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Mr. S. Suresh Kumar
Hon'ble Minister for Law, Parliamentary Affairs
& Urban Development
GoK

Dear Sir,

Subject: Our response to the government's stand on the Community Participation Bill

We thank you for inviting us to a discussion on the Community Participation Bill on 1st February 2011 in your chambers. However, we are disappointed that, despite your assurances to bring in changes to the Bill, it has been sent to the Governor as it was and that his assent has also been obtained to it. We hope that you will still bring in the suggested changes through an ordinance or through amendments during the next session of the legislature.

Though we were invited to the discussion, we wish to make it clear that the consultation held on 1st February 2011 cannot be considered to fulfil the requirement for public consultation 'while formulating policies' under Section 4(1)(c) and (d) of the Right to Information Act as it was apparently not a public consultation but a selective consultation with just a single civil society organisation. Nor can CIVIC claim to represent all of civil society. We hope that a wider consultation through public notice will be conducted in all municipal corporations and cities of Karnataka, including Bangalore, to elicit views of a broader section of civil society on the Bill. Nevertheless, we wish to present the following responses to the issues that were raised during the meeting by yourself and concerned officials.

Foremost among your concerns was: How are MLAs to be convinced that having elected Area Sabha Representatives (ASRs) who form the ward committee is a good thing?

It is in the interest of the councillor to allow different voices to be heard in the ward committee so that the perception of him as an unbiased leader who will cater to the needs of all sections of society in a free and fair manner gets rooted. This will increase his chances of re-election as he will be preferred by the people over a leader who works with his own coterie or henchmen, thus reducing his chances of re-election.

Following is our response to the concerns voiced by officials during the meeting:

1. Government's stand: *The city is the administrative unit. Not the ward. Hence the city council is the representative body and not the one at ward level.*

Response: The above statement negates the spirit of the 74th CA and the need for decentralisation which it embodies. The 74th CA recognises that in large cities, the city as the third tier of governance is still inadequate to bring about proximity between the government and citizens. The 74th CA has thus recognised the need for government to go further down to a fourth tier in large cities and has given **constitutional status** to the 'ward' and 'ward committees'. The devolution of functions to the ward committee is also a recognition of its status as an administrative unit.

2. Government's stand: *There is no mention of 'area', 'area sabha' or 'area sabha representative' in the Constitution.*

Response: The 74th CA left it to the States to decide how they will constitute the ward committees. The 74th CA has not barred elected ward committees. It is open to the States to opt for elected ward committees and thus to carve out the necessary constituencies, fix the body of eligible electors and the mode of election of ward committee members from sub-units of the ward. Hence the Model Nagaraj Bill was drafted and circulated by the MoUD bringing in the concepts of the 'area', 'area sabha' and 'area sabha representative' after the disastrous functioning of nominated ward committees (which had been adopted by most States) all over the country was revealed by various studies conducted by civil society. The nominated ward committee was an aberration when the parallel 73rd CA called for elected grama panchayat members.

3. Government's stand: *The goal of the government's bill is to encourage participation not increase representation. The bill addresses the participation deficit and not a representativeness deficit. Accountability has always been the larger challenge in the current elected setup, not the lack of enough elected representatives.*

Response: Establishing proximity is one of the aims of the 74th CA. The very purpose of the Model Nagaraj bill circulated to States by the MoUD is to enhance the degree of representation to plug the lack of proximity to the elected representative in the 74th CA when compared to the 73rd CA. In a GP, there is one representative for every 400 people, whereas there is one elected representative for 30,000 people in urban areas like Bangalore. Officials themselves have admitted the lack of proximity when they say that a councillor cannot attend all area sabha meetings in his/her ward and that he needs a proxy to attend area sabha meetings. This is the reason why there is need for having elected area sabha representatives for every 3000 people at least. If rural areas can be considered to need one elected representative for every 400 population, why not the urban populace?

4. Government's stand: *There is no evidence to prove that having more elected representatives in cities beyond ward councillors is going to improve accountability.*

Response: Definitely, merely having more elected representatives is not going to ensure accountability. There are several concomitant things that need to go along with it to ensure accountability. Nevertheless, proximity through more elected representatives is a necessary but not sufficient condition for accountability. Distance, inaccessibility and anonymity breed

unaccountability. It is only when there is proximity that it is possible to have area sabhas and demand accountability.

5. Government's stand: *The goal of the bill is to increase participation and through that (sabha meetings and decisions) bring in greater accountability.*

Electors merely participating in area sabha meetings and giving suggestions will not enhance accountability of the councillor. Unless the area sabha is also provided powers to demand information, plan, prioritise and monitor works, hold officials and the councillor accountable, have control over local assets and resources, and conduct social audits, there can be no accountability.

Also, representation in decision-making bodies is crucial for bringing in genuine participation. By denying participation of the Area Sabha Representative on the ward committee which is the decision-making body, the current Bill is reducing citizen participation to tokenism.

6. Government's stand: *Since the sabha is enshrined in the law and meets regularly to take decisions collectively and this is formally recorded, the corporator cannot simply ignore sabha decisions.*

Response: Currently the Bill does not speak of taking collective 'decisions'. It only says the area sabha shall give 'suggestions'. There is no guarantee that the suggestions will be treated with any sanctity by the councillor when he has been vested with veto powers. Participation has no meaning when not accompanied by decision-making powers. It is illusory to think area sabha suggestions will not be ignored by the councillor by using his veto power.

If rural areas can be given the privilege of having self-governing institutions with a great deal of participatory and direct democracy in the form of grama sabhas, why should the urban people be denied the same privileges?

7. Government's stand: *The area sabha representative is meant to merely convene the sabha meetings as a direct representative of the councillor, that is why the corporator nominates him.*

Response: Citizens' groups don't need an area sabha representative who merely does a postman's job of conveying suggestions to the councillor. Citizens' groups can as well just post their suggestions to the councillor which serves the same purpose. They don't need a convenor to convene their meetings. They can conduct their own meetings which they are already doing anyway.

8. Government's stand: *Having elected Area Sabha Representatives sitting on the ward committee will create conflicts between them and the elected councillor.*

Response: Conflicts are natural in a democracy. The essence of democracy is to build consensus between differing and competing interests. The task of the councillor is to facilitate the finding of a balance between competing interests and not to seek to have his own way. One could even think of indirect election of the ward councillor by the area sabha representatives (as in GPs) if it is felt that there will be conflicts between elected ASRs and the directly-elected councillor.

9. Government's stand: The ward committee will have, in addition to the councillor, members nominated by the city council. There is room now for RWA members, planners, architects, heritage experts, etc. to become members of ward committees. This will also promote accountability and increases participation.

Response: Giving representation to experts cannot be objected to, but more important is to provide a voice to associations of various interest groups in the ward on the ward committee. But their selection should be transparent and democratic and not based on nominations. Ideally, the interest groups should themselves decide on who will represent them. In case that is not an option, there should be an open process of calling for nominations and objections from the public. A disinterested and neutral committee consisting of distinguished citizens could possibly make the selections from among the nominations received, rather than the city council which will be beset with political considerations.

9. Government's stand: Councillor has to have veto power over ward committee decisions because s/he is the only elected representative for the ward, and is finally accountable for committee decisions. Veto power to the councillor is provided for only as an exception. It is expected that normal decisions in the ward committee will be majority decisions.

Response: Veto power to the councillor makes people's participation a sham. There is no guarantee that he will not exercise it every time. His veto power must be limited to the occasions if and when there is a tie between ward committee members.

Opponents oppose giving power to citizens/citizens' groups on the ground that ours is a 'representative' and not a 'participatory' or 'direct' democracy. One needs to move towards greater participatory democracy rather than mere representative democracy in the country's current context in order to keep checks and balances on the elected representatives, who one is seeing are indulging in one scam or another on a daily basis and have become totally unaccountable to the people, with a few exceptions.

More direct democracy is also required by giving more powers of decision-making to the people themselves through area sabhas, keeping in view the large-scale neglect of people's rights to life and livelihood taking place in the country in the name of development and the displacement and loss of land and assets that is happening. Decisions are being taken by elected 'representatives', but these appear not to be in tune with the people's real needs. The elected representatives are perceived to be not behaving like our 'representatives', but like our 'rulers'.

The cynicism with the current state of political affairs is because the so-called development appears to be a euphemism for the transfer of assets from the poor to the rich through a nexus of those in control of decision-making. This prevailing context of the country makes it imperative to think out of the box to make 74th CA more effective and not be status quo-ist citing technicalities, which those in power appear to be doing.

Yours sincerely,

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