result and how to become involved with what they do. There are a good number of civil society structures that do this already but its emulation by others would help reduce some of the misapprehensions about the nature of civil society. Some collaboration by civil society structures in making better known the range of activities that they undertake and those involved in specific ones might facilitate the involvement of members of the public with the particular structures in which they would be most interested. In this connection, it may also be that adherence to some form of ethics code could be a useful but not essential initiative. However, the formulation and adoption of any such code should be a matter for the individual civil society structures themselves to determine.

123. The Government should thus:

- ensure that all public servants fully appreciate the contribution made by civil society both in general and within their specific areas of competence;
- give explicit and positive recognition to the contribution which is made by civil society to the interests of people in Cyprus and elsewhere;
- publicise the ways in which becoming involved in civil society activities is possible; and
- establish a scheme for recognising skills which can be acquired through involvement in civil society activities.

124. Civil society structures should thus:

- disseminate more widely and more regularly information about their activities and what is achieved by them; and
- make clearer the ethical standards to which they adhere and how their implementation is monitored.

5.2. DEVELOPING A MODERN LEGAL FRAMEWORK

125. The current environment in which civil society currently functions comprises an outdated legal framework and a burdensome regulatory regime, as well as one which does not sufficiently recognise the value of it holding public bodies to account and does not ensure that threats to it are not tolerated.

126. As already noted, the legal framework is now under review and proposals for reform will be forthcoming. In finalising these, it will be important to ensure that it is relatively easy to establish civil society structures – retaining the flexibility of choice between the existing forms (associations, foundations and not for profit companies) - and that any obstacles placed in the way of doing so, serve a genuine public interest. Furthermore, there is a need to introduce a much wider concept of public benefit than is currently permitted under the judicial rulings with respect to the Charitable Institutions Law since this excludes the pursuit of many interests that are of great value for the population in Cyprus. A wider public benefit concept - explicitly defined in the new legislation - would enable the bodies concerned to attract the necessary financial support to pursue their objectives and serve the public interest without in any way usurping the role of government. It will also be important to define ‘public benefit’ in the legislation in an objective manner so that the determination of the structures enjoying this status is not a matter of discretion. In addition, the law will need to define in specific terms what advantages are to be enjoyed by entities having public benefit status so that the rationale for seeking it is clear.

127. However, reform of the legal framework for establishing civil society structures is only the starting point for the creation of an enabling environment. Apart from ensuring access to resources, which is discussed further in the following sub-section, it is essential that civil society structures are not subject to burdensome regulation, have the capacity to pursue their objectives and are properly protected.

128. It is important, in particular, to review the current regulatory structure to ensure that it is not unnecessarily demanding. It is undoubtedly important to ensure that there is no misuse of the advantages that might flow from a widened concept of public benefit that can be enjoyed by some civil society

structures. At the same time, the steps to prevent any such abuse should start from a clear presumption of the lawfulness of the activities concerned and any regulatory requirements should not involve undue costs that have the effect of discouraging advantage being taken of the new concept. All requirements should also take account of an entity's size and the sums it handles. Furthermore, it is necessary to keep in mind that regulatory requirements also entail a cost for the Government and that should not outweigh the benefits accruing from them. A requirement to publish accounts could, for example, do more to ensure proper use of funds than requiring them to be scrutinised by a public body.

129. The Government should thus:

- finalise the drafting of a new legislative framework for civil society structures that is fully compatible with international standards; and
- review all regulatory requirements for civil society activities to ensure that they are not unduly burdensome and take into account the different capacities and resources of the particular structures concerned.

5.3. SECURING ACCESS TO RESOURCES

130. Access to funding and other forms of resources are an essential component of an enabling environment. However, this depends not only on what the Government and local authorities are able to provide but also on what civil society structures can secure from other structures.

131. Indeed, the latter is especially important as the provision of resources from private individuals and entities is itself a key characteristic of a well-functioning civil society. Unfortunately, as it has been seen above, the current legal and regulatory framework in Cyprus is not particularly conducive to civil society gaining access to the resources that it requires. Nonetheless, this is a situation that could be remedied through the taking of various measures.

132. Private individuals and institutions within a country can be encouraged in various ways to provide finance for civil society but the most effective is for it to be possible for some form of tax relief - whether to the donor or the beneficiary - to be claimed. There is a need to review not only whether the existing arrangements are having a significant effect or should be revised - with due account being taken of those aspects of civil society activities considered a priority for support - but also whether such giving could be facilitated by reducing any formal requirements to the minimum needed to prevent abuse.

133. However, it also needs to be borne in mind that there are many donors outside the country that will not be influenced by any tax relief as their income is not taxable in Cyprus. Nonetheless, they may be deterred from supporting civil society structures in Cyprus because of the formalities that need to be followed and any charges imposed on their donations. It will be important to review all aspects of the regime governing donations from abroad so as to ensure that these are facilitated and not discouraged.

134. There is a need also to recognise that civil society structures can generate income through undertaking economic activities. This can take various forms, including the sale of goods and the provision of services, but at present there is very limited authorisation in the law for such activities to be undertaken. Contrary to international standards, it sometimes seem to be thought that the undertaking of economic activities is somehow incompatible with not-for-profit status when the focus really should be on the actual use of the income thereby generated. Moreover, there is also some fear that allowing such activities will be at the expense of commercial organisations but this will not occur if activities in the form of services are linked to the objectives of the structures concerned, the non-distribution of profits requirement is observed and no advantage such as exemption from VAT is enjoyed. There is a need, in particular, to ensure that this is a capacity enjoyed under the Public Benefit Organisations Law and related legislation that it is envisaged will replace the current Charitable Institutions Law.

135. The ability of the Government and local authorities themselves to provide support for civil society structures undoubtedly varies with their economic position. Nonetheless, there is scope for providing such support in both direct and indirect means. The latter takes the form of exemptions from one or more taxes or charges and the current approach with respect to them should be reviewed to ensure that the maximum feasible support is provided in this way for civil society structures.

136. More direct support can take the form of grants and the provision of premises, services and other facilities. It is important that grants are used to pursue the common objectives of the Government or local authorities and the recipient civil society structures. However, the distribution ought to be a process that is efficient but also conducted on a genuinely non-discriminatory and transparent basis. At present, there seem to be too many different sources and criteria involved in grant-making, with some recipients being unduly privileged even though others might use the funds to better effect. There is a need, therefore, to ensure that the process of grant-giving is both simplified and that it is truly competitive so that those with the relevant capacities can apply and the merits of different applications are objectively appraised. Furthermore,

the process of deciding on the allocation of funds should be one in which government and civil society are jointly engaged, drawing also on other relevant expertise.

137. Although some of the stumbling blocks to accessing European Union funding now seem to be being removed, it will be necessary to review this process too and thereby ensure that civil society structures in Cyprus are not unduly disadvantaged in making applications.

138. The initiative of establishing “Volunteer Houses” is a means of providing practical assistance to civil society structures without any transfer of funds. Consideration should, therefore, be given to emulating this approach in other ways as these may be less costly than giving grants while providing comparable benefits - especially for smaller structures - and ensuring maximum use of the facilities that public bodies at the national and local level have at their disposal.

139. The Government should thus:

- review, with the aim of enhancing, the existing arrangements for granting tax relief on donations in Cyprus to civil society structures;
- explore ways of facilitating and encouraging donations to civil society structures from outside the country;
- extend in a meaningful way the capacity of civil society structures to generate income for their objectives through undertaking economic activities;
- review the possibilities for enhancing the scope of the exemptions from taxes and charges granted to civil society structures;
- simplify the process of grant-giving and ensure that it is genuinely competitive and transparent;
- ensure that there are no obstacles in the way of civil society structures competing for funds available outside Cyprus such as those of the European Union; and
- extend the Volunteer Houses scheme and explore ways in which civil society structures can make use of other publicly-owned facilities in order to pursue their objectives.

5.4. DEVELOPING CAPACITY

140. Although civil society has much to offer, there is no doubt that this is not always exploited most effectively. Certainly, the larger structures need appropriate financial and managerial skills for the demands and expectations placed on them. Moreover, having the capacity to perform certain tasks such as the provision of care for the elderly or the provision of training for those suffering from disabilities does not mean that an entity is equipped to cost

the activities it proposes to undertake, prepare a funding application or to contribute to a public consultation. Furthermore, some civil society structures overlap or compete with each other when co-operation might produce greater success from their efforts. In addition, those leading civil structures are not always sufficiently able to communicate effectively the distinct contribution that they are making and thus the understanding of the public and of Ministries and other authorities about this inevitably suffers.

141. Given the benefits to be derived from civil society, it is in the Government's interests to help its structures maximise their effectiveness. Having developed the Charter on the "Rights and Responsibilities of Volunteers", efforts should now be made to ensure its observance so that those working with civil society structures – employees and volunteers – have sufficient training and protection, as well as scope for career development in the case of larger ones. Similarly, the Government should encourage and support the provision of training for civil society structures on financial reporting, applying for funding and taking part in consultation exercises. One way of doing this would be through promoting partnerships with interested companies in the private sector. Another one would be to provide support for activities emanating from civil society itself, such as the creation of a centre focused especially on capacity building.

142. The promotion of cooperation between civil society structures must not be used as a device to undermine their independence or even be perceived as being so directed. However, there is undoubtedly a role to be played in supporting networks which might lead to particular structures seeing the value of co-operating with each other and also in structuring grant funding in a manner that does not disadvantage various structures from working together. Moreover, civil society structures should respond positively to the initiatives outlined above.

143. The Government should thus:

- promote observance of the Charter on the "Rights and Responsibilities of Volunteers";
- encourage and support training for civil society structures on financial reporting, applying for funding and taking part in consultation exercises; and
- provide support for networks established by civil society structures to facilitate co-operation.

144. Civil society structures should thus:

- give effect to the Charter on the "Rights and Responsibilities of Volunteers" where applicable to their activities;

- ensure that their staff and volunteers obtain necessary training on costing activities, financial planning and reporting, applying for funding and taking part in consultation exercises; and
- establish networks to facilitate co-operation between themselves.

5.5. PROMOTING PARTICIPATION

145. It is a necessary preliminary to any arrangements to promote the participation of civil society, that those working in government structures at all levels appreciate the value of the contribution that it can make and thus have a genuine willingness to draw on the benefits of its experience and insights.

146. However, assuming that the suggestions already made have that effect, it is also vital that there be appropriate structures to govern and facilitate such participation so that the contribution of civil society can be appropriately exploited. This means that provision should be made for the sharing of information, the establishment of structures for dialogue in general, the manner in which consultation on particular matters - whether draft laws and regulations and proposed decisions - are organised and used and the follow-up to a consultation process.

147. At present, there is no real framework for dialogue with civil society or particular elements of it. The public consultation days organised by the President of the Republic of Cyprus and State Officials are a step in this direction but it is hardly practicable for them to cover all issues of concern or to hear from all participants (let alone others who may be interested but are not present) and, in any event, they are by their nature more opportunities to complain than to provide more wide-ranging thoughts as to the issues that need to be tackled and how this might be done. Although there is clearly a need for coordination of ideas emerging from the latter kind of dialogue, this is probably better handled at the ministerial or agency level of government.

148. Consideration needs to be given as to how to orchestrate such a dialogue between civil society and Ministries and other government entities at both the national and local level. Undoubtedly, the creation of contact points in Ministries and other governmental entities could be exploited for the purpose of conducting this dialogue, as could the emulation on a much broader basis of the current cooperation between the Ministry of Labor, Welfare and Social Affairs and the Pancyprian Volunteerism Coordinating Council. However, the success of such dialogue will also require the participation of more senior officials, for it really to be an effective two-way process. Furthermore, this will also be

dependent upon the disclosure of all relevant official information in order for the observations of civil society to be particularly focused and constructive.

149. While dialogue in the absence of specific legislative or administrative proposals will necessarily be broad-ranging, a more structured approach is clearly required once such proposals have been developed. As it has been seen the current requirements in such cases are very limited, both as to the field and range of civil society structures that should be involved. This clearly does not make the best use of what civil society can offer. There is a need, therefore, to develop a legislative framework for consultation on such proposals, drawing upon practice, with respect to European Union measures, that was followed in other member States regarding their own laws and decisions.

150. Such a framework should be generally applicable as regards draft laws and decisions at all levels of government - including local government - and should be inclusive so that those who wish to participate can do so. In addition, it should prescribe a period for the consultation exercise to run that is a realistic one for the participation of civil society structures, having regard to the need first to discuss the relevant issues with those involved in them. Furthermore, the technical arrangements for handling and analysing submissions that have been developed by the European Union and other countries, using e-technology to eliminate paperwork, save costs and speed up the process - should be adopted.

151. Undoubtedly the introduction of such a process will have some implications for the way in which the process of legislation and decision-making is organised but the use of e-technology should ensure that it is not slowed down. Moreover, it is clear that the quality of what is ultimately produced will be enhanced by such a consultation process.

152. Finally, this framework should establish an obligation to give feedback on the submissions, explaining why some were accepted and others were not. It would not be realistic to expect feedback to be given in respect of each of the submissions received but, given that these submissions should be structured on an issue by issue basis, the requirement to respond to those made on the various discrete issues covered will not be overly time-consuming for the Government or other authorities and indeed should ensure that due consideration has been given to all of them.

153. The Government should thus:

- encourage senior officials to undertake a regular dialogue with civil society structures undertaking activities relevant to their responsibilities;

- develop a legislative framework for consultation on draft laws and decisions at all levels of government which is inclusive and effective and fully exploits the possibilities afforded by e-technology; and
- ensure that the rules governing access to official information are fully adapted to the requirements for genuine public participation.

5.6. SECURING ACCESS TO JUSTICE

154. The ability of civil society structures to pursue their objectives is generally assured by their acquisition of a legal personality. However, sometimes having a competence does not mean that it can always be exercised. An important illustration of this relates to the inability in practice of civil society structures to seek judicial review of government decision-making. This is an especially vital means of ensuring governmental accountability and respect for the rule of law and often civil society structures are the only ones sufficiently motivated to seek judicial review, even though there are others who might suffer adverse consequences as a result of the decision concerned. However, the readiness of civil society structures to bring the necessary proceedings may be undermined by the risk of having to bear the costs of an unsuccessful application, notwithstanding the public interest in having the decision scrutinised. There is a need, therefore, to find a means of protecting civil society structures that bring such proceedings where they are genuinely in the public interest.

155. Finally, while intimidation and threats to those working with civil society structures are thankfully not commonplace, it is important to make it clear that such conduct is unacceptable in a democratic society. Efforts must, therefore, be made to give those who are the object of intimidation and threats the confidence that reporting it to the police will be acted upon and that appropriate proceedings will be brought against the perpetrators.

156. The Government should thus:

- eliminate the deterrent effect of liability for costs where civil society structures bring judicial review proceedings in the public interest; and
- ensure that all civil society structures and those working or involved with them have effective protection against intimidation and threats.

6. SUMMARY OF RECOMMENDATIONS

157. It is recommended that the Government:

- a) ensures that all public servants fully appreciate the contribution made by civil society both in general and within their specific areas of competence;
- b) gives explicit and positive recognition to the contribution which is made by civil society to the interests of people in Cyprus and elsewhere;
- c) publicises the ways in which becoming involved in civil society activities is possible;
- d) establishes a scheme for recognising skills which can be acquired through involvement in civil society activities;
- e) finalises the drafting of a new legislative framework for civil society structures that is fully compatible with international standards;
- f) reviews all regulatory requirements for civil society activities to ensure that they are not unduly burdensome and take into account the different capacities and resources of the particular structures concerned;
- g) reviews, with a view to enhancing, the existing arrangements for granting tax relief on donations in Cyprus to civil society structures;
- h) explores ways of facilitating and encouraging donations to civil society structures from outside the country;
- i) extends in a meaningful way the capacity of civil society structures to generate income for their objectives through undertaking economic activities;
- j) reviews the possibilities for enhancing the scope of the exemptions from taxes and charges granted to civil society structures;

- k)** simplifies the process of grant-giving and ensures that it is genuinely competitive and transparent;
- l)** ensures that there are no obstacles in the way of civil society structures competing for funds available outside Cyprus, such as those of the European Union, which could support their activities;
- m)** extends the Volunteer Houses scheme and explores ways in which civil society structures can make use of other publicly-owned facilities in order to pursue their objectives;
- n)** promotes observance of the Charter on the “Rights and Responsibilities of Volunteers”;
- o)** encourages and supports training for civil society structures on financial reporting, applying for funding and taking part in consultation exercises;
- p)** provides support for networks established by civil society structures to facilitate co-operation;
- q)** encourages senior officials to undertake a regular dialogue with civil society structures undertaking activities relevant to their responsibilities;
- r)** develops a legislative framework for consultation on draft laws and decisions at all levels of government which is inclusive and effective and fully exploits the possibilities afforded by e-technology;
- s)** ensures that the rules governing access to official information are fully adapted to the requirements for genuine public participation;
- t)** eliminates the deterrent effect of liability for costs where civil society structures bring judicial review proceedings in the public interest; and
- u)** ensures that all civil society structures and those working or involved with them have effective protection against intimidation and threats.

158. It is recommended that the Civil Society structures:

- a) disseminate more widely and more regularly information about their activities and what is achieved by them;
- b) make clearer the ethical standards to which they adhere and how their implementation is monitored;
- c) give effect to the Charter on the *"Rights and Responsibilities of Volunteers"* where applicable to their activities;
- d) • ensure that their staff and volunteers obtain necessary training on costing activities, financial planning and reporting, applying for funding and taking part in consultation exercises;
- e) establish networks to facilitate co-operation between themselves.

APPENDIX

KEY INTERNATIONAL DOCUMENTS

Council of Europe, Guidelines to promote the development and strengthening of NGOs in Europe, Multilateral meeting organised by the Council of Europe in cooperation with the Japan Foundation, Strasbourg, 23 - 25 March 1998

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