"Participatory Governance and Discourses of Socially Sustainable Development: Lessons from South Africa and the European Union"

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[1] The views expressed in this paper are the author's only and do not necessarily reflect those of the organisation to which he is affiliated.

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Introduction

The paper explores the relationship between the inclusiveness of participatory processes for the promotion of "socially sustainable development" objectives and the effectiveness of civil society action in realizing these objectives. The notion socially sustainable development refers to various policy discourses at local, national, and international levels, which aim at the integration of social considerations in economic development, through the involvement of a wide array of actors in decision making, as to the appropriate social and economic policies that should guide development.

Based on the findings of an empirical research, the paper suggests that formal involvement of NGOs in public policy making often does not add much to the promotion of civil society's objectives relevant to socially sustainable development.[2] Institutional involvement, we argue, might in fact often serve to grant legitimacy to certain policy agendas, without obtaining concrete improvements for the grass roots.

Our findings show that the more non-state actors are formally involved in social policy formulation, the less likely they are to engage in mobilization and protest activities. It is argued that institutional involvement (at the expense of mobilization) may weaken civil society's effectiveness, particularly NGOs'. This is so because these organizations usually lack resources of their own, as well as clearly identifiable constituencies, and their legitimacy is based on their message, rather than their representativeness. Thus, they appear to be exposed to the risks of capture when they become formally entrenched in formal dialogue structures. On the contrary, when NGOs maintain mobilisation in extra-institutional spheres (assisted by actors such as labour unions which have mobilisation power) in parallel to institutional involvement, they seem to be able to press certain issues, often linked with inalienable human rights, on the agenda of policy-makers.

In section 1 we provide an analysis of the notion of what we name "socially sustainable development," with a view to depicting the theoretical framework within which the "participatory governance" seems to evolve. Section 2 presents succinctly the outcomes of a field research conducted in South Africa. This research focused on the role and effectiveness of participatory governance in the design and implementation of the "socially sustainable development" discourse of this country, i.e., the Reconstruction and Development Programme (RDP). In this context we examine the National Economic Development and Labour Council, a tripartite-plus structure which has been mandated to discuss and propose socio-economic policy and legislation before its approval in traditional venues of representative democracy (e.g., Parliament). Section 3, sketches the

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[2] The paper draws on a field research conducted in South African and Brussels in the context of an IILS research on the role of civil society in promoting the ILO's agenda. It consisted of approximately 160 interviews with selected representatives from public authorities, the social partners, other civil society groups, and academics with experience in the area of public participation in policy making. The interviews were conducted in the period April 2003 to March 2005, in South Africa and in Brussels. With few exceptions they have all been tape-recorded.

meaning and understanding of socially sustainable development in the European Union context. This could be summed up in the "growth with social inclusion" socio-economic paradigm announced in the Lisbon declaration and Gothenburg strategy. We examine a key participatory governance structure established by the European Commission to address the issue of corporate social responsibility (CSR), i.e., the European Multi-stakeholder Forum on Corporate Social Responsibility.

In section 4 we conclude by highlighting ways of improving participatory governance so as to avoid the risk of absorption of socially sustainable development discourses by other dominant discourses.[3] Policy proposals to improve these structures include: (1) an authentic deliberation based on equality among participants; (2) a compatibility between the ideological frameworks of the public authority and civil society; (3) the possibility for civil society groups to engage in political rather than solely technical debates; (4) that legitimacy provision is not the sole outcome of dialogue within these structures and that such outcomes include legally binding regulation as well. The lessons learned from this empirical study seem to be relevant for participatory structures at all levels (regional, national, international).

Section 1. Socially sustainable development and participatory governance: yardsticks

General

An appropriate understanding of the emergence of the discourse of participatory governance necessitates a short analysis of its historical context, that is, the end of the Cold War and the acceleration of globalization.

One may venture to say that the end of the Cold War brought about a reassessment of previously dominant discourses and a re-aranging of policy priorities in many domains of national and international, political, economic and legal life. Many of the new discourses have relied on a declining role for the state and a parallel increase in the reliance placed on private actors –including NGOs and civil society. A rise in interest in civil society emerged in parallel with such notions as governance (without government) (Rosenau, 1992), "associational democracy" (Cohen and Rogers, 1992) and "participatory approach to development" (World Bank, 1997).[4]

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[3] Dryzek argues: "market liberalism has been much more successful than sustainable development in this period. So far the clash of the two discourses has taken the form of a few border skirmishes. For example, to a number of business interests … sustainable development is a good thing because "sustainable" means "continued" and "development" means "growth". Thus can market liberalism press its claims on sustainable development, and try to push the discourse in a particular pro-business direction" (Dryzek, 2000:127).

[4] Thus, while until recently civil society has been either perceived as a competitor of the state or as an informal sphere of action outside the state realm, it has been increasingly encouraged since the early 90's to join forces with the state in order to take part in more or less institutionalised participatory processes with a view to producing regulatory frameworks to address various facets of modern socio-economic reality tainted by the phenomenon of globalisation. As a result, civil society has expanded both as a sector and as a concept to a point that some are talking of "associational revolution" (Salamon, 1994).

The most fashionable discourse since the 1990s, which has elevated the popularity of participatory governance to high circles of academic, activist, and policy-making, has been incontestably that of "sustainable development". The latter has been defined as "the ability of current generations to meet their needs without compromising the ability of future generations to meet their own needs" (Brundtland, 1988: 20; UNCED, 1992). While ill-defined, this notion relies on certain conceptual pillars which lie at its heart and are key for its understanding and effective implementation. These pillars are those of "sustainability", "inter-generational equity", "intra-generational equity", and finally, "public participation". The first three are <u>substantive</u> features, whereas the fourth constitutes an element of form or <u>procedure</u>.

<u>Sustainability</u> implies a change in the behaviour of consumers based on the awareness of the negative results of unrestrained production and consumption. <u>Intra-generational</u> equity underscores that the elimination of existing inequalities between the "developed" world and the "developing" (but also between the poor and the rich within each country) is an essential condition for a sound implementation of the objective of "sustainability".[5] The element of <u>inter</u>-generational equity refers to the idea that present generations should adjust their behaviour so that the conditions of life of future generations are taken into account.[6] This pillar is closely linked to the previous two elements, since neither sustainability nor equity have any meaning if they are envisaged strictly in the present. Finally, the principle of <u>public participation,</u> which draws on the field of international human rights law (e.g., ICCPR, 1966; ICESCR, 1996), is considered –together with the sister concepts of "participatory democracy" and "good governance"—as central to the concept of sustainable development. The element of participation would serve to express the idea that disempowered and marginalised groups should be given a voice in determining the extent to which considerations of social justice and respect for human rights should be allowed to prevail over economic considerations in devising national economic policies or designing specific development projects.

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[5] One of the main consequences of this pillar would be an unprecedented focus on the issue of "poverty alleviation" not only by various UN initiatives and practically all international organisations (e.g. United Nations Millennium Declaration, 2000), but also by more unlikely actors, such as multinational companies or the G8.

[6] It is interesting to recall in this connection the national jurisprudence of countries like Bangladesh and the Philippines. In the Minors Oposa Case (1994) brought before the Constitutional Court of the Philippines, the complainants, representing "*their yet unborn posterity*" relied upon their "right to a balanced and healthy" environment with a view to promoting their inter-generational rights and the rights of future generations. Relying on the concept of "*generational genocide*", and the right "*to self preservation and self-perpetuation embodied in natural law* " the Court decided that "future generations" had a right to sustainability and that representatives of civil society had the right to defend them in front of a tribunal (Minors Oposa Case, 1994: 173-200). A similar case is Farooque Mohuiddin vs. Government of Bangladesh (Forooque Case, 1997: 1- 26). In France the defense of future generations took a more institutionalised shape through a decree (no 93-298 of 8 March 1993) establishing a "Counsel for the rights future generations". This Counsel may be called upon by the government but also by any recognized environmental protection association (Conseil des générations futures, 1993, cited in Kiss, 1993: 55).

Socially Sustainable Development

A careful observation of the evolution of the use of the notion of sustainable development in policy circles, shows that while originally the notion placed <u>environmental deterioration</u> at the centre of its preoccupation, the accelerated pace of globalisation (and possibly some of its failures and widespread popular protest) appear to have increased the realisation that risks stemming from technological progress and the progressive integration of global economic activity are more often located at the <u>social level</u>. As a result we have gradually assisted to the emergence of the discourse of "<u>socially sustainable development</u>".[7]

Broadly stated, socially sustainable development expresses a fundamental contemporary expression of a commitment towards humankind to enable it to develop economically while improving or maintaining its wellbeing, over time and space. It has as its <u>principal</u> objective the integration of social considerations in economic development.[8] Socially sustainable development would aspire at a *general agreement* (or a novel social contract) offering current and future generations an appropriate context for sharing equitably the economic, environmental and social benefits and costs of development, among all actors, across time and space.

One of the most concrete expressions of socially sustainable development in the international sphere has been that of the "decent work" paradigm of the International Labour Organisation (ILO), which calls for "a balanced and integrated approach to sustainable development and growth in the global economy, in which economic, social and environmental goals can be achieved together" (ILO, 2001: 14). At the national level, a good illustration of this paradigm is the Reconstruction and Development Programme (RDP) adopted in South Africa in the early days of democracy, which emphasises the idea of "growth <u>through</u> redistribution" (*infra*). At the European level, the strategy of the EU set by the Lisbon declaration of "becom[ing] the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion", also contains the main elements of the socially sustainable development discourse. The paper returns to the examination of the RDP and the Lisbon strategy in more detail below.

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[7] The passage from the environmental to the social realm, took place gradually in the early 1990s out of a series of international conferences (UNCED 1992; WCHR, 1993; ICPD, 1995; WSSD, 1995; UNHRC, 2001; ICFD, 2002), the action (and discourses) of international organisations, including the World Bank, the UNDP, the ILO, and the EU, but also, at the national level.

[8] As a consequence, today, considerations of a social nature may have ceased to be seen as secondary and incidental in relation to the primary objective of environmental protection, and instead, are placed more or less explicitly at the core of the sustainable development discourse. Thus, if the environmental aspect contributed significantly to the birth of the concept of sustainable development in public international law and national practice, this concept appears nevertheless to evolve in quite a different sphere today, the social sphere. Certainly, considerations of a social nature have been introduced very early into the discourse of sustainable development. Initially, however, these considerations constituted complementary or instrumental elements, aiming in priority to better reconcile economic development and protection of the environment.

What these discourses of socially sustainable development promise to achieve is above all the integration/conciliation of diverse considerations, interests, visions, ideologies, rights and duties into a coherent and functional whole with an anthropocentric goal which is opposed to extreme dogmatism both in the sense of profit-centred goals and a radical rejection of capitalism. This concept does not purport to be anthropocentric in an abstract and indirect sense (as was the case with environmentally sustainable development, where social considerations were part of the underlying or operational elements of environmental protection) but in a direct, targeted sense.

Participatory policy making

As mentioned above, the notion of sustainable development bears close relevance to and partly overlaps with that of "good governance" in the sense of a transparent and participatory management of public affairs or participatory governance.[9] Participatory governance is a central element of socially sustainable development because it constitutes the primary means through which socially sustainable development takes concrete form. In other words, it is the means through which it may be decided which "mix" of (often) antithetical objectives and policies may be seen as acceptable by all who might be affected by a development issue ("stakeholders"). Thus, participatory governance is the "vector" through which socially sustainable development may be put to effect in practice.

In order to provide appropriate fora where the conciliation of such antithetical goals can be achieved, socially sustainable development is seen as necessitating new dynamic and constructive structures of political dialogue in which the wider public, as represented by civil society, may participate in order to deliberate (Ginther and De Waal, 1995:10; Elster, 1998). Civil society denotes the voluntary, self-constituted sphere, which is located at an intermediate level between the market (not-for-profit) and the state (non-governmental), and through which various stakeholders can be represented in participatory processes dealing with the concretisation of socially sustainable development objectives. Civil society comprises a variety of different organisations like for instance, trade unions and employers' organisations, NGOs, grass-roots associations, social movements, consumer organisations, etc. (for an overview of different approaches to the notion of civil society, see, Baccaro, 2001).[10]

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[9] Defining the notion "governance" is beyond the scope of this paper. It may suffice to say that there exists various understanding and definition depending on who is using the term (a political scientist, a World Bank official, etc.). In general it refers to the the idea of a "non-traditional policy making process" which entails: a) less state intervention (top-down); b) more public participation (civil society); and c) more "soft" and "voluntary" regulation (as opposed to "hard" regulation).

[10] Civil society is not homogeneous. An important distinction should be drawn in particular between NGOs and social movements, two concepts that belong in the wider notion of civil society, but should not be used interchangeably. NGOs are value-based and increasingly professionalised organisations, which depend on charitable donations and a voluntary service rather than regular contributions from their members. "Social movements" are comprised of individuals, groups and organisations united by a set of common opinions and beliefs and whose goal is to influence the agenda of formal or informal institutions. They voice a "series of demands or challenges to power holders in the name of a social category that lacks an established political position" (Tilly, 1985: 735) or adequate representation. A typical illustration of such movements constitutes the labour movement(s) of the late 19th and 20th century. A more recent example would be that of the US civic rights movement in the 1960s.

The participatory approach to policy making represents a rather surprising return to past political traditions related to the Athenian system of direct democracy and early forms of liberal democracies such as those that led to the drafting of the French and American Constitutions, emphasising the virtues of "deliberative democracy" (Eltser, 1998: 97-122; Sunstein, 1997).[11] Deliberative democracy refers to the idea of the force of the better argument. It entails a process through which the reasons for and the reasons against a decision, are weighed by the participants in a jury-like manner so as to allow opinions to be exchanged and the best ones to prevail. Contrary to negotiations, opinions should appeal to the common sense of participants rather than their strategic interests.

Since the late 1980s, the discourses of "participatory" or "deliberative" democracy regained interest initially among political philosophers. The concept, first used by Bessett (1980), was elaborated by Manin (1987), Cohen, (1989), Habermas, (1996) and Dryzek (2000) and progressively became extremely popular in Anglo-Saxon literature studying the effects of the inclusion of non-state actors in public policy making (e.g., Cohen and Rogers, 1994; Hirst, 1994; Sabel and O'Donnel, 2000; Baccaro, 2003). Formal participation –it is argued—addresses representational and informational asymmetries and improves democracy, fills in any gaps left by traditional policy-making mechanisms (e.g., institutions of representative democracy, or social dialogue mechanisms) and better promotes environmentally and socially sustainable development objectives. [12]

Examples of participatory governance

It appears that this approach has exerted an increasing influence also upon the conduct of national, local and international public administration. At the national level, it has led to various forms of "participatory public administration" experiments. Examples from the industrialised world, in particular European countries, involve the use of participatory structures in order to introduce labour market reforms and improve competitiveness while maintaining social peace (Ishikawa, 2003; Compston, 2002: 4).[13] In the "developing" world, South Africa provides an excellent illustration of this trend, since it is the only country in the world to have institutionalised to such a high degree the

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[11] Sustein, (1997) goes as far as to interpret the whole US constitution, rather as a legal order, as a "device for the protection and promotion of generalised political deliberation".

[12] For a recent overview and variations of deliberative democracy, see Baccaro and Papadakis (2004).

[13] In general, since the 1990s existing social dialogue mechanisms were revived and extensively used as a tool for economic recovery and growth all over the world but also as a tool to address incomes policy, employment policy, social security reforms and regulation of industrial relations (Denmark, Ireland and the Netherlands). The same can be observed in countries in transition where participatory processes have been used as a tool to manage the transition to the market economy, implement IMF-sponsored structural adjustment programmes and address poverty and unemployment, social security, health and safety at work issues, while avoiding social unrest (e.g., Albania, Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Moldova, Poland, the Slovak Republic and Slovenia, Kazakhstan, Costa Rica to mention a few; World Bank, 2001; Fashoyin, 2001; Ishikawa, 2003; Galilea and Marin, 2002).

presence of civil society groups in the public policy making process at the national level (*infra*). <u>At the community level</u> many examples of participatory democracy have mushroomed since the early 1990s, in both the industrialised and the "developing" world. The Porto Alegre (Brazil) participatory budgeting process often figures as the most prominent and successful participatory initiative at this level (Gret and Sintomer, 2002).[14]

At the <u>regional level</u>, the European Union is a prime example of participatory approaches to social policy making –as we briefly sketch below (section III). Besides the EU, the newly formed African Union also stands out for the extent to which it intends to integrate civil society in its permanent organs which deal with socio-economic issues.[15] <u>At the international level</u>, the discourse of participatory governance has been around for quite a long time in <u>international instruments</u>.[16] Interestingly, many international agreements concerning the provision of financial resources, the financing of development projects and the liberalisation of trade require guarantees of good governance including

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[14] Fung and Wright (2003) compile and analyse a host of other interesting case studies of direct participation of citizens in local affairs, such as the "neighborhood governance councils" in Chicago or the "Panchayat reforms" of West Bengal and Kerala, India. The former initiative aims to address the problems of inner-city Chicago residents by devolving substantial power over policing and public schools to citizens and their groupings. The *Panchayat* reforms *in Kerala* allowed for the direct participation of citizens and civil society organisations in decision making on development at the level of individual villages, by devolving substantive administrative and fiscal power.

[15] The African Union (which replaced its predecessor Organisation of African Unity) was inaugurated in July 2003 in Maputo of Mozambique, three years after the signing of its Constitutive Act (July 2000, Lomé). The Union's declared aim is to be people-oriented and respond to calls for democracy and development in the continent. Thus, article 3(g) of its Constitutive Act includes among the objectives of the Union " to promote democratic principles and institutions, popular participation and good governance". The Economic, Social and Cultural Council of the Union (ECOSOCC), established under articles 5 and 22 of the Constitutive Act, is an advisory organ composed of different social and professional groups of the member states. It comprises 150 civil society organisations with the mandate to inter alia: promote dialogue between all segments of the African people; force partnerships between governments and all segments of civil society, in particular, women, the youth, children the diaspora, organised labour, the private sector and professional groups; and promote good governance, democracy, popular participation, human rights and social justice. The inaugural session of the ECOSOCC took place on 29 March 2005 (ECOSOCC, 2004).

[16] As early as 1986, the UN General Assembly Declaration on the Right to Development made a link between economic development, free and meaningful participation of citizens in governance and the eradication of social injustice. However, it is only after the end of the Cold War that the international political and legal practice speeded up its interest in this concept. In 1990 the first Human Development Report of the UNDP made the first clear-cut argument in favour of socially sustainable development and public participation as one of its central elements. The report indicated that because economic growth could often not only translate but also fail to translate into human development, putting "people back at the centre of the developmental process in terms of economic debate, policy and advocacy" was a goal with far reaching positive implications for the development of the economy and society as a whole. Similar discourses continued to appear increasingly in key international instruments during the whole decade. In 2000 section V of the seminal UN Millennium Declaration was devoted to the issue of human rights, democracy and good governance with an emphasis on public participation (UNMD, 2000). In paragraph 25, the U.N. General Assembly resolved to "work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries".

the participation of stakeholders in the policy making process (e.g., Monterey Consensus).[17]

Further endeavours have been observed at the level of <u>international organisations</u>. For instance, in the framework of the World Bank and the IMF, participatory structures are seen as useful in ensuring the successful introduction and implementation of poverty reduction and structural adjustment programmes at the national level. Relevant initiatives include the Poverty Reduction Strategy Papers (PRSPs), the Structural Adjustment Participatory Review Initiative (SAPRI, see *infra*), and the IBRD/IDA Joint Inspection Panel[18], all giving a possibility to civil society to participate in the design and implementation of development projects supported by the World Bank, or to object to projects which might adversely affect certain stakeholders.

The ILO also consistently and actively promotes participatory policy-making mainly through tripartite (but also "tripartite-plus") social dialogue in its member States. It does so through a plethora of technical cooperation programmes especially in Latin America and Africa.[19] In the area of children's rights, the UNICEF also emphasises the importance of public participation, especially by NGOs, for the promotion and implementation of the 1995 UN Convention on the Rights of the Child (UNCRC) which was prepared under the auspices of this UN agency.[20]

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[17] The Monterrey consensus reflected a "new partnership". In other words, it constituted a reciprocal undertaking of unilateral commitments on behalf of developing and industrialised countries. On the one hand, developing states undertake a commitment to ensure "good governance". On the other hand, developed states undertake to provide in return financial and technical cooperation for development. Paragraph 8 highlights, that a "collective and coherent action is needed in each interrelated area of our agenda, *involving all stakeholders* in active partnership" (emphasis added). See, ICFD (2002).

[18] The Panel is an international body composed of eminent specialists in the area of development. It provides an independent forum to citizens and civil society groups who believe that their interests have been or could be harmed by a project financed by the World Bank. These project-affected people and their representatives may file a complaint and request an autonomous investigation assessing the compliance of the project under the spotlight with the Bank's own social and environmental policies. Since it began operations in September 1994, the Panel has received 10 formal Requests for Inspection.

[19] The ILO has also established a massive technical cooperation programme named International Programme for the Elimination of Child Labour (IPEC), which is among other things entrusted with promoting the ratification and implementation of the two main conventions of the ILO in the field of child labour, i.e., Conventions Nos. 138 and 182. The IPEC requires for the provision of technical cooperation, the participation of a wide range of actors, including the social partners and also NGOs and other civil society organisations, in the design and implementation of policies and projects related to the elimination of child labour. See, http://www.ilo.org/public/english/standards/ipec/.

[20] The UNCRC requires from every signatory state the creation of a "programme of action" addressing the issue of children's rights and urges states to draft these reports with the active collaboration of civil society organisations. The countries that have ratified the Convention undertake to design and supervise the implement appropriate policies for the protection and promotion of children's rights and to send a bi-annual report to the UN Committee on the Rights of the Child on the state of children's rights (Article 44, UNCRC). The participatory process through which these functions are carried out is often named the National Program of Action (NPA).

Along the same lines, semi-public initiatives such as the Global Fund for AIDS, TB and Malaria emphasises the element of public participation in the framework of international health financing. [21] The Fund relies largely on Country Coordinating Mechanisms (CCMs), i.e., participatory bodies established at the national level with the mandate to select, review, monitor and evaluate project proposals and forward them to the Secretariat of the Global Fund before approving funding disbursement.[22]

A detailed analysis of the above-mentioned practices and theories is beyond the scope of the present paper. It suffices to say that all of them seem to share a common vision based on the expected benefits of "public participation". The latter is viewed as a process that allows the broad notion of socially sustainable development objectives to acquire concrete form and content. As noted above, socially sustainable development reflects a claim for integrating social justice in economic reasoning but does not predetermine the exact blend of social and economic objectives that should prevail. Participatory governance is the method through which this crucial issue is to be determined – unavoidably in an ad hoc manner—for each specific policy, project etc., to be discussed by a wide range of stakeholders who attempt each time to promote the specific interests of their constituencies.

The core idea is that because the substantive content of sustainable development is indeed vague (e.g., what can be defined as "sustainable" consumption? What are the rights of "future generations"?), attention should be given to the procedural elements through which substantive answers can be produced in each concrete case. It is through these procedures that the vague and ill-defined notion of sustainable development will eventually be clarified and its scope and legal nature consolidated. As a consequence, public participation constitutes the one aspect of socially sustainable development which is apt to practical implementation and monitoring but which does not provide any *a priori* guidance as to which balance is equitable. This will always be subject to "bargaining" among the participants.

This is why genuine participatory processes among all stakeholders are crucial for the effective implementation of socially sustainable development. Having said that, evaluating whether participatory processes are genuine in reconciling in a fair manner

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[21] The Global Fund was created in January 2002 after a series of international summits (G8 meeting in Okinawa, Japan, 2000; African Leaders' Summit, Abuja, Nigeria, April 2001; G8 Genoa meeting, July 2001) and the UNGA Special Session on AIDS of June 2001. Its purpose is to dramatically increase resources to fight three of the world's most devastating diseases and to direct those resources to areas of greatest need and thereby contribute to poverty reduction as part of the Millennium Development Goals (Global Fund, 2004: Part 1, Section 1) see, http://www.theglobalfund.org/en/apply/mechanisms/.

[22] CCMs encompass representatives from the academia; government; NGOs/Community-Based organisations; people living with the diseases (HIV/AIDS, TB and Malaria); private Sector; religious organisations; and multilateral and bilateral development partners in-country (Global Fund, 2004: Part 5, Section 11). In South Africa the CCM of the global Fund is named the South African National AIDS Council. The paper returns succinctly to this participatory structure below.

See, http://www.theglobalfund.org/en/files/publicdoc/Framework_uk.pdf.

conflicting priorities, is largely an empirical question and can only be addressed on a case-by-case basis.

Public participation: Voices of dissent

The question arises whether participation of civil society in participatory fora is after all to its advantage as well as the benefit of promoting socially sustainable development. While the dominant view both in the development and legal literature seems to be in the affirmative, certain authors would express doubts in this respect.

One of the most in-depth and recent critiques vis-à-vis the pros of discourses of sustainable development and participatory governance, has been articulated by Balakrishnan (2003). Balakrishnan, argues that in order to study concepts such as sustainable development, international legal and political analyses should not only look at institutional appearances expressed in "soft" and "hard" legal instruments, but also at "how the ideology of development" is being deployed in the field and how the Third World social movements are resisting it (2003: 4).

Emphasizing the relationship between "institutions" and "resistance" from an empirical viewpoint, he explains that whenever there is successful "resistance" to a certain aspect of the development and/or liberal paradigm, the quasi-exclusive response of international institutions is the creation of yet another "institution" to mitigate the resistance without addressing its root causes and without truly changing the development agenda which remains dominated by the colonial legacy and liberal understandings of the economy and society. Consequently, Third World resistance is bound to continue after the expansion of the international bureaucracy and its novel development discourses (including sustainable development along with its emphasis on public participation), which above all serve to legitimise the dominant liberal development paradigm (ibid, p.10)

It may thus be the case that –so the author argues— the development apparatus is not only "a machine for the elimination of poverty", but also (and according to him, mainly) a "machine for expanding the bureaucratisation" of the political spheres at all levels" which takes "poverty" and "underdevelopment" as its "incidental point of entry". In other words, the efforts of the international community to address these woes, are seen by Balakrishnan as largely tainted by actors which aim to contain, rather than address, the causes of resistance, through a process of normalisation rather than repression (as in the colonial past) and through bureaucratisation of social action and civil society rather than humanitarian concern (ibid, p. 112).[23]

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[23] They stress that because of the overarching dominance of the neo-liberal ideology, the blend between environmental protection and economic growth is bound to be at the expense of the former, the end result being to provide ecological legitimacy to the dominant liberal economic model, acknowledging the primacy of international trade law over environmental law (which emerged through major disasters and the reaction of civil society).

In sum, Balakrishnan's analysis is a fundamental challenge to the dominant legal and political theory and practice which focuses as already seen above on the "institutional" and "bureaucratic" element of sustainable development, that is to say, the "participatory governance" approach and in general the emergence of "soft law" rules within multi-stakehorlder and/or multi-layered governance spheres aimed at promoting socially sustainable development (see also Dryzek, 2000).

It is interesting to note that Balakrishnan places emphasis on "social movements" (especially those emerging in the Third World), rather than a certain conception of civil society which focuses on "NGOs" (originating in industrialised countries). NGOs are the part of civil society which has suffered the most the "bureaucratisation" effect of neo-liberal and neo-colonial discourses. Social movements on the contrary, represent more genuine voices of civil society and cannot be easily absorbed.[24] Balakrishnan points out that the tendency to perceive NGOs as the core representatives of civil society in its entirety marginalises and appropriates the voice of social movements present within civil society. The net outcome is an emphasis on "normative and institutional frameworks for the existence of classic Western liberal rights." Thus, democracy promotion efforts have consisted often of strengthening state institutions (parliaments), political parties, the media and lately, participatory forms of democracy to the neglect of what happens in "more extra-institutional arenas such as workplaces" (*ibid*, p. 259). This trend of "NGOisation" of the civil society discourse is problematic according to Balakrishnan because it severely limits the radical democratic potential of civil society (ibid, p. 260).

Similar "dissenting" voices have been expressed regarding participatory endeavours at the international level. The claim that where participation is genuine, it risks being ignored or downplayed by western policy makers under the sway of the neo-liberal agenda, tends to be confirmed by the *ad hoc* World Bank civil society cooperative endeavour known as SAPRI. This was a tripartite initiative involving the World Bank, a network of civil society organisations (the SAPRI Network) and seven participant states into a large participatory experiment aimed to assess the World Bank's Structural Adjustment Policies (SAPs).

This experiment started in 1997 with the establishment in each participant country of participatory processes where state, civil society and World Bank representatives conducted an extensive research regarding SAPs. In collaboration with seven participating governments, numerous multi-stakeholder committees and national fora

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[24] Another proponent of the view that NGOs are social institutions financed by ruling classes in order to represent their ideological basis and facilitate the exploitation of lower classes in the Third World is Petras (1999), according to whom, NGOs have operated so far as vehicles for averting rising mass movements that might challenge imperial hegemony. They provide social-science intelligence and introduce neo-liberal ideas and practices to the exploited poor thus discrediting and isolating revolutionary activists while encouraging local groups to adapt to the reality of neo-liberalism. Moreover, during deepening economic crises they engage in preventive action in order to prevent the development of class-consciousness and fragment the social movements. NGOs receive funding from western ruling elites and therefore shape their proposals and activities according to the interests of their contributors. Moreover, their internal organisation is hierarchical and authoritarian. Thus, they undermine democracy and foster a new type of cultural and economic colonialism.

were formed in order to depict the perceptions of all stakeholders interested in and/or affected by SAPs and suggest ways to improve the impact of the World Bank's policies on poverty. The underlying purpose of the SAPRI would be: a) to improve lending and policy advice in the selected countries; and b) assess how the participation of local, broad-based civil society could improve economic policy-making.

The lessons drawn on this initiative were discussed between representatives of participant states, SAPRIN participants, and the World Bank staff during a High Level meeting chaired by the President of the World Bank. However, the report failed to be adopted by the World Bank. At the end of this 10-year collaborative process, the SAPRIN Network (which represented the civil society organisations), denounced the "lack of follow-up action on behalf of the Bank." Arguing that the World Bank "failed to encourage its staff to implement [the] decisions" which were taken in its presence, it deplored the fact that the outcomes have not been integrated in any of the Bank's Operational Policy Guidelines (see, SAPRIN 2002). This may not be surprising as the main argument emerging from the report –in which paradoxically the World Bank took active part- was that "if there is to be any hope for meaningful development in the countries of the South and for the sustained reduction of poverty and inequality, the Western-inspired and imposed doctrines of structural adjustment and neo-liberal economics must go" (SAPRIN, 2004). This experience seems to demonstrate that where the civil society resists the dominant development paradigm, their voices are likely to be ignored. [25]

In light of the above, we propose to complement the short analysis of socially sustainable development and participatory governance provided above, with an empirical analysis of the action of civil society, first, in a Third World country like South Africa, where participatory governance has been flourishing since the end of the apartheid and socially sustainable development has implicitly been declared to be the primary objective of the new democracy (RDP, 1994), and second, in the regional integration context of the European Union where socially sustainable development and participatory governance are also at the core of the social-policy regime building. Both the EU and South Africa have gone further than any other public space in the institutionalisation of these notions in the last decade, and thereby constitute interesting laboratories for empirical investigation of these fashionable notions.

We believe that such an examination generates a more complete picture of the virtues and shortcomings of participatory governance structures and the tenor of the socially sustainable development discourse and highlight that such an examination can be fruitful in pointing towards ways to improve participatory governance and genuinely promote socially sustainable development objectives.

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[25] Interestingly, anecdotal evidence demonstrates that while the SAPRI "participatory" processes in the selected rejected key components of policy proposals promoted by the World Bank or the IMF, similar participatory endeavours (in the context of the PRSPs) involving the same countries, seem to be less critical vis-à-vis the same policies (if at all).

Section II: South Africa

Reconstruction and Development Programme (RDP)

The commitment of the post-apartheid state towards socially sustainable development and participatory governance has been articulated in the Reconstruction and Development programme (RDP drafted in 1994. The RDP was above all an attempt to advance the interests of the "previously disadvantaged" by establishing a transition process towards economic, social and cultural equity, while at the same time achieving growth. This should be done through public investment on meeting basic needs, redressing the rampant inequalities in terms of wealth, education, essential services and access to land, rebuilding and de-racialising the economy, developing human resources, as well as radically democratising the state and society.

It should be noted that South Africa is a country which suffers extreme levels of poverty and unemployment.[26] At the same time, it is one of the most unequal societies in the world (May et al. 1998).[27] Overall, re-organizing the economy and reducing poverty and unemployment levels is a difficult task often explained by the long apartheid legacy which created and sustained poverty and huge income inequalities on the basis of race.

To reverse these poverty and inequality trends, the RDP emphasised the role of the public sector and civil society actors, and a participatory approach to policy-making. This programme was itself negotiated and drafted by a wide spectrum of actors drawing on the African National Congress (ANC), unions (mainly the Congress of South African Trade Unions-COSATU), and community-based organisatons such as the civics (the South African National Civics Association-SANCO; *infra*), which are active in Townships and other poor and underdeveloped areas (interview: Bond, 3 March 2005,

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[26] At the time of the field research, unemployment in South Africa was somewhere between 24 percent and 29 percent if a strict definition was adopted (i.e., this definition requires active job search by the unemployed). If an expanded definition was adopted the rate was placed between 33 percent and 41 percent. Since 2002 the situation has not changed dramatically: according to recent official data, strict unemployment rate was 28,4 percent in September 2003 and 27,8 percent in March 2004, and its expanded rate was located at 42,0 percent and 41,2 percent respectively (see, Statistics South Africa on-line database. See, http://www.statssa.gov.za/keyindicators/lfs.asp

[27] South Africa is the world's second most unequal nation (after Brazil), with roughly 50 percent of the population living with just 11 percent of national income (May et al., 1998). In 2003, about 48.5 percent of the population (21.9 million people) fell below the national poverty line. Income distribution was highly unequal and constantly deteriorating. This was reflected in the high Gini-coefficient (an indicator of inequality) which rose from 0.596 in 1995 to 0.635 in 2001. The Human Development Index of the UNDP for South Africa moved from 0.72 in 1990 to 0.73 in 1995 but declined to 0.67 in 2003. It should be noted that according to the UNDP, poverty and inequality continued to exhibit strong spatial and racial biases in 2003 (UNDP, 2003: 5-6).

Johannesburg). In sum, the RDP document was the result of an attempt to reconcile different views and policy priorities (Webster and Adler, 1998).[28]

The RDP also constituted the electoral platform upon which the ANC was elected, and has been ever since considered as the overarching policy programme of the ANC—at least in theory—which was overwhelmingly participatory in nature. The following citation illustrates well the main thrust of it:

> "The RDP vision is one of democratising power. Democracy is intimately linked to reconstruction and development. […] Democracy for ordinary citizens must not end with formal rights and periodic one-person, one-vote elections. Without undermining the authority and responsibilities of elected representative bodies (the national assembly, provincial legislatures, local government), the democratic order we envisage must foster a wide range of institutions of participatory democracy in partnership with civil society on the basis of informed and empowered citizens […] Multipartite policy fora (like the present National Economic Forum) representing the major role players in different sectors should be established and existing fora restructured to promote efficient and effective participation of civil society in decision-making. Such fora must exist at the national, provincial and local levels" (RDP, 1994, paras. 5.2.6 and 5.13.7).

In the following years this commitment to participatory democracy to reconstruct South Africa according to a socially sustainable development discourse, was going to be incarnated in numerous pieces of legislation (e.g., the new Labour Relations Act or LRA and even the Constitution), but also more specific policies (e.g., the Sector Education and Training Authorities or SETAS of the National Employment Skills Act in the field of employment creation) and local programmes (e.g., those regarding housing and water service development and other public works; e.g., Ntsime, 2001; or community policing; e.g., Rakgoandi, 1995).

Several pieces of legislation regulating the various aspects of state-civil society relations *per se* were also promulgated (e.g., the Nonprofit Organistions Act No. 71 of 1997; National Development Agency Act No. 108 of 1998). All these pieces of legislation, programmes, and devices, institutionalised an active role for civil society actors –social partners, community-based movements, and other civil society groups- in the design and implementation of their respective objectives to the point that civil society could easily be described as an "integral element of the public space after the three traditional public sectors", i.e., legislative, executive and judiciary branches of the state (Swilling and Russel, 2001). [29] Another common practice established since the early days of the post-apartheid period, that of large-scale public consultations that usually take place within specialised portfolio committees between the time of drafting of Green and

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[28] For instance, chapter four of the RDP appears to be a more free market-driven analysis (interview: Dor, 17 March 2005, Johannesburg).

[29] The Non Profit Organisations Act (NPO) states for instance explicitly that it is government's responsibility to make sure that "within the limits prescribed by law, every organ of state must determine and coordinate the implementation of it's policies and measures in a manner designed to promote, support and enhance the capacity of Non-Profit Organisations to perform their functions" (cited in Swilling and Russel, 2001).

White papers and the adoption of a Bill by Parliament, also testified to the commitment of the new democracy to enriching its institutions with direct public participation.

Perhaps more importantly, many important institutions were established at the national level, aimed at designing and implementing laws and polices in the pure tradition of socially sustainable development and its participatory governance component. The most important among them was NEDLAC, examined below.

National Economic Development and Labour Council (NEDLAC)

NEDLAC is a statutory body established under the National Economic Development and Labour Council Act (No. 35 of 1994). According to this Act, NEDLAC is a consultative forum where the social partners negotiate specific areas of national economic and labour policy. Its objective is to discuss and promote issues related to economic growth, participate in economic decision making through consensus-building, conclude agreements pertaining to social and economic policy and consider labour legislations related to market policies before their implementation or introduction in Parliament.

The forum functions at three different levels. The Executive Council, which is composed of 18 representatives from each of the four constituencies (*infra*) and meets three times per year; the Management Committee which meets monthly; and four different "Chambers" on Labour Market; Trade and Industry; Development Chamber; Public Finance and Monetary Policy. NEDLAC and its various chambers, are expected to intervene in the various stages of the policy making and legislative process in South Africa. This process usually starts from a submission of a Green Paper by the relevant government department to the appropriate chamber of NEDLAC, where its is negotiated among participants. This process continues with the drafting of a White Paper submitted to Parliament often taking the shape of a Bill for discussion and approval. The latter has good chances of becoming an official policy or peace of legislation if consensus is gathered among the NEDLAC constituents.

Contrary to traditional social dialogue tripartite bodies, NEDLAC's main innovation has been the inclusion, along with the unions', employers', and state representatives, of a fourth constituency or social partner, namely the *community constituency*. This constituency is composed of community-based organisations responding to three criteria spelled out in the Act. The latter allows participation by "[…] organisations of community and development interest that: a) represent a significant community interest on a national basis; b) have a direct interest in reconstruction and development; and c) are constituted democratically" (NEDLAC Act, No. 34, 1994: clause 3 (5)).

Formally, the community constituency may only participate in the development chamber as well as the Executive Council and the Management Committee. Its "informal" participation in other chambers has been tolerated in other chambers too (interview: Mbongo, *op.cit.*) (for instance they were part of the discussions on the crucial issue of Labour Relations Act amendments). The community constituency is currently

represented by the South African National Civic Organisation (SANCO,) Women's National Coalition (WNC), the National Cooperatives Association of South Africa (NCASA), the South African Federal Council on Disability, and the South African Youth Council (SAYC). After 7 years of existence (2002), NEDLAC admitted a fifth community constituency, the Financial Sector Campaign Coalition (FSCC). This is a platform of organisations with an interest in the issue of democratisation and de-racialisation of the financial sector. However, the FSCC is not part of the development chamber but only an ad hoc "task team" established exclusively for the purposes of dealing with this issue (interviews: Caine, 15 March 2005, Johannesburg; Mkhize, 11 March 2005, Johannesburg).

In ten years of existence, NEDLAC's agenda and functioning evolved considerably. In the first five years (1995-2000), NEDLAC's immediate focus was on building links with the labour market and reforming it. NEDLAC's works contributed dramatically to the creation of one of the most progressive labour and industrial relations legislations in the world (*infra*). In the period 2000-2003, NEDLAC tried to identify ways to "tackle the socio-economic deficit", namely, inequality and joblessness. Instead of solely negotiating and designing policy or legislation, the civil society constituencies and the state gave priority to policy implementation and identified the key interventions in the areas of poverty, employment and growth. [30] From 2003 to 2005, the focus of NEDLAC fell on the issues of implementation of existing agreements and the examination of a number of related key policy proposals in the areas of employment generation and poverty alleviation (e.g. a Labour Job Creation Trust, Expanded Public Works Programmes, or a Draft Bill and Co-operative Development Strategy).

It should be emphasised that the most important event that seems to have interrupted the regular rhythm and procedures of the NEDLAC process and demonstrated at the same time that the state may not be fully committed to the NEDLAC process (e.g., interview: Webster and Buhlungu, *op.cit.*) was the adoption of a policy document entitled Growth Employment and Redistribution (GEAR) by the Ministry of Finance. GEAR which was unilaterally declared to be "non-negotiable" was adopted in June 1996. It

GEAR established the macro-economic framework of South Africa and became the overarching policy document influencing practically every economic and social policy, from employment to health care, and from urban development to racial and gender policy. Formally, GEAR's objective was to address the issue of "resource limitations" by "prioritising policies" and "stabilising the economy" - before beginning to fund and implement the RDP programmes (eventually perceived by many to be a "wish list"). The major ultimate objectives ("forecast") of GEAR, i.e., 100,000 jobs on average per year in 5 years and 6 percent as target growth rate, would be achieved through a

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[30] The main achievement of this period was the organisation of two key Summits, i.e., the Presidential Job Summit and the Growth and Development Summit (GDS), where important questions were raised and specific commitments were taken by the tripartite-plus participants in relation to job creation, investment, basic needs, skill-enhancement, and employment equity.

macro-economic strategy which consisted of containing government expenditure, lowering fiscal deficits and inflation, increasing the pace of deregulation and privatisation, giving priority to attracting foreign investment, and establishing a minimalist state intervention (the so-called "fundamentals").

In reality however, GEAR's "orthodox" underlying assumption of "first growth and then redistribution" giving priority to market-driven economic policy, was to be achieved at the expense of the Keynesian model of "Growth *with* redistribution", and the "growth *through* redistribution" model suggested by the RDP. [31] Thus, not only did it attract widespread criticism for the way it was adopted (outside NEDLAC), but also, and perhaps most importantly, it has not demonstrated its usefulness in economic terms.

An evaluation of the GEAR is beyond the scope of the paper. It suffices to say that today, it is generally admitted by the academic and policy community in South Africa that since its adoption the country seems to have found itself worse off both economically and socially. GEAR succeeded as a stabilisation programme but failed to reach its forecasted targets with regard to GDP and employment growth. As in many other countries which adopted similar macro-economic models (e.g., Stiglitz, 2002), the inflation and public deficit figures were at the end of the period (2000) lower than planned but GDP growth was well beyond the forecast (approximately half). Worse, employment growth was negative (while it should have been 3 percent per annum according to plan). During the field research this was explained by the very high real interest rates, linked to the need to attract foreign direct investment and protect the currency from speculative capital movements and capital flight (see also Annex I). Not surprisingly, GEAR has therefore been one of the most controversial policy documents, often described as a "home grown structural adjustment programme."

Perceptions on NEDLAC

Interviews with NEDLAC constituencies revealed that while NEDLAC is a key institution for the socio-economy, the structure might soon be undergoing a restructuring phase, to make it more effective for *implementing* the policies and agreements that have been decided within its premises since its creation –implementation often proves to be the Achilles heel of most participatory processes in this country. The need to reform this institution stemmed also from a widespread perception that the commitment of the

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[31] Swilling (1992) distinguished among four options regarding the future South African economic model: 1) Growth *for* redistribution: this model reflects a free market perspective, which presumes that resources for development can only be generated as a by-product of growth. The policy priority should be growth; 2) Growth *with* redistribution: the Keynesian approach which emphasises the need for linking redistributionist development policies channelled through the financial system to growth strategies. According to this policy "growth is impossible without creating the socio-economic conditions within consumption that are necessary for growth within production"; 3) Growth *through* redistribution: the ANC view. Both production and consumption constitute an integral part of a growth model, and not simple a "primer for growth." Redistribution can break the imperfections of the market and the biases of the economic system that impoverishes the majority and stunts growth; and 4) Redistribution *for* growth: because there is a large white-controlled cake, it simply needs to be re-divided for development to be achieved.

constituents in NEDLAC seems to have decreased in the last years, and that the overall effectiveness of its community constituency had been constantly questioned.

More specifically, interviews with the major actors involved in NEDLAC emphasised the importance of this institution in promoting *social peace*. Ideas such as "consensus building is a necessity in economic policy-making", "social dialogue in exchange of social peace" and "legitimacy of action through broad and inclusive participation" were presented as the driving forces of this structure. These statements reflected the opinion of practically all the interviewees, including those who represented the interests of big business in South Africa (interviews: Dowie, *op.cit.*; Van Heerden, *op.cit.*).

Related to this, it was also generally argued that the impetus behind the inclusion of not only unions but also other civil society organisations was the building of the largest possible consensus in the South African society in order to achieve the targets of reconstruction of the post-apartheid society in an environment of social peace and dialogue. Most interviewees underlined that having played a crucial role during the anti-apartheid struggle and the transition period (especially the Township "civics"), civil society's participation in NEDLAC came "almost as a natural event" (e.g., interview: Dexter, *op.cit.*)

Having said that, the part of the institution which seems to work the best is the traditional *social dialogue* which takes place in all its tripartite chambers (labour market; trade and industry; public finance and monetary policy) and not the more "participatory" one, the development chamber. At the time of the field research more than 100 agreements had been successfully reached through the tripartite NEDLAC process on key economic acts and policies.[32] On the contrary, the development chamber, where the community constituency was allowed to participate, did not seem to work as well. According to several interviewees, the development chamber made no difference and was described as "toothless and sidelined" (interview: Darroll, 27 March and 9 April 2002, Johannesburg). Since NEDLAC's creation, its non-union civil society component comprised of five civil society organisations representing the civics, the women, the cooperatives, the handicapped and the youth, played a largely symbolic role and the participatory chamber was described as a "talk show."

With no exception all the interviewees argued that this constituency suffered from an acute lack of human and financial resources, which diminished its weight and scope.[33]

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[32] such as the Labour Relations Act (LRA), the Basic Conditions of Employment Act (BCEA), or the World Trade Organisation (WTO) negotiations and trade policy positions of South Africa (interview: Dexter, *op.cit.*). As mentioned above, currently NEDLAC examines a number of key legislative and policy proposals in the area of employment generation and poverty alleviation, among others, a Labour Job Creation Trust, Expanded Public Works Programmes, and the Draft Bill and Co-operative Development Strategy (NEDLAC, 2004: 3; interview: Mkhize, *op.cit.*).

[33] The most well-built and efficient organisation is the South African Federal Council on Disability (interview: Naidoo, *op. cit.*), the Youth, and NCASA (interview: Dexter, 26 February 2002, Johannesburg).

For the business community, non-union civil society's participation in NEDLAC played no real role because it was perceived to be lacking managerial and financial capacity (interview: Dowie, *op.cit.*) but also the necessary legitimacy as it representativeness was often questioned ("how can one claim that it represents the interests of women"; interview: Botha). Its participation didn't create any particular dilemma among traditional social partners because it was not perceived as a "threat" and lacked the capacity of mobilisation (interview: Naidoo, *op.cit.*). This seemed to be precisely the reason why the inclusion of a fourth constituency did not raise any real objection among the business community. As one black business organisation representative noted "as long as civil society participation stays confined in the development chamber, business would not object to its presence in NEDLAC" (interview: Wesigye, 27 February 2002, Pretoria).

The former head (overall convenor) of the community constituency himself also highlighted the issue of lack of sufficient technical capacity (interview: Mbongo, 5 March and 18 April 2002, Johannesburg), even though he emphasised the contribution of his constituency in the field of advocacy ("we raised the awareness and sensitivity of the social partners") on specific issues such as health (in particular with regard to the HIV/AIDS epidemic) and poverty alleviation. In sum, as one of the most experienced students of South African industrial relations noted, NEDLAC's fourth constituency has shown only limited problem-solving capacity despite its honest efforts (interview: Nupen, 28 February 2002, Pretoria).

Interestingly enough, while the community constituency was broadly considered by most interviewees to be closer to the agenda of NEDLAC's labour constituency and in particular COSATU -generally perceived as its natural ally (interview: Dowie, *op.cit.*) - it was observed that the main difference between the two partners (besides the huge effectiveness differential) was one of strategy: the labour constituency was found to be much more vocal and polemical compared to the community constituency. For instance, on the key issues of flexibilisation of the labour market (the Labour Relation Act amendments), deregulation and privatisation promoted in the context of GEAR, while the unions adopted a strategy of direct confrontation and immediate mobilisation (notably through a series of strikes and other protest and mobilisation activities), the community constituency seems to have urged for more moderation and negotiations before any action took place (interview: Mbongo, *op.cit.*).

Very illustrative in that respect seems to be the case of the adoption of the GEAR by the South African government (unilaterally): with the exception of the labour movement (in particular COSATU), the rest of civil society organisations represented in NEDLAC had little to say about the adoption of neo-liberal policies by the ANC in the context of GEAR, even though the main stakeholders concerned by the impact of the neo-liberal turn of the Government's macro-economic policy (which involved deregulation, privatisations and massive lay-offs), have been the very weak constituencies who are normally represented by civil society organisations, namely, the poor, the women, and the youth.

This lack of activism and effectiveness was often attributed to the following main reasons: first, the deep financial problems affecting all civil society organisations in the development chamber. Second, the representativeness of the organisations, i.e., their claim to speak on behalf of particular groups (women, disabled etc.), which was often challenged by the more traditional policy actors (interview: Botha, 19 June 2002, Geneva; see also Friedman and Chipkin, 2001; Reitzes and Friedman, 2001; interview: Webster and Buhlungu, *op.cit.*). Third, the "seclusion" of these organisations in the development chamber, which (institutionally) prevented them from influencing discussions on trade, finance, and labour issues, which are important for development. Fourth, the fact that the agenda of the development chamber ("the dumping ground of NEDLAC" according to one interviewee) was often decided in the absence of these groups. Finally, the lack of political and financial independence of the community constituency vis-à-vis public funds.

Most of the interviews conducted with civil society activists and studies focusing for instance on the (once) most vocal organisations involved in NEDLAC, i.e., the South African National Civics Organisation (SANCO), argued that these community organisations rarely put pressure on the government, despite the negative repercussions upon the interests of their constituency, the poor majority of the country. As one of the students of South Africa's civil society observed, the attitude of SANCO vis-à-vis the ANC has been one of permanent acceptance or "coerced harmony" ("two months down the road I will give you something, for the time being keep quiet"; interview: Bond, *op.cit.*; see, also interview: Mayekiso, 9 March 2005, Johannesburg). In sum, these organisations appeared to be stuck in a process which prevented them from shaping an independent political agenda, let alone promoting it by criticising the government and mobilising against it.

To better illustrate this point, it is interesting to note that the most prominent example of successful action by SANCO from 1994 to 2005 (that truly benefited its main constituency, i.e., the poor township and informal settlements residents) was a series of agreements reached with ESCOM, the partially privatized national electricity company. In May 2003, SANCO "negotiated" and signed an agreement with ESCOM and the Minister of Public Enterprises and the Human Rights Commission, aimed at a partial waiving of debts of poor residents of SOWETO, freezing of electricity cut-offs due to unpaid bills, and negotiating tariffs directly between different communities and ESCOM allowing for a relatively cheaper rate for the poorest of these communities. In sum, residents in the Johannesburg area might have benefited from the write-off of some 1,39 million Rands in arrears (Zuern, 2004: 20; Egan and Wafer, 2004: 12; Banda, 2003).

However, many students of civil society in South Africa, admit that SANCO's action and success in this field was not the result of its own strategy, let alone political struggle within or outside NEDLAC. It appears in fact that SANCO was called in at the last moment in order to sign this deal with ESCOM, apparently in an effort to receive the formal credit for the waiving of the residents' debts. Apparently, the main party "responsible" for this spectacular "success story" was the huge mobilization action of township residents and a SOWETO "social movement", the Soweto Electricity Crisis

Committee (SECC), which had previously created the momentum for this pro-poor agreement (interview: Mbele, 2004; Ngwane, 2005).[34] Another example seems to confirm the importance of maintaining pressure outside institutionalised fora (from the SECC and massive non-payment) in order to obtain such a large "write-off" by ESCOM. As Zuern (2004: 20) sums up and notes:

> "in Tswane, where SANCO leaders participated in a series of negotiations with the metropolitan government council and where no group such as the SECC had engaged in large mobilizations prior to negotiations, the council refused Sanco's request to write off outstanding arrears, arguing that effective credit control measures were already in place."

In general, the lack of critical voice and opposition capacity within NEDLAC's community constituency is in contrast not only with the past of these organisations, which have been at the forefront of pro-poor social justice mobilisation during the anti-apartheid democratisation struggle, but also the attitude of many organisations which are not represented in NEDLAC and who tend to be described in the South African context as "new social movements." The latter term refers to grass-roots movements formed in South Africa after 1994 (an in particular after 2000) to represent constituencies and interests operating outside the framework of the anti-apartheid liberation movement. Movements such as the Soweto Electricity Crisis Committee (SECC), the Anti-Privatisation Forum (APF), the Landless People Movement (LPM), but also organisations with close links to these movements (e.g., the South African NGO Coalition-SANGOCO) not only supported unions' lobbying and protest/mobilisation activities (e.g., anti-privatisation strikes); they have been launching their own mobilization campaigns in townships, undertaking protest action against water and electricity privatisation and other aspects of GEAR (Buhlungu, 2004; Ballard et al., s.d.; interview: Habib, 17 April , 2002, Johannesburg; Heller and Ntlokunkulu, 2001; interviews: Ngwane, *op.cit.*; Mnisi, *op.cit.*).

Just like the reasons explaining why civil society groups present at NEDLAC seem to have failed to promote their independent agenda appear more or less clear, the reasons explaining why unions –led by COSATU—and the *ad hoc* community participant, the Financial Sector Campaign Coalition (FSCC), have been more successful, seem also relatively unambiguous.

As far as underlined unions (led by COSATU) are concerned, it appears that they are not only financially more independent than civics or women's associations due to their large membership base and affiliation which provides them with precious membership fees.[35]

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[34] The SECC was formed in 2000, initially as a response to the cut-offs of electricity in the East Rand, Vaal and Soweto, subsequent to the privatisation of the distribution network of the national electricity company ESCOM and its decision to adopt a "cost-recovery" policy. As seen below, one of its most famous actions has been operation Khanyisa ("bring the light"), which involved the illegal reconnection of residents' electricity (see, Egan and Wafer, 2004).

[35] In the year 2000 South Africa counted 464 registered Unions, with 3,552,113 members or 19.4 percent of the (expanded definition of the) economically active population (EAP) (SAR, 2001/2002: 225). COSATU was by far the largest trade union federation with approximately 1.5 million (paying) members. It was followed by Federation of Unions of South Africa (FEDUSA) with approximately 533,000 in 1998 and National Council of Trade Unions (NACTU) with approximately 200,000 members. COSATU

They also have a strong capacity of mobilisation and–contrary to the rest of civil society in this national participatory Forum—have sought to use this capacity as often as possible, in particular during negotiations concerning labour and social regulations. In this context, and despite unions' declining influence within the so-called ruling "Tripartite Alliance" (between the ANC, the South African Communist Party and COSATU), the union movement has managed to oppose further deregulation and privatisation and, at times, even reverse this trend.[36]

The FSCC's success story, while arguably less impressive than that of COSATU, also points to the importance of mobilization and outside pressure in effectively shaping NEDLAC's agenda and outcomes.[37] The FSCC, a coalition of 55 organisations, was originally established in 2000 to demand universal access to affordable and appropriate financial services for every South African. Encompassing *inter alia* the biggest civil society organisations in South Africa (with an interest in this campaign but with no real expertise in this field), such as the COSATU and the powerful South African Council of Churches (SACC), the FSCC has been at the forefront of mobilization for the transformation of the financial sector in South Africa. One of the particularities of the FSCC –which distinguishes it from the rest of NEDLAC's community constituency—has been its twofold strategy which consisted in making use of both institutional (NEDLAC) and extra-institutional forms of mobilization (street demonstration), when it engaged with both the state and business actors to support its demands. This strategy seems to have led to unprecedented pro-poor agreements regarding the transformnation of the very opaque financial sector in South Africa. First, it compelled the NEDLAC constituencies to accept the introduction of the subject-mater in NEDLAC's agenda and the FSCC to join the forum. [38] Most importantly perhaps, in October 2004, the *Mzansi* national bank account

therefore accounted for 46 percent of registered union membership, FEDUSA for 14 percent and NACTU for 8% (SAR, 1998/1999: 32). In other words, COSATU faces no serious opposition from its rival unions as it has more members than all the other federations put together.

[36] For example, while a series of proposal labour market flexibilisation were actively promoted by government and business representatives, the combination of formal dialogue within NEDLAC (and other participatory structures like the Millennium Labour Council) and spectacular mobilisation (including strikes, pickets and threat for civil disobedience campaigns), led to "a huge improvement on the original proposals by government" (COSATU, 2001). Among other things, Section 189 of the amended LRA established the right of the workers to strike over the retrenchment contrary to the government's initial proposals. This agreement provided for a right to strike to all workers if they are employed by a company employing over 50 people and where retrenchments will affect more than 50 people or 10 percent of the labour force of the enterprise.

[37] FSCC is one of the least studied campaigns in South Africa. The reconstruction of the history of the FSCC is based on data and analysis which draw on various FSCC documents available at the internet site of the South African Communist Party (SACP) under the item "press releases", e.g., http://www.sacp.org.za/pr/2004/pr0526.html and http://www.sacp.org.za/pr/2003/pr1017.html, as well as interviews conducted with the coordinator of the FSCC (Caine, 15 March 2005, Johannesburg), the Executive director of NEDLAC (Mkhize 11 March 2005, Johannesburg), and the convenor of the community Constituency of NELDAC, (Shezi, 14 March 2004, Johannesburg).

[38] The issue of the financial sector's transformation in South Africa constitutes one of the major preconditions for achieving a genuine transition to socio-economic equity. It should be noted that until the successful mobilisation of the Coalition, poor people had little or no chance to access a bank account, let alone credit. While insurance companies and banks provided the most sophisticated products and services

was launched by all the major banks and the Post Office. This was perceived to be the first tangible step towards achieving universal access to basic financial services for every South African.[39]

Participatory governance in South Africa: concluding remarks

Similar dynamics have been observed in two other participatory structures, aimed at addressing the issues of HIV/AIDS, and child labour: the South African National Aids Council (SANAC) and the Child Labour Intersectoral Group (CLIG). SANAC and CLIG clearly demonstrate the difficulties faced by civil society when it acts from within the participatory structures, and the effectiveness of the action of those civil society organisations which stay outside these structures and combine action in both institutional and extra-institutional realms. It also demonstrated that the inclusion of civil society organisations in participatory structures may have actually hindered their action and generated a largely unintended process of "capture" by other participants. A tentative presentation of the structures and dynamics prevailing in these bodies has been provided elsewhere (Baccaro and Papadakis, 2004). Without entering into the specifics of the structures and the dynamics observed during the field research the remainder presents the main thrust of the findings of the field research.

- Civil society's technical input within the participatory processes established by the South African government was perceived by many interviewees to be weak and its presence rather symbolic. Despite this fact, most groups participating in it preferred to remain on board in the absence of an alternative. As the head of the coalition of anti-child labour NGOs (the Network Against Child Labour, NACL) participating in one of these structures (CLIG) argued:

  "CLIG has by and large become a talk shop. It doesn't in any sense ameliorate the conditions of children. It is unable to put into operation any kind of measures where it observes child labor or reports on child labor matters [...] That is our view in the field [...] We need to remain engaged because there are crucial issues we need to talk with the DOL about" (interview: Camay, 7 March 2005, Johannesburg).

- Besides being perceived as "talk shops", participatory governance structures in the area of child labour were perceived by some as serving purposes of legitimisation of pre-decided policies. As one interviewee familiar with one of the participatory processes studied in South Africa (aimed at reporting on the implementation of the Convention of the Rights of the Child; *supra*) stated:

  "Civil society [groups] are often used to legitimate the government reports on child issues prepared periodically for instance for the UN. The report states and

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to a small minority which could access these services, i.e., people with regular employment and big entrepreneurs, more than 10 million people received no financial services at all. Access to basic financial services was effectively denied to these people who had no bank accounts and no access to micro-credit, despite the huge micro-economic activity that characterises South Africa.

[39] This pro-poor account meant that more than 10 million people in the country who were until then "unbanked", could now open an account (and receive a debit card which also enabled them to deposit, withdraw and save money at affordable charges).

civil society endorses, however, what the State wants to hear, not what civil society believes" (interview: Jackson, 22 March 2002, Cape Town).

Similar dynamics where depicted in SANAC (which performs as a Country Coordinating Mechanism for the Global Fund for AIDS, TB and Malaria; *supra*). Most of the participants in this body often viewed themselves as "legitimating" actors of pre-set funding proposals, which, among other things, excluded treatment-oriented proposals (which did not constitute the priority of the state). For instance, they complained that they were given the proposals to study and approve at short notice, often just a few hours in advance of the meeting (e.g., interviews: Jacobs, 2005; Le Roux, 2005*;* Mabele, 2005).

- A number of "implicit" terms of reference (e.g., "speak in one voice", "don't criticize the government") effectively silenced civil society participants within these bodies (interview: Munro, 2005). The lack of critical voice and sufficient contribution of NGOs within participatory processes were mainly reported to be due to shortcomings in the distribution of financial support to civil society by the state and confusion and/or de facto gradual redirection in certain political and economic orientations of the state (e.g., the adoption of the "non-negotiable" GEAR). Interestingly, according to the leader of one anti-child labour NGO platform, NGOs within these processes progressively appeared to embrace the government's agenda:

    "We've now been driven into the government's agenda instead of driving our own agenda of what is possible and that creates a problem" (interview: Camay, 2005)

The state agenda encompassed policies to combat child labour and HIV/AIDS which focused primarily on the developmental/economic aspects of these issues (e.g., developing basic infrastructure such as water and electricity to combat forms of child labour associated with fetching of water and wood; emphasis on nutrition and prevention, rather than treatment, to combat HIV/AIDS). These policies were often associated with "poverty alleviation" and pro-growth strategies rather than policies addressing more proactively the issues (e.g., strengthening labour inspection in farms to combat one of the most prevalent forms of child labour, child farm labour; or providing treatment to HIV/AIDS victims, in particular to prevent mother-to-child transition).

- The choice of focusing on these areas in priority seems to be the result of various technical and economic considerations which the "participatory processes" actually strengthened. In particular, the adoption of commonly-accepted definitions, proved to be the most time-consuming task within these bodies (e.g., what truly constitutes child labour in South Africa; or whether it is "HIV or poverty" which causes AIDS). In this context, "poverty alleviation" through developmental policies constituted the only possible common ground among participants. However, most civil society participants perceived these policies as slow and ineffective in addressing the urgent issues in question.

- Most importantly perhaps, according to most interviewees, the effectiveness of civil society in avoiding capture within these processes was clearly determined by the presence/absence of appropriate mobilisation coming from outside these structures, i.e., a form of societal mobilisation. As one interviewee stated regarding child labour :

    "[…] we're acquiescing formally on the one hand. Secondly, we don't have the power to change things. We don't have the emotional support of the community regarding child labour … It's not seen so there's less of a social sensitivity around the issue" (interview: Camay, 7 March 2005, Johannesburg).

On the contrary on the issue of HIV/AIDS, the existence of societal mobilization often taking the form of a "new social movement" called Treatment Action Campaign (TAC), has effectively influenced the agenda of the state in the area of HIV/AIDS treatment and the distribution of affordable anti-retroviral drugs to HIV positive people. Such a policy had not been adopted through the relevant participatory process because the latter tended to reproduce the absence of consensus prevailing within the Governing Alliance, which was divided over technical and economic issues (Van der Vliet, 2004). Emphasizing the human rights dimension of the issue (health emergency, racial equality, and respect for human dignity) rather than its technical aspects, TAC sought to open the way for distribution of affordable generic drugs by making use of confrontational means, such as legal action against the authorities on the grounds of not doing enough to promote constitutionally-protected rights. Thus, it put pressure on the competent authorities to articulate a National Treatment Plan (interview: Mametja, 2002). A High Court decision finally obliged the government to establish an issue-specific HIV/AIDS treatment policy (MTC, 2002). This issue-specific policy, i.e., the "Operational Plan" is today part of SANAC's agenda and the social movement TAC has been invited to participate therein.[40] Despite this invitation, the strategy adopted by TAC seems to be one of combining both participation and mobilization, this time in order to monitor the implementation of the operational plan (TAC, 2004; interviews: Geffen, 2002; Heywood, 2005; Bundlender, 2005).

- Conscious of the above problems, well-known (and financially more robust) organisations that are active in these areas, regarded participatory processes with indifference or sometimes with concern, and preferred to keep a distance from them. These organizations argued that fieldwork, research, lobbying and above all awareness raising activities, street protest, mobilization, and litigation had proved to be far more effective for promoting their social agendas. (interviews: Solomons, *op.cit.*; Biyela 16 April 2002, Johannesburg; Msezane, *op.cit.;*). This is not to say that these organisations did not believe in the value of engaging in dialogue with government. Far from it. They believed however that the most crucial activity in the areas under examination was to raise the awareness of the

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[40] For a chronology of events that led to the adoption of the treatment plan see, United Nations Office for Co-ordination of Humanitarian Affairs, s.d.. On the issue of governance in the area of HIV/AIDS in South Africa, see, Chirambo, 2004.

public authorities and mobilise society as a whole with a view to "re-politicizing" these issues which tended to be "de-politicized" and treated as technical/economic ones within participatory structures. Many interviewees stated that they believed that the risk of being trapped in long, unproductive and costly discussions, or even being captured, was greater than the potential benefits and did not warrant direct involvement. [41]

- <u>Overall</u>, in South Africa, the presence or absence of a "social movement" has proved to be an essential factor not only for the adoption but also the sound *implementation* of policies and legislation. This opinion seems to be shared by influential academics, industrial relations experts, the development community in South Africa, and also the leadership of the largest trade union (COSATU). All today admit that to reverse an observed loss of influence of social and pro-poor development policies, and strengthen the voice of those who promote them (trade unions, CBOs, NGOs, international organizations and even states), policy makers have to find ways to establish a link between struggles in the workplace and struggles in the community focusing on the broader social field (interview: Webster and Buhlungu, 11 March 2005, Johannesburg; COSATU's Resolution, 2005; interview: Bond, 3 March 2005, Johannesburg).

Thus, in the absence of strong social mobilization, civil society's voice appears depleted and a strong risk of capture appears to exist for civil society within participatory processes *vis-à-vis* stronger participants which ride the ideological wave of "neo-liberalism". As a former South African finance minister during the transition years and one of the instigators of the first social dialogue body (National Economic Forum) observed, civil society organisations–other than unions—might have been included in participatory policy structures "to keep them happy and silent" (interview: Keys, 5 April 2002).

Section III. European Union

Lisbon Declaration and the quest for an EU social-regime building

The main official statement of EU policy expressing its commitment to socially sustainable development can be found in the Final Conclusions of the European Council Summit in Lisbon (March 2000). The latter is considered to be the most important benchmark in EU social policy history, as EU member states committed themselves to work towards a new strategic goal for the decade 2000-2010, i.e., to "become the most

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[41] "Dialogue is important. At the end of the day if you do not lobby you can't influence the politicians. […].Experience shows [however] that the NCRC [c.f., the organisation representing child rights NGOs in participatory processes in the area of child rights] is not the dynamic organisation that it could have been. Instead, it has become too close to the government. Before the 1994 elections it was established as an NGO umbrella structure to deal with children's issues in general and generated a lot of debate, but the relation with the government became too close. Nothing is very active in the field of child labour today. Everything depends on whether there are funds or an event, everything depends on other people's agenda" (interview: Solomons, 18 March 2002, Cape Town).

competitive and dynamic knowledge-based economy capable of <u>sustainable economic growth</u> with more and <u>better jobs</u> and <u>greater social</u> cohesion" by finding the <u>"appropriate macro-economic policy mix"</u> to this effect.[42] Modernizing the European social model and investing in human resources were declared to be the most crucial aspects for retaining both "the European <u>social values</u> of solidarity and justice" while at the same time "improving economic performance." In short, they officially recognised the essential linkage between Europe's economic strength and its social model, and implicitly put in the center of EU policy-making the discourse of "socially sustainable development"[43]

The European Union has been a prime example also of participatory approaches to social policy making. Participatory structures initially helped promote the agenda of the EU Commission in the social/labour field in the absence of an explicit treaty-based mandate. What started as an informal social dialogue at European level in the 1980s under the initiative of the Delors Commission, culminated in the amendment of the Treaty of Rome through Articles 138 and 139 of the Maastricht Treaty which stipulate the Commission's obligation to consult "management and labour at Community level" in the social policy field. These Articles stipulate that agreements can be <u>negotiated</u> between the social partners at European level on a bipartite basis within nine months (and then be transformed into Directives by the Council); alternatively, Directives may be issued by the Commission on its own initiative if negotiations fail.

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[42] "5. The Union has today set itself a new strategic goal for the next decade: *to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion*. Achieving this goal requires an overall strategy aimed at:

– preparing the transition to a knowledge-based economy and society by better policies for the information society and R&D, as well as by stepping up the process of structural reform for competitiveness and innovation and by completing the internal market;

– modernising the European social model, investing in people and combating social exclusion;

– <u>sustaining the healthy economic outlook and favourable growth prospects by applying an appropriate macro-economic policy mix</u>." See, European Council, 2000.

[43] In practical terms the steps to undertake in order to promote a socially sustainable development would consist of:

1. setting an objective of a yearly 3% growth rate, a full employment target for the EU by the year 2010 and employment rates of 70% on average and 60% for women by that date;

2. calling for more policy coordination between the Broad Economic Policy Guidelines (BEPGs), sectoral economic policies, tax policies, employment and social policies and education/training policies in order to avoid "negative externalities" due to non-coordinated competitive Member State policies, and contradictory objectives; and

3. promoting the Open Method of Coordination as the only realistic way to enlarge the EU agenda on social issues and prioritise social regulation through similar decentralised and participatory policy processes competences, as opposed to traditional intergovernmental methods which had proved their limits.

European Council, 2000: 5, paragraph 37-38. See also, Goetschy, 2003.

This "stick and carrot" method has resulted in several important agreements at the European level concerning for instance parental leave (1996), part-time work (1997), fixed-term contracts (1999) and telework (2002) and more recently working time in the maritime and air transport sectors (under the sectoral European social dialogue. It should also be added that an important social Directive of the Commission on Works Councils was adopted after the social partners failed to directly negotiate an agreement on this issue.

In addition to this, the Amsterdam Treaty of 1997 included issues such as social protection and non-discrimination in the agenda of the Commission and the Council and called for a participative approach to social policy making on behalf of the Commission. The above-mentioned Final Conclusions of the European Council in Lisbon (European Council, 2000) envisaged as a means to implement the goal of sustainable economic growth with greater social cohesion, broad partnerships with organised civil society through participatory policy making. The *European Union Sustainable Development Strategy* adopted by the Council in Gothenburg in 2001, reinforced this approach by recommending an "improved policy coherence through participatory processes" and emphasizing the need for "participatory" and "transparent" governance (European Council, 2001).[44]

Following the publication of this document, major EU documents emphasised participation by all stakeholders as essential for achieving the Lisbon goals of economic and social development.[45] Among these documents, the White Paper on European Governance (European Commission, 2001b) put forward a set of proposals for modernizing *governance* in the European Union in order to "open up the decision-making process," and "enable citizens to participate in decisions taken at the European level" (European Union, 2001b: 3) notably through the "organised civil society". [46]

The European Union seems to promote the involvement of civil society also in the framework of one of the most interesting regulatory innovations based *inter alia* on the idea of broad public participation aimed at establishing "soft" standards, namely, the Open Method of Coordination (OMC).[47] This is a new process of policy-making,

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[44] In that respect, one may read for instance: "Sustainable development must be placed at the core of the mandate of all policy makers. Better policy integration relying on a systematic and transparent review of the costs and effects of different [development] options, is crucial, so that different policies reinforce each other, trade-offs are made by informed decisions, and environmental and social objectives are met at least economic cost. Openness will also facilitate better dialogue between stakeholders with divergent interests, paving the way for a broad consensus on solutions and their implementation."

[45] Among the most recent ones see, European Commission 2004a and 2004b; Several Communications from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, such as European Commission, 2004c.

[46] The term "European governance" is ill defined in this document. I is broadly defined as "a set of proposals aimed at a set of recommendations on how to enhance democracy in Europe and increase the legitimacy of the institutions." European Commission, 2001b: 1.

[47] The OMC is a process aimed to "co-ordinate" (rather than "harmonize") social policy among the EU member states. This method a) fixes common objectives/guidelines; b) translates the common objectives into national policies through so-called "National Action Plans" (deigned in "partnership" with

implementation and monitoring designed to facilitate the active participation of "stakeholders" in formulating guidelines and other soft regulation in various areas, such as employment creation, non-discrimination or social protection (Goetschy, 1999 and 2003; Kenner, 1999; Kameron, 2001).

Trans-national NGOs

Thus, in addition to the social partners, the European Union increasingly involves other civil society organisations in social policy-making and in particular, trans-national civil society, i.e., NGOs focusing their activities at the European level, with a view to participating in EU policy design and implementation (see, Annex II). The trans-national NGO phenomenon has emerged in the last ten to 15 years alongside the inclusion in the EU Treaties of competences that go beyond the strict rationale of economic integration, e.g., social exclusion and anti-discrimination (see also Annex III). These two areas along with the above-mentioned establishment of the EU governance and sustainable development agendas, has led to a growing recognition of the role of the "European civil society" in the EU socio-economic policy making and in turn to the mushrooming of trans-national NGOs. The latter increasingly coordinate their activities on an issue and cross-issue specific manner with a view to engage in a structured dialogue with the EU institutions (the idea of "civil dialogue"; *infra*).[48]

More specifically, most of these "trans-national" NGOs deal with a wide array of issues (environmental, social, human rights, development, etc) and have acquired their present form and structure through the merging of other already existing national and international issue-specific NGOs (NGOs representing "service providers" and "service seekers" have existed at the national level since the 1950s). Besides voicing their members' interest to the EU institutions, trans-national NGOs are involved in the implementation of various EU policies and legislation (see, Annex III). In this context, they are often heavily financed by the Commission (interview: Nolan, 2003).

Recently, these trans-national NGOs have themselves become members of more encompassing organisations often labelled "European Platform NGOs" representing the major NGO families active in the EU, i.e., "social", "environmental", "human rights", "development" and "consumer". These Platforms have been established at the request of the Commission, in order to rationalise the increasingly numerous contacts between the EU institutions and the European trans-national civil society sector, but also following the realisation on behalf of trans-national NGOs that "political opportunity structures" in Brussels can be better exploited via co-ordinated action (interviews: Be, 2003; Wilson, 2003; McPhail, 2003).

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all stakeholders, including civil society); c) establishes "indicators" and "benchmarks" as a means of comparing best practices; d) invites the state to exchange learning and best practices for pre-decided policy areas; and finally, e) submits the states under periodic monitoring and "peer group review" to evaluate the process.

[48] Annex II and III provide a snapshot of the impressive presence of international NGO activity in Brussels and some details regarding their main areas of focus. For more information on special interest groups active in the EU in general see, at: http://europe.eu.int/comm/sg/sgc/lobbies/index_en.htm.

In the "social" field, a good illustration is the "Platform of European Social NGOs" (or "Social Platform"), an umbrella body regrouping some 40 trans-national NGOs active at the EU level (in areas such as disability, discrimination, and poverty.[49]) Another well-known European Platform is the so-called "Green G8", i.e., the European structure representing the eight largest environmental NGOs in Europe and internationally.[50] Similar Platforms exist in the area of development (CONCORDE), humanitarian action (VOICE), and consumer protection (BEUC).

Initially (around 1995), these Platforms functioned rather informally as loose alliances among the European NGOs representing the above-mentioned "families". Increasingly however, these Platforms appear to have become relatively well-structured and coordinated organisations and recognised as key interlocutors of the "European" civil society within the EU institutional galaxy (interview: Be, 2003; Wilson, 2003; Loprieno). Their activities consist of maintaining close informal and formal relationships with EU policy makers and institutions, and participating in various consultations with EU bodies in a systematic manner.[51] Each Platform enjoys privileged relations in particular with the relevant DGs (e.g., the Social Platform with DG Employment and Social Affairs), and are often financed heavily by them (e.g., 700'000 Euro per year for the Social Platform which according to one interviewee represents 90 per cent of its running costs; interview: Rose, 2003). It should be noted that according to several field interviews, the main strategy of these Platforms would be "co-operation with EU institutions rather than confrontation", contrary to their (trans-national NGO) members for which mobilisation (mostly in the form of lobbying) is not *a priori* excluded (interview: Wilson, 2003).

Civil dialogue

The nascent interaction between the EU and the national and trans-national civil society (often described as "European civil society") is labeled "European civil dialogue" by reference to the EU social dialogue (Briesch, 2003). The main difference –and not a lesser one—between the two processes is that while social dialogue is based on the above-mentioned Treaty provisions (and thus is subject to specific terms of reference), civil dialogue refers to a host of largely *ad hoc* practices, which are –at best—based on a

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[49] e.g., the European Anti-Poverty Network (EAPN), SOLIDAR, European Public Health Alliance (EPHA), European Women Lobby (EWL), etc.

[50] I.e., the European Environmental Bureau (EEB), Friends of the Earth Europe, Greenpeace, WWF, Friends of Nature International, the European Federation for Transport and Environment, BirdLife International and Climate Network Europe. The Green 8 is a "loose alliance". However, the influence of its members and their possibilities of participating in the EU policy process appears to be overwhelmingly higher compared to other European Platforms.

[51] The European Commission meets regularly with the Social Platform and in the last years a tradition has been developed by the European Employment and Social Affairs Council to invite informally the Platform during the meeting of the Ministers of Employment and Social Affairs (e.g., Naphplion January 02, in Varese, June 2003). During the preparation of the Convention for the drafting of the EU Constitution, the Social Platform was very actively "informing" the members of the Convention on issues related to the youth, the poor, the ageing people, homosexuals, families etc. with a view to promoting the inclusion of social issues and civil dialogue in the articles of the draft EU Constitution.

series of "soft law" instruments with little or no prospect of becoming European law. Admittedly, the weight of the outcomes of the two processes is also different: the social dialogue outcomes are almost binding since they are the result of a process of "negotiations" (the force of the stronger argument) among legitimized social partners. On the contrary, "civil dialogue" is largely a process of "consultation" (deliberation or the force of the better argument) among randomly selected actors, and therefore their legal nature is questionable. [52]

It should be noted that "civil dialogue" tends to be more thriving and productive in areas where the EU enjoys some powers conferred by the Treaties. For example, in the area of environmental protection –and areas where environmental protection is a crosscutting theme, such as agriculture, fisheries, regional development, world trade and external aid—trans-national environmental NGOs and their Platform G (8), appear to be of particular help to the Commission's DG Environment, described as "the single biggest producer of legislation in the EU" (interview: Loprieno, 2003). However, this dialogue rarely takes the form of "participatory structure" but rather involves bi-lateral contacts between the DG Environment and these NGOs. Similarly, civil dialogue is also observed around issues of social inclusion and discrimination for which –as said above—some Treaty basis exists, and more rarely in the area of health and employment (Open Method of Coordination). In general, the current and potential scope for regulating policy areas through "civil dialogue" where a clear line between national and European competencies cannot be drawn, is enormous. In this context, in particular since the resources of the relevant DGs are usually very limited, trans-national European NGOs and their Platforms are more than welcome by the Commission to play a key role in promoting or expanding EU legislation at the national level, as well as ensuring that other DGs take up the cross-cutting concerns.

One of the most recent examples of "civil dialogue" at the EU level is depicted in the remainder of this paper and concerns the area of corporate social responsibility (CSR). The Commission established a "Multi-Stakeholder Forum on Corporate Social Responsibility" (CSR Forum) as a participatory structure involving social partners and civil society organizations, with a view to coming up with suggestions on how the

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[52] The sole legal basis for "civil dialogue" is Declaration 23 annexed to the Treaty of Maastricht which "stresses the importance in pursuing the objectives of Article 117 of the Treaty establishing the European Community, of co-operation between the latter and charitable associations and foundations as institutions responsible for the social welfare establishments and services"; and Declaration 38 annexed to the Amsterdam Treaty which "recognises the important contribution made by voluntary service activities to the developing of social solidarity" and encourages "the European dimension of voluntary organisations, with particular emphasis on the *exchange of information and experiences*."

The specific role of civil society organisations in modern democracies is also recognised and closely linked to the fundamental right of citizens to form associations in order to pursue a common purpose, as highlighted in Article 12 of the European Charter of Fundamental Rights. The latter states: "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 (…)".

Finally, an indirect legal basis can also be found in the two anti-discrimination Discrimination Directives and programme of action that explicitly refers to the role of NGOs in their transposition at the national level (European Council, 200b; 2000c; 2000d).

European Commission should regulate the issue (and market) of CSR (European Commission, 2001a and 2002a). The Forum was an interesting development in the chronicles of the EU because while hitherto civil society organizations have been financially and politically assisted by the EU mainly for implementing a set of already decided EU social policy packages, in this case civil society was invited to participate in addressing an "unknown policy area" along with more traditional partners, at the EU level. Interestingly, as one of the fathers of this Forum argued, failure of the CSR forum participants to reach common agreement, would mean that the Commission would be obliged to regulate the subject on its own (like in the case of social dialogue):

> "[The CSR process] is an enlarged social dialogue mechanism, the equivalent of the ILO at the EU level, where the role of the Commission is pretty similar to the one performed by the secretariat of the ILO, namely, to facilitate the dialogue; this could eventually lead to a form of negotiation and agreement which will be presented to the Commission like this: "you have raised this question, we are suggesting this answer." We named it a "Forum" but it is quite different from other Fora since unlike the rest of them, participation is not free but very structured, i.e., each category of participants holds a certain number of seats. [The CSR process] is something like collective agreements at the national level: the state intervenes only once negotiations fail" (interview: Be, 2003)

The Commission's argumentation is a further demonstration of the centrality of the "socially sustainable development" paradigm and its participatory element. It also implicitly demonstrates the political willingness of the Commission to replicate "the stick and carrot method" which led to the creation of the European social dialogue and the expansion of EU common social policy, to "civil dialogue." The method of "negotiate or else we legislate" has in the past proved to be key in building the EU social policy but also consolidating the EU's legitimacy as a political rather than only economic entity.[53]

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[53] The tactic of the Commission to employ "sticks", e.g., "envisaged social regulation", as well as "carrots", namely, participation of extra-institutional actors in policy-making, coupled by persistent efforts on behalf of the Commission to interpret available Treaty bases in an expansive manner (e.g, on health and safety), has led in the past to the gradual shift of interest of the EU social partners from the national to the European level (which had until then preferred direct lobbying at the Council level as a means for promoting their agenda). It should be noted that up until Maastricht and Delors's entrepreneurial stance, both ETUC and UNICE lacked clear negotiating mandates and structures and were unable and unwilling to participate in Community-level social dialogue. They both appeared more as lobby organisations rather than social partners. A number of organizational changes within ETUC and the removal of the employers' negative stance vis-à-vis direct negotiations at the Community level seem to have modified the stance of both organizations regarding EU social dialogue and European collective agreements. These changes were triggered in large part by the Commission's constant efforts, on the one hand, to empower workers' organizations at the EU level, and on the other hand, to signal the possibility of launching prospected social legislation so as to push the Employers to accept negotiation as "the lesser of two evils" compared with legislative intervention (Lo Faro, 2000; Falkner, 2002; Streeck, 1994; Rhodes, 1995; Ross, 1995).

These actors –under the "threat" of top-down regulation—eventually accepted to modify their internal structures and philosophy with a view to joining direct negotiations for "regulating" certain aspects of the European socio-economy. In turn, this has led to a gradual expansion of the EU social policy regime (e.g., Ross, 1995; Watson, 1994). It has also contributed to the "state/polity-building" efforts of the Commission since the involvement of social partners and other parts of civil society in European politics may have generated more "legitimacy" for the EU to move forward with its social policy agenda, which is a necessary element for the consolidation of the EU as a political entity (Lo Faro, 2000: 141). In one word, the "negotiate or else we legislate" strategy of the Commission has proved to be one of the most powerful sources of legitimation for the EU construct as a whole.

The remainder sketches the history, structure, dynamics of this exceptional Forum and tries to identify the reasons that may have led to its (deceiving) outcomes. Interestingly, many of these reasons fit the downsides of the participatory public administration observed in South Africa. We also argue that in the absence of a clear Treaty basis for involving extra-institutional actors (instead of doing so in order to provide legitimacy to the Commission with a view to expanding the EU social regime), it would appear that the Forum might have contributed to legitimizing an approach of CSR which fits mostly the business approach, while minimizing the possibilities for the expansion for the EU common policy in this area (which was one of the core objectives of the Forum). In this context, notwithstanding the "irenic" atmosphere observed during the works of the Forum (attributed to a number of structural characteristics of the Forum examined below), protest and mobilization activities often taking the form of lobbying of the EU institutions were evaluated by many interviewees as far more effective tools for shaping the European socio-economic policy, or at least in a way which respects a better "balance between antithetical objectives" of the socially sustainable development paradigm. Participatory governance largely appeared as symbolic "talk shops."

The European Multi-stakeholder Forum on Corporate Social Responsibility

The issue of governance in the area of CSR exemplifies four major particularities which reflect the reasons on the basis of which most interviewees explained the inclusion of civil society organizations in this participatory process. First, CSR is viewed as an issue which lies at the interstices of public (state) and private (market) policy; civil society lies between these two spaces. Second, the civil society sector is perceived as a key policy actor (or a "stakeholder" from a civil dialogue viewpoint) which has been at the origin of the concept and partly the development of CSR tools. Three, CSR is one of the best illustrations of the "sustainable development" and "governance" agendas of the EU, both viewing extra-institutional actors, in particular NGOs, as key. Finally, CSR constitutes a good sample of the social challenges (negative aspects of globalisation) and approaches (good governance and participatory approach) surrounding the whole issue of globalisation. Therefore, independently of whether this governance experiment has been successful for the purposes of CSR, it certainly constitutes one of the most interesting steps in promoting "socially sustainable development" as a whole.

An in-depth analysis of the CSR issue is beyond the scope of this paper.[54] For the purposes of the present paper it suffices to say that CSR is usually described as a voluntary (self-regulatory) tool at the disposal of enterprises which wish to guarantee a minimum number of labour and environmental standards during the conduct of their activities. The CSR debate raises (and tries to respond to) the controversial question of whether enterprises should be accountable vis-à-vis shareholders only, or on the contrary, towards society as a whole as affected by the conduct of their activities, and if so, by

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[54] For an overview of CSR initiatives see, e.g., ILO, 1998 (GB.273/WP/SDL/1(Rev.1) and (Add.1), November). For an update on recent CSR practices see, ILO, 2003..

which means. While in theory no enterprise is against the principle of engaging its "social and environmental responsibility" to prevent and cope with risks associated to its profit-seeking activity,[55] the axact way of applying and monitoring the implementation of this principle deeply divides all the so-called "stakeholders", namely, the private sector, public authorities, the social partners, and other civil society organisations, such as NGOs.

Overall, a divergence of approaches exists not only among management -which supports a "voluntary" approach to CSR, unions and NGOs -which support a more legalistic approach, pushing the "state to step in", but also within management, the social partners, and the (traditionally fragmented) civil society sector, as to the scope and nature of the (voluntary or binding) "convergence" of various CSR voluntary instruments (such as management standards, labelling and certification schemes, reporting, ethical investments etc.) and monitoring methodology. [56]

In short, the main obstacle in addressing the CSR issue is twofold: on the one hand, the *definition* of the issue which is too vague, and on other hand, the *diversity* of opinions and proposed tools on ways to address (conceptually and practically) gaps associated to CSR. In the absence of a common/compulsory CSR framework at regional or international levels, each "stakeholder" is allowed to have its own perception regarding the appropriate "mix" between economic, social and environmental considerations for designing and monitoring CSR initiatives. These obstacles not only firmly place CSR instruments in the category of "self-regulation"; they also transform the possibility of reaching consensus regarding the various aspects of CSR, a difficult if not impossible task.

An additional difficulty stems from the origins of the CSR concept, i.e., the US. Importing a concept that has been invented within a country with a labour market philosophy which is fundamentally different from that of the European countries, seems to raise major structural difficulties in terms of transposition and implementation. Above all, while CSR may be understandably viewed by the consumers and the public authorities in the US as a good substitute for low public standards or inaction regarding social and environmental rights, the concept of CSR in Europe and extra-European developing countries may lead away from deep-rooted assumptions, such the role of the

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[55] The increasing reference to "sustainable development" in commercial spots advertising products of the oil industry might testify this.

[56] For instance on the management side, Small and Medium Enterprises (SMEs) seem to have a different understanding (and concerns) about CSR compared to multinational companies. While the multinational sector appears at times to be less reluctant in adopting some form of CSR and even ensuring some degree of convergence, smaller enterprises regard CSR as an additional financial burden upon them equivalent to a hidden tax since CSR practices are –by the very nature of the SME sector- already present, because of their proximity to the "local" and the "community". National and sectoral unions also find difficulty in adopting a common position at the cross-sectoral and cross-national level (ETUC) because of the diversity of national experiences and sectors concerned. Finally, the various issue-specific civil society families (environmental, social, consumers, human rights, development) prioritise a different aspect of CSR depending on their priorities and thus tend to put forward different solutions.

welfare state and the social partners in establishing and monitoring public social regulation and collective agreements (interview: Schömann, 2003).[57]

It is within this conceptually blurred context that the Commission presented in July 2001 a Green Paper on "Promoting a European Framework for Corporate Social Responsibility".[58] The overall objective of this Green Paper was to launch the debate about the concept of corporate social responsibility as a first step towards developing a European CSR framework.

According to one interviewee, an additional reason underlying the launching of the debate had to do with the increasing mobilization of trans-national civil society and the anti-globalisation movement which denounced in Seattle and Genova the negative effects of globalisation, including gross-violations of human rights by private enterprises and the latter's "hypocritical" responses to these accusations.[59] Besides the well-known NGO mobilisation activity in the US, in Europe, trans-national NGOs were on their guard regarding mass dismissals by multinational companies engaged in a process of restructuring (e.g., the Renault Vilvorde and DANONE affairs, two of the most grievous in terms of employment loss due to enterprise restructuring at the EU level). Unlike NGO mobilisation activity on US soil, which mostly focused on the human rights dimension of the issue, the Commission decided to approach the CSR issue "under the angle of employment" which, it should be noted, is part of the Commission's competence (interview: Be, 2003).

The Green Paper tentatively defined CSR as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with the stakeholders on a voluntary basis" and characterised it as a necessary step towards achieving the goal set by the Lisbon Summit and the European Strategy for Sustainable Development (*supra*). Immediately after the presentation of the Green Paper, the Commission launched a consultation process on the Green Paper. This (increasingly regular) procedure at the EU level, aimed at gathering the views of all interested parties, organisations and individuals, before drafting a document containing a more specific set of proposals for EU action in the area of CSR, e.g., a White Paper. According to EU standard practice, while Green Papers set out a range of ideas presented for public discussion and debate, White Papers usually contain "an official set of proposals in specific policy areas and are used as vehicles for their development." [60]

Instead of a White Paper, the Commission presented in July 2002 a synthesis report in a form of a Communication based on the comments received during the consultation process by some 250 individuals and organisations and EU institutions that

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[57] On the potential incompatibility of CSR to the European labour market, see, Lapeyre, ETUC, deputy General Secretary 1st High Level Meeting, October 2002).

[58] COM(2001) 366 final, July, 2001.

59 For a critique of Nike's Labour and Environmental Auditing in Vietnam as performed by Ernst & Young, see, O'Rourke (1997).

[60] See, http://europa.eu.int/comm/off/green/index_en.htm

had responded to the invitation of the Commission.[61] Overall, the report summarised the various positions of the various categories of the respondents and set a preliminary agenda for tackling the issue. It should be noted that critics of this report have argued, that the business and Anglo-Saxon approach to CSR largely dominated this document (just like the previous ones), as it implicitly spelled out an understanding of CSR which overemphasised its voluntary dimension and undervalued calls from all parts of the European civil society highlighting the need for some form of regulation in this area (Capron, 2004: 1).

Having said that, the Commission's view on CSR at the end of the above-mentioned consultation process clearly left open the possibility of some sort of "regulation" in this field –following its "regulate or else we legislate" strategy. As the report stated:

> "[while in] principle, adopting CSR is clearly a matter for enterprises themselves, which is dynamically shaped in interaction between them and their stakeholders, […] there are at least two reasons pointing to […]the need for Community Action in the field of CSR. *Firstly*, CSR may be a useful instrument in furthering Community policies. *Secondly*, the proliferation of different CSR instruments (such as management standards, labeling and certification schemes, reporting, etc.) that are difficult to compare, is confusing for business, consumers, investors, other stakeholders and the public and this, in turn, could be a source of market distortion."

Put differently, the CSR issue was viewed by the Commission as an opportunity for expanding the EU social agenda. While accepting that CSR belongs to "self-regulation", the Commission perceived CSR as being part of its field of competence, since the lack of convergence among voluntary practices risked generating distortions in the internal market. This analysis of the Commission raised many hopes on the side of the pro-regulation actors (unions and NGOs) as to the intention of the Commission to proceed with some sort of policy or legislative initiative in the area of CSR, and perhaps equivalent concerns by pro-self-regulation actors such as European employers.[62]

These hopes were further reinforced by two key decisions put forward in the communication. First, a number of areas of focus were presented for which "convergence and transparency should be achieved through Community action." These areas were identified on the basis of the responses furnished in the consultative process mainly by civil society groups. [63] Second, (and this was perhaps the most tangible contribution of this Communication), it decided to endorse one of the proposals put forward by the European Parliament, i.e., to create a *European Multi-stakeholder platform* aimed to "address and to agree" (by mid-2004 if possible), on guiding principles on a number of issues including *"the development of commonly agreed guidelines and criteria for CSR*

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[61] COM (2002) 347 final.

[62] Reminiscent of Pithea's discourses. According to Greek mythology Pithea was the Oracle of Delphi and the Apollo's priestess who made prophecies that could be understood in two opposite ways, depending on where in the sentence the one who heard them put the stress.

[63] i.e., codes of conduct; management standards; accounting, auditing and reporting; labels; and socially responsible investment

measurement, reporting and assurance" at the EU level, and the "definition of commonly agreed guidelines for labeling schemes, supporting the ILO core conventions and environmental standards".[64]

In sum, the Commission defined the *agenda* as well as the *procedure* through which its action in the area of CSR could proceed. According to some interviewees, the Commission seems to have felt the need to launch this participatory governance process in order to manage more effectively the demands of the various actors involved in the area of CSR.[65] Clearly, the underlying assumption for the creation of the CSR Forum was that in order to address effectively issues related to the diversity of opinions and conflicting approaches of the various stakeholders, only "a structured and partnership-based approach between businesses and their various stakeholders" and "a concerted effort by *all those concerned* towards shared objectives" could build the necessary consensus for designing an EU CSR framework. This approach of the Commission fitted squarely the "socially sustainable development" and "participatory governance" approach which as seen above, is based on "deliberation" among "all affected stakeholders".[66]

It is interesting to add that just like in the past (social partners/social dialogue), one of the immediate outcomes of the announced intension of the European Commission to launch this "expanded social dialogue" process with a view to regulating CSR, was an observed effort on behalf of the European NGO community to coordinate its activity and speak in one voice in this area. In other words, the Forum functioned as an additional incentive for European civil society to further coordinate activities among them. In this context, the Social Platform functioned (more or less formally) as the secretariat of this initiative (interview: Wilson, 2003).

The Commission set up the EU Multi-Stakeholder Forum on CSR in October 2002 (CSR Forum) and scheduled the end of its works for mid-2004. Officially, the objective behind the establishment of the Forum was "to promote innovation, convergence, and transparency in existing CSR practices and tools," by allowing its participants to

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[64] The other issues were: a) the relationship between CSR and competitiveness (business case); b) the contribution of CSR to sustainable development, in particular in developing countries, and to gender mainstreaming; c) SME-specific aspects (tools, coaching/mentoring practices by large enterprises, supply chain aspects); d) effectiveness and credibility of codes of conduct, to be based on internationally agreed principles, in particular the OECD guidelines for multinational enterprises; e) disclosure on pension and retail funds' SRI policies.

[65] "[w]e would receive the visit of many actors, each one expressing its own concern and opinion. Therefore we decided to elaborate a more empirical approach, that is, one based on dialogue among actors" (interview: Be, 2003).

[66] As stated in the same Communication of the Commission: "The EU success in promoting CSR ultimately depends on widespread "ownership" of the principles of CSR by businesses, social partners, civil society, including consumer organisations, and public authorities, including from third countries, which should be based on comprehensive partnership with representatives of society at large. The involvement of all affected stakeholders is key to ensure acceptance and credibility of CSR and better compliance with its principles. In their responses to the Green Paper, a number of respondents invited the Commission to facilitate a dialogue between businesses and their stakeholders" (COM(2002) 347 final: 8).

"improve knowledge" through exchanging good practices and "assess the appropriateness of establishing common guiding principles for CSR practices and instruments." [67]

As mentioned above, the main originality of the "Forum" was to be found in its structure and functioning. Chaired by the Commission, the Forum was composed of European representative organisations of employers, business networks, trade unions and NGOs. The Commission hosted the Forum but it was <u>not</u> one of the participants. The composition of the Forum aimed at ensuring a "balanced representation" of the various organisations that contributed their input during the consultation process following the release of the Green Paper. In sum, besides the most institutionalized EU civil society actors, namely, the European social partners[68], the five above-mentioned civil society Platforms, including the Social Platform and the G(8) were also present.[69] Alongside these organizations, a number of business networks and organisations which were neither recognized as social partners nor belonged to the five NGOs families, also held a seat. The most important was CSR Europe, an organisation set up and supported by the big multinational enterprises which led the CSR debate at the EU level, and UEAPME, representing small and medium enterprises (a partner organisation of UNICE). [70]

In the absence of clear guidelines regarding selection criteria, these organisations were chosen to participate in the Forum on the basis of their "reputation" and the "interest" they demonstrated during the initial consultation phase (interview: Be, 2003; Wilson, 2003). According to many interviewees, the <u>selection</u> of these organizations responded to criteria which were far from objective, let alone respectful of representativeness requirements. This seems to have raised many criticisms with regard to the "representativeness and legitimacy" of the five NGO families and the numerous Business networks participating in the Forum, on behalf of the only institutionalized actors at the EU level, i.e., European social partners, and even by the Commission itself. As one interviewee observed, unlike the social partners most participant organisations

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[67] More specifically, according to its mandate, the main axes of its activities were decided to be:

- "exchange of experience and good practice" among the various actors at EU level;

- "bringing together existing initiatives" within the EU, and seeking to establish "a common EU approach and guiding principles", such as "a basis for dialogue in international fora and with third countries"; and

- "identifying and exploring areas where additional action" is needed at EU level."

[68] i.e., European Trade Union Confederation – ETUC; UNICE-The Voice of Business in Europe; and CEEP- European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest.

[69] Amnesty international and FIDH represented the human rights NGO sector; Oxfam, represented the development NGO sector, and finally BEUC represented the consumer's protection organizations.

[70] The rest of the business networks were: the European Round Table of Industrials, a structure composed of a number of European industries; Eurocadres/CEC representing professional and managerial staff; Eurochambers, representing European Chambers of Commerce and industry; Eurocommerce, representing various associations of commerce of the EC; and World Business Council on Sustainable Development, a business initiative which aims to promote sustainable development.

were "not really representative" organizations but rather "clubs" of enterprises or organizations.[71]

The structure of the Forum was three-tiered. It was composed of: 1) four thematic round tables (sort of working groups) dealing with particular aspects of the CSR dossier; [72] 2) four plenary sessions or "high level meetings", scheduled between 2003 and 2004 where deliberations took place with a view to taking stock of progress achieved in the thematic tables in each of the selected areas; 3) A Coordinating Committee, which, carried out the most administrative tasks of the Forum. The Committee was composed of representatives from the Commission and from the participant members and was responsible for the organization of the Forum's "high-level" meetings and round tables.[73] Finally, the Forum attributed to a number of European institutions and international organisations the status of observer organisation.[74]

During a final high-level meeting in 29 June 2004, an 18-pages Final report was put together by the Coordinating Committee. The Report summarized the main findings, and urged the Commission to use this document as a joint proposal with a view to deciding on further steps on the issue of CSR (Final Results and Recommendations, 2004: 18). The

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[71] "The issue of represenativeness of NGOs can be resumed in the question often raised "who are you?" As far as we are concerned we have chosen the NGOs with which we are dealing today, on the basis of their reputation. Therefore we are working with Oxfam and Amnesty international but not with Transparency international since this NGO is less well known, established and structured. One has to underline however that so far there is no umbrella NGO talking on behalf of all the Human Rights NGOs or representing the different aspects of human rights; contrary to unions and employers that are able to talk on behalf of all their constituents" (Be, interview, 2003).

[72] , i.,e., a) "improving knowledge" and "exchanging experience" about CSR; b) promoting CSR among SMEs; c) "diversity, convergence and transparency" of CSR practices and tools; d) development aspects of CSR.

[73] Two representatives nominated by ETUC coordinated the point of view of European trade unions. Two representatives nominated by UNICE, coordinated the viewpoint of European employers. Two representatives from the multinational business coalition, the CSR Europe, coordinated the viewpoint of business networks active in the field of CSR. Finally, two representatives nominated by the environmental protection platform NGOs the so-called "Green8" and by the Social Platform, coordinated the viewpoint of NGOs.

Finally, for each round table a Rapporteur was appointed to support the Co-ordination Committee in preparing Round Table meetings and to assist the work of the Round Table. The Rapporteur prepared a background paper before for each Round Table, drafted minutes during the round table and submitted to the members of the Round Table a summary report about its work (for more *see* Objectives, Composition and Administrative Aspects, MSH CSR Forum, October 2002; the reports are available on the site of the Forum).

[74] The European Parliament, the Council of the European Union, the Committee of the Regions, European Economic and Social Committee, the OECD, the ILO, the UNEP (UN Environmental Programme), the UN Global compact office, the ACP secretariat, the EUA (European University Association), and the EUROSIF (European Sustainable and Responsible Investment Forum).

It should be noted that one interviewee familiar with the establishment of the Forum observed that international organisations were included in the list of observers on the demand of civil society organisations, as a way to ensure coherence between already existing international legal instruments and the future EU CSR model (interview: Summer, 2003).

release of the document came not without controversy over its content for the reasons we tentatively depict below.

Perceptions on the Forum

The positions of the four constituencies regarding the CSR issue and the role and effectiveness of this participatory governance endeavour reflected the usual cleavages of associated with the CSR debate.

Broadly stated, business and enterprise organizations (UNICE, CEEP, UEAPME) viewed the CSR debate (and the Forum itself) as part of the European "sustainable development" strategy, as it encompassed simultaneously strong economic, environmental and social components. Thus, CSR is a matter which ought to be treated not "only in the presence of social partners" but rather, "in the largest possible assembly of actors" (e.g., interview: Walker, 2003). Above all, business and enterprise organizations stressed the voluntary nature of CSR, and the absence of a mandate by the Forum to work on the establishment of a regulatory framework. Already existing "soft" instruments at the international level (e.g., OECD Guidelines, the ILO declaration on multinationals) were more than sufficient in providing guidelines for the design and implementation of the CSR practices in the corporate sector. In their view, an additional EU instrument in this area would be not only superfluous but would tend to de-motivate and "stifle creativity and innovation among enterprises which drive the successful development of CSR."[75]

Consequently, before, during and even after the works of the Forum, business and employers' associations had been radically opposed to the idea of devising a possible regulatory EU CSR framework. For them (UNICE, CEEP and UEAMPE) any legislative effort to promote a European CSR model was "out of the question". Consequently, the CSR Forum was viewed at best as a possibility for the business sector to *exchange information* and *best practices,* demonstrate progress achieved in this field, and possibly contribute to inspiring other enterprises to adopt what they considered to be the most appropriate CSR scheme, on a case-by-case basis.

This seems to have been also the view of big business networks such as CSR Europe, the network of 60 multinational companies established to assist their members to

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[75] This position is consistent with the business approach to CSR which argues that in devising CSR initiatives one should, *first,* keep in mind that CSR is after all about self-regulation which (often) goes beyond existing practices and laws in the areas where production plants are located. S*econd,* take into consideration that the different sectors of activities, geographical, social and economic characteristics of each enterprise cannot afford a *one-size-fits-all* CSR strategy (e.g., Eurocommerce, Final High Level Meeting, Brussels, 29 June 2004; interview: Walke, 2003; Alain Woolf, CEEP, Final High level Meeting, Brussels, 29 June 2004).

mainstream CSR in the business world[76], but also of smaller business network associations such as Eurochambers:

> "By definition CSR is not stemming from regulatory measures and does not substitute them but is a voluntary commitment going beyond mandatory legal requirements" (Eurochambers: Arnando Abruzzi, 1st High Level Meeting, 26 October 2002).[77]

Within the corporate world, SMEs appeared in general to be the most reluctant towards the CSR concept as a whole, since –as they argued—CSR practices were de facto in place in the SME business environments because of the nature of the small and medium business and their usual proximity to people, communities and the grassroots which implicitly obliged them to behave in a "socially responsible manner." In this context, further "obligations" imposed to them by more explicit forms of CSR (e.g., involving the labour inspectorate in the monitoring of CSR initiatives), would expose them to unnecessary and often unbearable additional costs. In short, SMEs argued that their particularity of SMEs should be respected and the primary target of CSR should be big multinational companies and their global production systems (e.g., interview: Huemer et al., 2003). This has been especially the position of the UEAPME, the leading representative organization of SMEs and associated to UNICE. [78] Some SME business organizations such as Eurochambers (which holds a discourse rival to UNICE's) adopted even more radical views regarding CSR (and the CSR Forum), as an invention aimed to address "the issue of bad image of big businesses" (interview: Ambruzzini et al., 2003).[79]

Naturally, trade unions led by ETUC and all five civil society families (social, environmental, development, human rights, consumer) emphasized not only the value of certain CSR initiatives but also the need to de-privatize partially such initiatives in order to render them more efficient. The European unions argued (through ETUC) that self-regulatory initiatives were fragmented and far from sufficient for ensuring workable sustainable development practices. They suggested that the "states and the EU should

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[76] Curiously enough, not a single German multinational enterprise participates in this group. Most of them seem to have opted for alternative means of self-regulatory endeavours, such as Global Framework Agreements (for an analysis of these tools see, Bourque, s.d.).

[77] Nevertheless, there seems to be two minor differences between the approaches of CSR Europe and UNICE. First, while both support the voluntary nature of CSR, the former seems to be less reluctant to the discuss possibilities of "convergence" (interview: Wilson, 2003). As one observer of the Forum noticed, very surprisingly CSR Europe find itself playing a role of mediator between on the one hand UNICE and on the other hand unions and NGOs (Capron 2004: 2). In fact, as some interviewees observed, it would appear that the whole CSR debate at the EU level is led by CSR Europe, contrary to UNICE which has so far been less interested (the same applies between unions and NGOs, where NGOs seem to take the lead). This is certainly not unrelated to the fact that CSR Europe is funded by the Commission for implementing EU CSR programmes at national level (interview: Redigolo, 2003).

[78] Although not officially recognized as a European social partner at the EU level, the organisation is associated to UNICE.

[79] "[CSR] has been invented to address the issue of bad image of big businesses. CSR cannot be applied to SMEs as they a have a different agenda, perspective and means of action. Small businesses produce within local environments. We have already a responsible behaviour since the owner of a SME lives in that environment [so he doesn't want to deteriorate it] whereas big business live outside this environment [Nike for instance]" (interview: Ambruzzini et al., 2003).

step in" to protect effectively workers' and citizens' rights in the EU and the Third World. This could only be achieved through the adoption of a legally binding regulatory framework establishing –at least- minimum CSR standards convergence (including common monitoring practices), through the establishment of a European "reference" framework. Not surprisingly, this has also been the position of the NGO sector.

In sum while European unions and NGOs viewed the CSR notion and the Forum itself as part of the EU "governance" and "sustainable development" agendas which placed emphasis on the need for more private initiatives, they highlighted the need for some minimum EU legally binding guidelines to mitigate the "voluntary" nature of CSR and thus enhance its declared objective:

> "[ETUC] acknowledges that CSR needs to be the result of a voluntary process, and reaffirms that this voluntary commitment needs to be shaped by guidelines set at the European level. Without a framework, the voluntary approach is unacceptable. When a company opts to be socially responsible, it must do so within precisely defined guidelines […]. The requirement that CSR go beyond the law and existing rules does not mean that companies can opt for an "à la carte" approach to CSR focusing on certain social and environmental factors, while ignoring others" (see, Resolution adopted by the ETUC Executive Committee, Brussels 9-10 June 2004, available at: http://www.etuc.org/a/139)

This has been implicitly the main point of dissention between on the one hand, unions and NGOs, and on the other, business and employers' organizations. In that respect, the final report of the Forum was unequivocally disappointing for the unions and NGOs alike, since the "voluntary" approach triumphed. By and large, the Forum's recommendations appeared to have done nothing more than slightly expand on the titles of the themes which were meant to be examined by the Forum.[80] Recommendation 4 which calls for "increased exchange of experience between purchasers and suppliers in order to build capacities in sustainable supply chain management", gives the general tone of the Final Report.

With regard to the issue of the role of public authorities (EU and member states), the relevant recommendation (no.- 9) is particularly interesting. It calls on the EU and member States to consider and evaluate how to use "public funds" in the most responsible and effective manner for enhancing (voluntary) CSR. In addition, building on this oxymoron, it highlights the role of public authorities in creating "the right conditions for CSR", but fails to recommend specific ways on how this should be done. The sole reference to the need for a "co-ordinated *policy* approach" and "a legal framework", is confined to urging for the implementation of the open-ended goal of "sustainable development" enounced in Lisbon and the European Sustsible Development Strategy (supra) and does not go as far suggesting the harmonization of different CSR practices

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[80] The report mainly analyses a number of actions on which member States, the EU institutions the social partners, NGOs and business groups should focus. For instance, it puts forward recommendations such as "raising awareness" of the core values and principles embodied in reference international texts (recommendation 1); collecting, exchanging and disseminating information about CSR, conducting research so as "to improve knowledge about CSR" e.g., in the academia (recommendations 2-3); enhancing the capacity of Business "to understand and integrate" CSR in their activities (Recommendation 4); building the capacity of the "capacity builders" (sic recommendation 6).

under a common EU framework. The role of member States and EU institutions would consist of finding "the right combination of economic, environmental and social framework conditions" that should exist in order to "support sustainable growth and entrepreneurship, and the sustainable development of societies and economies", reflecting the most typical socially sustainable development/participatory governance practice (see, recommendation 7:1 in the Final Report, 2004: 14).

Overall, the employers' side seems to have been pleased with the outcomes of the Forum, since most of their demands were fulfilled. While "from an organizational and procedural point of view" they complained that the Forum was "unnecessarily complicated, complex and heavy", its assessment of the methodology and outcomes were very positive since the report achieved "the double objective set for the Forum", i.e., exchange of information on what motivates enterprises in adopting CSR practices and guidance by best practices, without going as far as establishing common guidelines for CSR. This was also the view of the platform of multinationals represented by CSR Europe and most business networks. Some business organizations (e.g., Eurochambers) expressed concerns about the "working methods and composition of the Forum" on the grounds that the representation of SMEs was not fully satisfactory, and that the outcomes of the Forum were insufficient in fully clarifying CSR and its effects (Eurochambers, Position Paper, May 2004).[81]

It is interesting to note that in general, it would appear that the actors which were the least attracted by the idea of adopting common guidelines or any legalistic approach in order to "harmonize" the "CSR market", had since the start been quite eager to "learn more" about the concept. They would have also been quite happy with having more organizations participate in the Forum if possible, so that the dialogue among stakeholders could be more informed (e.g., the financial sector, interview: Walke, 2003).

Another interesting trend of the Forum revealed during the field research was that despite the diametrically opposed positions among the four constituents (unions, employers, business networks, and NGOs), the interaction among them proved to be rather irenic. As far as the ETUC and UNICE were concerned, this attitude was explained by the fact that the representatives of the European social partners "have the habit of working together at the EU social dialogue level." Similar harmonious interaction was observed also between ETUC and the multinational representation of CSR Europe, which seemed to share "a rather positive energy" during the discussions. One interviewee attributed the low level of tensions between participants to the informal discussions which preceded each round table (interview: Redigolo, 2003). The same seems to have applied to the case of the Social Platform, which consciously adopted a non-confrontational stance during the whole debate despite its overall disappointment with the process and its outcomes (interview: Wilson, 2003).

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[81] "Despite the good progress made by the Forum in improving knowledge about CSR, Eurochambers stresses the need to know more about CSR and its effects." (Eurochambers, Position paper, May 2004)

The one NGO family which adopted a more agonistic stance during the debates but also after the release of the report, was the environmental NGO family, the G(8), composed of the most influential organizations in the EU environmental field.[82] The G8 expressed many concerns regarding the process and initially even threatened to withdraw from it (interview: Wilson, 2003). More specifically, the G8 protested vividly against some procedural issues and accused the Commission of being partial as to the selection of participants and agenda setting. These attacks were more or less explicitly directed against what was viewed by the G(8) as an intention of the Commission to alter the balance of power in favor of the business community (due to the introduction of the fourth constituency, i.e., the numerous business networks); the lack of sufficient funds; the absence of representation of affected communities from the third world (which at the end of the day are the ultimate target of CSR practices); and, last but not least, signs of interference on behalf of the Commission during the agenda setting of one working group (round table), so as to prevent discussions on the most sensible issue, i.e., public policy in the area of CSR. As one participant stated:

> "The procedures and membership of the Forum gave us cause for concern. Why had a new "stakeholder family" of business organizations been created, producing a structural imbalance in the Forum? Why were there so few resources available to bring representatives of affected communities in Southern countries to offer their experiences to the round tables? Why was the Commission resistant to discussion of public policy initiatives in the round tables?" (Duncan Mclaren, Final High Level Meeting, 29th June 2004)

The final report itself was not received without a certain frustration and protests on behalf of the civil society families. The document –of only 18 pages— came into light after six months of intensive work within the co-ordination committee, along with a certain confusion due to the fact that shortly after its official release, some NGO representatives contested the content of the report estimating that they had not been properly associated in its drafting (Capron, 2005: 2). Again, the most virulent attacks came mostly from the G8, which declared in that respect that:

> "[the report] did not fully reflect the richness of those debates [; it is] a flawed analysis and portrays an *unrealistic consensus* –a lowest denominator approach put forward by stakeholders. [The process] missed the opportunity to advance Europe's leadership on sustainable development […] We remain convinced that CSR could contribute to delivery of sustainable development, but only within a regulatory framework" (Green 8, Duncan McLaren, Final High Level Meeting, 29th June 2004)

Similar comments –albeit less fierce—came from the Social Platform:

> "We regret that the stakeholders have not been able to formulate together a coherent vision and ambition on the role of the EU in establishing a European framework for CSR, […] The social Platform accepts [nevertheless] this report as a fair record of deliberations of the Forum and in doing so hands the flame to the EU institutions" (Anne Sophie Parent, Final High Level Meeting, 29th June 2004)

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[82] Albeit, the least structured since their members, e.g., WWF, Greenpeace etc., already enjoy well-established connections with the Commission and don't need a more structured network (interview: Loprieno, 2003).

It is interesting to note that similar criticisms were raised also during the meetings of the Forum. Nevertheless, the above-mentioned irenic stance of its participants lasted until the end of the works of the Forum. While several NGOs felt that "listening to good practice" was sometimes a "waste of time" and considered exiting the Forum, they all remained in it. According to some interviewees, it seems that NGOs consciously decided to adopt a cooperative stance for a "strategic reason", i.e., in case the Forum failed to produce a joint proposal, their "good faith" during the process would be an additional proof that the Commission should "step in" and promote the regulatory route (e.g., a proposal for directive; Wilson, interview, 2003; Be, interview, 2003). This would be similar to what happens in the case of failure of social dialogue (e.g., the Works Councils mentioned above). As one of the fathers of the Forum confirmed:

> "We have never told them that "if you don't participate you will be penalized." However, NGOs, like the rest of participants, have no interest at all in being absent from the process, since they know that they will be obliged in any case, to accept a solution which will have been negotiated in their absence. In order to influence the debate one has to be there. The same applies to enterprises, which initially were very reluctant in participating. The worse thing that can happen to them is to be judged *par coutumas*. [For instance] it's the environmental NGOs that threaten to exit; but they are still there. Initially, they exercised a strong pressure but progressively they calmed down, when the engine started to function" (interview: Be, 2003).

In fact, during the initial phases of the Forum, the Commission was almost certain of the irenic effects that the strategy of inclusion of NGOs and business networks would produce, based on previous experience with the social partners:

> "one has to understand that this belongs to the regular evolution of things. It was exactly the same with unions before they become actors that participate in social dialogue in an institutionalized way. We are probably in front of a similar situation: the NGOs have so far been in the phase of protest and mobilization, therefore, when suddenly they are finding themselves at the negotiating table, they are somehow unconfrotable. […] As a clairvoyant person observed: "we have to give them some time before they get used to one another" (interview: Be, 2003)

Thus, besides the "strategic" element depicted by both NGOs and Commission members (linked to the above-mentioned "stick and carrot" expectation), the friendly climate endured also because of the frequent interaction among the participants during the workings of the Forum. This was confirmed by many interviewees arguing that the general feeling during the works of the forum was gradually transformed from one of general mistrust to one of general trust and cooperativeness, despite the frustrations resulting from the broadness and shallowness that characterized many meetings (see, Coalition of NGOs for CSR, letter to the Commission, June 2003). During the first meetings the trust between NGOs and the corporate sector was indeed very low. On the one hand, the management side was afraid that NGOs wanted to use the opportunity "to shut them down." On the other hand, NGOs thought that the corporate sector would use this opportunity for doing "green washing" and "name and fame." Gradually however, the frequent interactions among participants, contributed to decrease the initial tensions and mistrust. As one interviewee summed up the perception of many:

> "the pure human value of meeting and talking to each other and becoming familiar with the people involved, decreased mistrust" (interview: Summer, 2003).

In reality however, this irenic atmosphere was not as spontaneous as that. It seems that an agreement among participants shaping the terms of reference of the Forum ("Basic Rules") might have played a key role in that respect. This agreement emphasized that ""right vs. wrong" debates should be avoided and "name and shame"" would neither be encouraged, nor reported in the minutes of the meetings (European Multi-Stakeholder Forum on CSR, 2004a). In exchange, unions and NGOs were assured that there would be "no major publicity" of the Forum and that "name and fame" discussions would not be reported in the minutes of the meetings "so that the corporate sector doesn't use its participation as a way of improving its image" (interview: Summer, 2003). In addition, several provisions of the "Basic Rules", encouraged debates and exchange of information around case studies involving "partnerships" among stakeholders and highlighting success stories based on participatory and consensual approaches, rather than "bad practices" and tensions.

To this date, the only empirical study on the Forum and its outcomes confirms that, while this peaceful atmosphere within the Forum might have contributed to the conclusion of the Forum in time and without major difficulties it did not lead to having the views of NGOs sufficiently reflected in the Report. The latter did nothing more than highlight the huge diversity of practices and perceptions regarding CSR and putting forward some timid and vague recommendations. Overall, it was clearly dominated by "the business approach" and its content was "breathless" (Capron, 2005: 2-5). A major flaw of the process identified by the author has been, on the one hand, the absence of representatives from non-European countries (community-based organizations from the South), and on the other hand, the dominant method of the proceedings, i.e., exchange of good practices. Both these procedural characteristics proved to be overwhelmingly beneficial to the promotion of the business and Anglo-Saxon approach to CSR. Although this approach has certain merits, it ignores the particularities of other conceptions of CSR and the reality prevailing in other parts of the world, but also within Europe.[83] The NGOs found that there was not sufficient a focus on the <u>less</u> business-driven approaches to CSR and on "bad practices" as experienced by the communities hosting the production plants of these companies which apply CSR practices. This was regrettable since testimony from the South could have contributed to the clarification of the concept, its flaws, and possibly provided important information as to ways of assessing, improving and better monitoring these practices. In addition, while the notion of "sustainable development" –at the core of CSR—was used extremely often in the various reports (round tables and final), none of these reports provided any definition of this "notion hautement polymorphe". At the end of the day, the combination of the prevailing methods and the observed lack of conceptual clarity, might have contributed to the promotion of a one-sided conception of CSR, i.e., one privileging a "utilitarian" conception of the issue. According to the author, the Forum gave the impression that being socially responsible for an enterprise meant:

"faire son marché dans le rayon des instruments et des pratiques proposées en fonction des avantages et des incovenients que lui procurent chucun d'eux. L'idée de marché est d'ailleurs

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83 One of the consequences was that French speaking participants had troubles adjusting themselves to the imported concepts of "transparency", "responsibility" and "liability", terms with which the continental legal traditions are not familiar (Capron, 2004: 3-6).

très présente dans le texte: on la trouve notamment dans l'observation selon laquelle il est difficile de reconnaître dans le catalogue des recettes lesquelles sont les meilleures et à laquelle il est répondu qu'il faut faire confiance au marché qui saura faire le tri ! La RSE [responsabilité sociale de l'entreprise] est ainsi réduite à une question unique de choix d'instrumentation, corollaire (ou conséquence) de la négligence de conceptualisation" (ibid., 5).

In sum, while the Forum had the merit of identifying the great diversity which prevails in the "CSR market", it ignored the need for bringing some order into this area. It failed in other words to provide an articulation between legislative, industrial relations, entrepreneurial strategies advocated by the European civil society or even make specific proposals to the Commission. This led to a fragmentation of debates, composed of a succession of narratives, carefully selected so that tensions would remain low. This technique might have helped to avoid an "impasse" during the debates. However, it might have also contributed to an outcome which was <u>overwhelmingly</u> at the expense of the unions' and NGOs' agenda.

This is quite confusing to the eyes of any observer, since the decision to include civil society actors in this process (in addition to unions and employers' representatives), was taken on the grounds that during the open consultations that followed the release of the Green Paper on Corporate Social Responsibility (*supra*), the <u>bulk</u> of observations emanated precisely from civil society organisations responding to the invitation of the Commission for observations and comments, and in particular the five NGO families (social, consumers, environmental, human rights and development). [84] The opinion and expertise of civil society organizations was at that time described by the Commission to be key, as it would serve at "putting forward alternative solutions" to the dominant (voluntary) approach, and at directing the future regulatory action of the European Union in this area.[85] One could therefore reasonably raise the rhetorical question: how could it be possible that the approach of the majority of the participants in these debates (including the Commission) highlighting the crucial role of public authorities, became a marginal issue?

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[84] As one of the architects of the Forum stated at the time of the field research:

"it would be absurd to open a debate on CSR without civil society. NGOs have the technical capacity regarding certain practical aspects, for instance, those related to labels, codes of conduct etc. All these practices are followed more by the NGOs rather than other actors, like unions and employers. For them, these are new (practices) (interview: Be, 2003)

[85] "[The Commission] approached the CSR dossier under the angle of employment (c.f., for which it enjoys legal basis for action). We realized that other methods, more positive, must exist to manage the problems created by the restructuring of enterprises at the European level […] these new issues [i.e., CSR and sustainable development] necessitate dialogue among stakeholders, that is to say, a dialogue which goes beyond shareholders, and involves civil society and consumers. We have chosen to publish a Green Paper […] essentially because this area is relatively new for us. Not so <u>much the practice itself</u>, but mostly, <u>how to approach it from the point of view of public authority</u>. We knew that this concern should be part of the overall debate on European Governance, that is to say, the relations between the Union and European society" (interview: Be, 2003).

While the Commission has not yet made use of the outcomes of the Forum in order to undertake action in this area (following the anticipated stick and carrot method of "negotiate or else we legislate") it may reasonably be expected that the option to follow the regulatory route in the area of CSR is more remote for the Commission compared to the pre-Forum context, not only because of strong business lobbying against it, but also because the outcome of the "participatory process" did not add any legitimacy to this idea. The Forum might have contributed in other words to a) demonstrating that businesses are ferociously against non-voluntary CSR and b) effectively de-legitimizing the regulatory route on the basis of a joint report (i.e., "Final Results and Recommendations").

Participatory governance in the EU: Concluding remarks

To sum up, it appears that while unions and NGOs might have contributed to introducing the issue of CSR in the agenda of the European Union through lobbying and mobilization against what they perceived as "bad business practices", the creation of a participatory governance process to address this issue might have contributed to silencing rather than empowering "civil society's" voices and strengthening rather than mitigating the voluntary approach advocated by business. This seems to be due to a number of structural characteristics associated with this Forum, such as the absence of specific selection criteria and true "equality" among participants within this Forum. In turn, this seems to be related to the lack of a legal basis for "civil dialogue", the issue "representativeness and legitimacy" of the "newcomers" in policy design at the EU level (NGOs and business networks) which was often contested, and the terms of reference of the Forum with its emphasis on best practices. Under these conditions, the CSR Forum appeared to function as a "talk show" which was largely beneficial to one of the participants only, i.e., the business community and in fact have been harmful to the aspirations of the NGOs.

Interestingly, many civil society networks and NGOs active at the EU level, have raised similar concerns related to what was perceived as a tendency by EU participatory bodies to be influenced by the dominant pro-business approach, despite the numerous pro-regulation voices of civil society participants. A wide array of consultation Fora open to trans-national civil society's participation in order to address a variety of issues necessitating the balancing of social and economic objectives, have been established by the European Commission. These Fora, which in recent years meet regularly, seem to constitute the first steps towards what many describe as "civil dialogue" where concerned stakeholders from the private sector, the social partners, NGOs, and other interested parties, either discuss among them or are invited to consult with the relevant DG(s) of the Commission (interview: Sigmund, 2003).

Like the CSR Forum, these Fora are usually issue-specific and consensus-building oriented, but are far from being negotiation bodies able to produce binding agreements (interview: Rose, 2003). However, because possibilities for EU legal action in the social area are still very limited (due to the absence of solid treaty bases), they currently constitute *de facto* the only spaces where social policy may be discussed, and where the idea for further EU social regulation gradually mature.

Examples of Fora open to civil society participation may be found mainly in the context of the implementation of the 2001-2006 Action Programme on discrimination and the transposition of the relevant directive, [86] where the Commission is actively cooperating not only with the member States but also with trans-national civil society and the social partners but also in other areas (e.g., the *European Health Forum)*. [87]

Besides financing the activities of trans-national NGOs for project implementation, the Commission organises regular meetings with NGOs, social partners and national representatives to discuss policy design, implementation and assess the progress of implementation (interview: Nolan, 2003).

Interviews with trans-national NGOs involved in the above-mentioned participatory Fora at the EU level, highlighted concerns similar to those raised by the civil society participants of the European CSR Forum.[88] In sum, while their leaders

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[86] In the field of gender discrimination, for instance, an *Advisory Committee on Equal Opportunities for Men and Women* is a good illustration of the way European trans-national civil society is involved in the EU policy process.

This committee is convened by the Commission twice a year "to help the Commission *formulate and implement* Community measures" in the area of equal opportunities for women and men and "to encourage the *continuous exchange of information on experience*" gained and policies and measures undertaken in the fields in question between the Member States and the various actors involved."

It is composed of 40 members with a three-year renewable term of office. The seats are distributed as follows: a) One representative is appointed from each Member State by the respective Governments from among the officials of Ministries or Government Departments responsible at the national level for promoting equal opportunities; b) One representative is from each Member State appointed by the Commission from among the members of national committees or bodies specifically responsible for women's employment and/or equal opportunities; c) Five members representing employers' organisations at the Community level, and five members representing employees' organisations at the Community level, appointed by the Commission on the basis of a proposal from the social partners; and d) Two representatives of the European Women's Lobby (EWC) which attend the committee meetings as observers. See http://europa.eu.int/scadplus/leg/en/cha/c10919.htm

[87] This Forum brings together "stakeholders" representing the pharmaceutical industry, insurance sector, health practitioners, patients, unions, and NGOs, and meets periodically to "discuss" and "make contributions to EU health policy development", its implementation and the setting of priorities for action. The EU Health Forum officially serves as "an *information and consultation* mechanism to ensure that the aims of the Community's health strategy are made clear to the public and respond to their concerns" (interview: Rose, 2003). The Forum is a three-tiered participatory structure "aimed to exchange information and foster discussions among the health community in the widest sense".

It is composed: a) Open Forum, i.e., a platform for general exchange of information and for a discussion. This Forum is very participatory as it includes a broad range of groups and interested parties.; b) Health Policy Forum, where discussions of key policy areas are held among approximately 45 representatives of NGOs, patients, health professionals, unions, health service providers, health insurers, and the health industry; among them a platform of European health NGOs, the European Health Forum is very active; and c) Virtual Forum, "aimed to exchange information and foster discussions among the health community in the widest sense". See, http://europa.eu.int/comm/health/index_en.html

[88] Other interesting Fora where the not-for-profit/NGO sector can make a contribution to the socio-economy include for instance, the Consultative Committee for Co-operatives, Mutuals, Associations and Foundations which was formally established by the Commission in order "to advise on policy affecting

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believed in dialogue and remained engaged in them, they often expressed their disarray and frustration with these participatory structures mostly because they felt that the agenda setting of most of these bodies was disproportionately shaped by market rather than civil society actors. Lobbying, and when possible mobilization (usually led by unions or at best environmental NGOs—the only two actors that were observed to have some capacity of mobilization at the EU level), were seen as far more effective tools for promoting their objectives, possibly in combination with inclusion in participatory bodies for the purposes of "exchange of information".

The head of the European Women's Lobby (EWL), which is perceived to be one of the most influential and effective NGOs at the EU level (interview: Nolan, 2003) appeared to be very critical towards the EU institutions and the various participatory governance Fora, on the grounds of lack of transparency and genuine openness during policy design. In particular, the interviewee observed that while some mechanisms within the European Parliament and the Commission were in theory "rather open" and the EWL was very often invited in discussions on women's issues,[89] the corporate sector is always consulted "at the very early stages" of the policy process leading to the adoption of a Directive or a policy in general. Civil society organisations such as the EWL were often kept in the dark "until the last moment."[90] This situation could be easily resolved – according to her—if the Commission adopted a more transparent working methodology, and in particular, if a legal basis recognising and structuring civil dialogue at the EU level was introduced into the Treaty or the text of the Constitution (interview: McPhail, 2003).

Another influential European civil society organisation active in the area of public health, the European Public Health Alliance (EPHA), formulated similar comments and was equally critical towards EU Fora such as the Health Forum, where this organization participated. Above all, the interviewee contested the "legitimacy and effectiveness of the Forum" on the grounds that its participants were chosen through *ad hoc* and arbitrary criteria:

> "there is neither transparency nor represenativity criteria. It was launched in November 2001 with a lot of publicity! There is also a problem related to the ownership of the Forum: is this a Commission or an independent forum? EPHA and EPSU (c.f.: European Public Service Union) participate in this Forum and have already drafted a joint policy position paper (on public procurement), which was sent to the Directorate General. But, because there are no guidelines regarding participation, the forum's legitimacy is

the Social Economy"; the Framework Partnership Agreement concluded by ECHO (the EC Humanitarian Office) and more than 160 NGOs provides a loose forum for debating issues of mutual interest and a joint exam of humanitarian objectives and principles; or the agricultural advisory committees which have existed for 40 years "as a formal mechanism for regular and systematic consultation of NGOs and socio-professional organizations".

[89] "There is no difficulty to reach MEPs, the rapporteurs of the Committees etc. Actually they contact us! For example, this has been the case on the Employment Guidelines (c.f., European Employment Strategy) where the Employment Committee contacted us. But, even when we are not asked to provide an input, we do it anyway. The Commission too is rather open" (interview: Mc Phail 2003).¨

[90] In the case of a forthcoming Directive on gender equality for instance, (the first to be adopted outside the employment framework), the head of EWL deplored the fact that "not a single copy had been received by her NGO", contrary to the corporate sector which had full information on its content.

questionable. The forum has no feedback from the public. There is lovely talking great to have dialogue […] the Forum has not helped in advancing the issues discussed. It is important for reaching consensus. However, it does not deliver its mission. DG V puts too much importance in this Forum" (interview: Rose, 2003).

Along the same lines, another NGO network active under the broad scope of the European social inclusion strategy, the European Anti-Poverty Network (EAPN), also argued that while this organization might have contributed to shaping the EU strategy in the areas of poverty and social exclusion, it had not done so through participatory "civil dialogue" endeavours but rather through lobbying and political pressure.[91] The head of the EAPN explained that besides the Social Platform (EAPN is one of its members) which interact with the Commission, the EP, and the Council, his NGO and most of the trans-national NGOs in Europe, were "usually hand-picked by the EU institutions" to participate in policy design fora and implementation. The absence of specific guidelines regarding the choice of NGOs to participate in these fora, and in general, the absence of a legal basis for civil dialogue in the Treaties, had maintained the whole NGO sector very unprepared for participatory governance endeavours. On the contrary, had a more structured and frequent interaction between the EU and the NGO sector existed at the EU level, the appropriate signal to the NGOs could be sent to improve their level of coordination and effective participation.

Overall, very few interviewees referred enthusiastically to the variety of participatory Fora open to NGO input when asked to depict and assess the degree of openness of the EU vis-à-vis civil society.

It should also be noted that in the social field the main interlocutor between NGOs focusing on social issues and the EU institutions, was reported to be the Social Platform, the only representative NGO voice to enjoy a more or less structured relationship with the EU institutions for policy making reasons. Due to the fact that roughly 90% of the running costs of the Social Platform was provided by the Commission itself, and also because of the frequent contacts of the Platform members with the Commission for project implementation purposes, the Social Platform was perceived by most NGOs as the most direct way of participating in social policy design at the EU level and the most concrete illustration of "civil dialogue" (interview: Parent, 2003; Rose, 2003; Kenningham et al., 2003; Mc Phail; 2003). While from this point of view NGOs defined the EU as "increasingly open" vis-à-vis civil society's policy input, they all regretted that the EU had not been able to establish clear guidelines regarding the choice of the participants in these Fora, or to shape decisively the agenda setting of the participatory bodies. Unless membership in policy design bodies becomes less improvised and financial independence of the NGO sector improved, the de facto corporate influence on the EU would continue to prevail over the influence of the trans-national civil society sector inside these consultative Fora.

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[91] EAPN defined itself as a "lobby and political structure" aimed at promoting the interests of the poor at the EU level and monitoring the implementation of the national action plans on social inclusion so as to ensure that poverty is taken into account at all stages and at all levels of policy making.

Having said that, despite the dependence of NGOs on the Commission's funds for purposes of implementation (Nolan, interview, 2003; Rose, interview, 2003); the absence of a legal basis for civil dialogue; and the apparent "toothlessness" of available participatory Fora, trans-national NGOs' seemed to have a say in social policy design at the EU, sometimes quite decisively. While most interviewees from European NGOs reported that the above-mentioned issues were an obstacle to developing effectively policy activities, many observed at the same time that, in the past, it has been precisely trans-national NGO networks that had successfully pushed issues such as anti-discrimination, CSR, and social inclusion, in the agendas of EU institutions and member states (interviews: Nolal, 2003; Ionita, 2003; Farrell, 2003; Kennighamm, 2003; Be, 2003). This was attributed by practically all NGOs interviewed during the field research, to the effective combination of "lobbying" (at EU, Council, and member States levels) successful litigation, and some "mobilisation" activities taking the form of campaigns (led by European unions or environmental NGOs —reportedly, the only actors to have some capacity of mobilization at the EU level), with a view to "politicizing" some issues and including them in the agenda of the EU.

The general tone regarding the choice of lobbying as the most effective strategy of trans-national NGOs for influencing policy making was set by the European Public Health Alliance (EPHA). The head of EPHA argued that her organization's overall goal was "to promote public health awareness among consumers and policy makers". To promote this objective EPHA's main strategy was reported to be awareness-raising around public health and lobbying of the EU and the Member States "to make sure that health is in the EU agenda."[92] Therefore, the interviewee observed that in the absence of clear EU competence in the field of public health, EPHA's lobbying activity aimed at establishing an "appropriate legal basis". However, while waiting for this to happen, EPHA developed its lobbying activities around policy areas where the EU has a competence (e.g., the Common Agricultural Policy-CAP). In this context, EPHA's main policy function would be to establish contacts with EP and Commission staff and to constantly raise the question: "What do you do to apply Article 152?" (e.g., in the context of CAP). Last but not least, while EPHA's lobbying activities were mostly aimed at putting pressure on the European institutions to "push forward the EU social agenda," the member states also constituted lobbying targets in particular when it came to pushing for the implementation of measures agreed at the EU level (interview: Rose, 2003).

Interestingly enough, EPHA but also a number of other NGOs based in Brussels noted that on numerous occasions NGOs lobbying capacity had been used by EU staff and MEPs in order to "expose recalcitrant states to public opinion criticism" for not applying EC law or for being too slow in negotiations aimed to expand the scope of the EU public health agenda (an interviewee provided the example of a country where progress regarding EU tobacco and alcohol was very slow). NGO lobbying was often perceived as a means of either putting pressure on the European institutions to "push

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[92] It should be noted that while the Amsterdam Treaty mentions that the EU "should ensure a high level of health care in all Community policy" (Article 152), until recently health was still a matter of national competence and not European.

forward the EU social agenda" or on the member states to implement at the national level what had already been agreed upon at the EU level.[93]

For the majority of trans-national NGOs, lobbying was perceived to be the least expensive strategy, especially in a context of insufficient European societal mobilization. The latter was reported to be the "most expensive strategy" since at the EU level it was not yet "spontaneous" and could be afforded only by a small number of well-established EU NGOs, in particular the environmental NGO sector and –occasionally- ETUC (interviews: Loprieno, 2003; Rose, 2003; Summer, 2003). Because social mobilization was rare, NGOs seemed to think that acting as "special interest groups" and developing their "personal connections with MEPs and the Commission", was the only viable alternative for promoting their agenda. This was related to the fact that issue-specific social causes mobilised very targeted and often very "weak" constituencies (e.g., gay and lesbian, disabled people, etc.), as opposed to issues like environmental protection and labour rights, described to be "more appealing to the European public" at large.

Consequently, in the absence of European societal mobilization, the rights of weak constituencies were perceived to be *de facto* better promoted through "discreet lobbying" (with the assistance of sympathetic MEPs and EU Commission staff) and far less—if at all—through participatory governance. At the EU level, rarely would trans-national NGOs be willing or able to mobilise people for the reasons depicted above. A notable exception was reported to be that of trans-national environmental NGO sector which was well-endowed in terms of human and financial resources, and for which more "confrontational politics" were seen as a major strategy for promoting their agenda along with cooperation with the EU institutions through participatory governance (interview: Loprieno, 2003; Rose, 2003; Summer, 2003). Maybe this could also explain why most interviewees perceived environmental NGOs to be the most successful civil society sector at the EU level, after that of trade unions.

Overall Conclusion

The present paper concludes the theoretical and empirical exploration of the phenomenon of civil society's participation in formal structures for the promotion of socially sustainable development objectives. It extrapolates from the findings of the field

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[93] Another example of the role of trans-national NGOs in the follow up to the implementation and transposition of EU legislation at the national level is provided by the action of European Network Against Racism (ENAR), a network of over 600 organisations combating racism and promoting equal treatment, which assists national states or puts pressure on them, to implement the "Race Equality Directive." However, like many trans-national NGOs, ENAR has recently condemned "the failure of most EU Member States to fully comply with their legal obligation to transpose into their national legislation," by 19th July 2003 this Directive and the fact that most of the member states have excluded the NGO sector from the design of national legislation on anti-discrimination. (See, ENAR Press Release, of on Combating Racial Discrimination: bad Score in Europe," 7 July 2003.)

research conducted in South Africa and the European Union in order to make some general propositions. It also addresses some related wider issues like the appropriate safeguards that might surround civil society's participation in formal governance structures in order to avoid the risk of capture in this context and the relationship between participatory governance and more traditional forms of democratic representation. An examination of these questions is all the more important as participatory governance constitutes today a privileged approach to the regulation of the socioeconomy not only at the national but also at the regional (EU) and international level (e.g., IFIs through the PRSP process).

The advantages and drawbacks of civil society's participation

The field research in South Africa and the European Union revealed that (as the proponents of the participatory approach to civil society seem to predict), a policy process which directly involves citizens and their civil society organisations in participatory processes (on a so-called multi-"stakeholder" basis) enhances trust among the participants and serves to legitimise the recommendations and decisions taken in the eyes of public opinion.

In South Africa, contrary to what happened before the establishment of the participatory processes under examination, policy actors now reportedly have an incentive to avoid free riding and adopt a less confrontational or critical stance. As a result, the relationship between civil society organisations and the rest of the policy actors (state and social partners) has increasingly become one of cooperation and mutual understanding at the national level (the study focused on the national as opposed to the community or local level).[94]

More specifically, in NEDLAC, the organisations which compose the community constituency and were until recently very vocal (e.g., the civics which were responsible of numerous civil disobedience campaigns in townships), represent today even-tempered actors, even in light of the adoption of the liberal macroeconomic framework of GEAR which largely runs against the interests of their constituents (e.g., Heller and Ntlokunkulu, 2001). Similar dynamics have been identified in other examined processes.

It was also observed that civil society could influence public policy through lobbying, protest, mobilisation and awareness-raising that target policy- and law-makers as well as the wider public. Thus, it may be said that another form of "participation" can and often does take place outside participatory fora in the form of a "social movement." The field research has shown that this action, which does not constitute the focus of participatory policy making theories, can be very effective in promoting the objectives of the constituencies it represents. It was also observed that when some of the above-mentioned civil society organisations joined in participatory processes, they were largely unable to effectively promote the objectives if their constituencies.

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[94] There are indications that at community or local level civil society appears to be more critical (Heller and Ntlokunkulu, 2001).

Similar dynamics could be observed in the European Union participatory governance endevours, where the European civil society participants were observed to perform more effectively outside rather than inside participatory structures such as the MSH CSR Forum. At best, "European" NGOs might have contributed to creating the "momentum for EU action" in the area of CSR (interview: Nolan, 2003) and this against the background of the Seattle and Genoa demonstrations (interview: Be, 2003). The outcome of the participatory processes, including the CSR Forum, might have in fact contributed to strengthening the approach of the business and employers' associations and multinational enterprises.

The question arises therefore whether participation of civil society in participatory fora is after all to its advantage as well as the benefit of promoting "socially sustainable development." While social peace is clearly one of the most positive and visible outcomes of participatory processes, it is far from clear whether "social justice" objectives can be better served by the same token. Based on the outcomes of the field research we consider that the active inclusion of civil society organisations, other than social partners, in such processes may be at the end of the day beneficial only under specific conditions. It might be equally important to empower civil society so as to maintain parallel action outside these processes, backed by relevant societal mobilization, with a view to avoiding "the risk of capture" (a risk which was highlighted by the Fora participants themselves).

Essential conditions for participation

Based on the findings of the field research conducted in South Africa and the EU we attempt below to identify certain general safeguards which may be useful in ensuring that civil society maintains its voice in participatory structures with a view to effectively promoting socially sustainable development. These interrelated conditions are: (1) authentic deliberation based on equality among participants; (2) compatibility between the ideological frameworks of the state (or public authority) bureaucracies and civil society; (3) the possibility to engage in political vs. technical discourses; (4) that legitimacy provision is not the sole outcome of deliberation and that such outcomes can include legally binding regulation

Authentic deliberation

Authenticity is "the degree to which democratic control is engaged through communication that encourages reflection upon preferences without coercion." It is a major precondition for effective deliberation and true democratisation. According to participatory governance theorists like Dryzek (2000), Bohman (1996), or Habermas (1996), this condition of "non-coercion" is only met, "to the degree that domination through the exercise of power, manipulation, indoctrination, propaganda, deception, expressions of mere self-interest, threats, and the imposition of ideological conformity (the "distorting agents") are all absent." These "distorting agents" tend to diminish only to "the extent of <u>equality in deliberative competence</u> across political actors" (Dryzek,

1996: 6-8). Thus, effective deliberation is conditioned by the free and unconstrained participation of equal individuals in <u>genuinely</u> representative decision making processes.

The empirical findings of the research lead us to believe that civil society actors do not enjoy equality in deliberative competence inside participatory processes. When joining these participatory governance structures, civil society should be conscious of the fact that participation often entails a certain internalisation of bureaucratic parameters and processes which are in turn shaped by systemic constraints (notably those stemming from the need to accommodate investors and capital markets to prevent capital flight). These systemic requirements are powerful, possibly to a larger degree than public opinion. The net outcome of participation might therefore naturally be an overall loss of civil society's vitality and capacity to shape policy, in particular, its capacity to introduce in the agenda of social policy-making bodies new themes and alternative strategies to promote solutions which often appear utopian to more traditional policy actors (even though sometimes reflect Constitutionally protected socio-economic rights, e.g., access to health care).

More specifically, civil society may be perceived as a weak partner due to lack of sufficient resources as its financing does not come from membership fees (with the exception of employers' and workers' organisations) but from unstable donor sources or the public authority. When participation in formal structures is combined with financing from the public authorities, civil society might naturally become more accommodating to the bureaucratic constraints, more inclined to adjust its discourse and strategies to the dominant paradigm, and more prone to abandon mobilisation outside the participatory processes. This can be a serious flaw when the dominant ideological framework of the public authority is not compatible with that of civil society. Under such conditions, the agenda of the participatory process as set by the bureaucracy is likely to be incompatible with that of civil society, while the latter may have largely lost its own capacity to promote its independent agenda through either deliberation inside, or mobilisation and protest outside the participatory process. Under such conditions, civil society's participation in formal policy processes is likely to become symbolic.

The voice of civil society can also be weakened when it has to prove its representativeness vis-à-vis its counterparts within participatory processes. The latter tend to measure their legitimacy through elections (for the public authorities) or membership (for employers' and workers' organisations). Civil society groups such as NGOs however, draw legitimacy not from the number of members or the aggregation of votes but from the reasonableness, fairness and ethical legitimacy of the message that they carry and its appeal to public opinion (interview: Ameel, 2003). Very often, civil society's action and discourse is addressed to a much wider section of the public than the actual number of its members. Therefore, the "audience" of civil society cannot be measured with accuracy and may vary from time to time. Asking civil society to prove its

legitimacy in terms of representativeness places on it an impossible burden of proof and weakens its voice within participatory structures.[95]

Parallel action in the form of protest and mobilisation in extra institutional arenas (such as Courts, the streets etc.), is essential in order to re-establish the "equality of deliberative competence" among participants within the process. Just like the right to strike is an essential safeguard to level the playing field between workers and employers in traditional collective bargaining structures (ILO, 1994[96]; ILO, 1996[97]), so extra-institutional action by social movements may be essential for a meaningful participation of civil society in participatory processes. This option may allow civil society to maintain its force and legitimacy by communicating with the public and shaping public opinion. It also may allow civil society to prove its representativeness by making concrete demonstrations of its mobilisation capacity. Thus, it may allow civil society to maintain the critical edge which is essential for the promotion not only of specific policies on socially sustainable development but for democracy itself.[98]

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[95] A related issue is how civil society organisations are selected for participation in these processes. The research has revealed that so far, there are not commonly accepted criteria and that the relevant decisions remain ad hoc and often contested.

[96] Paragraphs 147-148 read: ""the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers" […] The promotion and defence of workers' interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met."

[97] "474. The Committee has always recognized the right to strike by workers and their organisations as a legitimate means of defending their economic and social interests."

(See the Digest of 1985, para. 362.)

475. The right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests.

(See the Digest of 1985, para. 363.)"

[98] Dryzek (2002) argues that democratisation is largely (but not exclusively: scope and authenticity also matter) a matter of progressive recognition and inclusion of different groups in the political life. The pressure and movements for democratisation almost always originate in insurgency in civil society rather than the state; thus a flourishing civil society is key to democratisation. A flourishing in civil society is facilitated when the state is *passively exclusive* (e.g., corporatist states like Sweden); on the contrary an *actively inclusive* state corrodes the discursive vitality of civil society (e.g., Mexico; Eastern European countries in transition to democracy, and many other participatory democracy endeavours). In general, exclusions produced by any democratic model are the seeds for future and further democratisation of states. Inclusion is only benign, according to Dryzek, when a) the group's defining interest can be associated with an established or emerging state imperative; and b) the entry into the state does not "unduly deplete" the civil society left behind. Dryzek like Habermas puts the emphasis on the fact that nowadays securing the national attractiveness for international financial capital is among the core state imperatives and discourses like those of sustainable development are (rather unstable) compromises between this imperative and environmental protection or social justice imperatives. Dryzek,, 2002: 81-115.

Ideological compatibility/agenda setting

To a large extent, a weak position of civil society inside participatory processes might be intimately related to the technical (mostly economic) nature of the debates which are more often than not underpinned by the dominant ideological preferences of the public bureaucracy reflecting market-driven approaches. A related point is that civil society is also more often than not excluded from the crucial stage of setting the overall agenda of such processes which is largely conditioned by the dominant ideology within the bureaucracy. These ideologically-triggered priorities can constitute important barriers to civil society's effective participation as the latter may often lack the means and expertise to challenge these priorities on the basis of technical arguments within participatory processes. On the contrary, it can challenge these priorities outside the participatory structures in a more straightforward manner. Note that although civil society's action may remain symbolic in both cases, somehow symbolism outside participatory structures may have much more weight due to its resonance upon public opinion and the constituencies of civil society.

We may express our understanding of this issue in a general proposition by saying that in order to be able to distinguish between genuinely equal and unequal participation in participatory structures, one has to look at the hidden ideological domination which is depicted when: (a) there is little or no discussion about the goals of such processes/structures; (b) there is discussion about the means to achieve pre-determined goals; (c) when a) and b) constitute (implicitly or explicitly) a precondition in order to allow civil society actors entry into the participatory processes; and (d) when a) and b) do not reflect the interests of the constituencies that civil society represents and is supposed to serve.

In the section on South Africa we provided an illustration of how powerful the dominant liberal discourse can be, by describing the passage from RDP to GEAR policies setting the overall macroeconomic framework in this country.[99] Further examples can be identified not only at the national level but also at the level of international organisations. One case in point is the outcome of the Structural Adjustment Participatory Review Initiative (SAPRI) set up by the World Bank. As mentioned earlier (section 1) between 1997 and 2002, SAPRI involved the World Bank, a network of civil society organisations (the SAPRI Network) and seven participant states into a large participatory experiment aimed to improve lending and policy advice in the selected countries and assess how the participation of local, broad-based civil society could improve economic policy-making. Despite the initial good will and a fully-fledged participatory and transparent process at the national and international levels to assess the structural adjustment programmes, the outcomes of the process admittedly failed to influence the World Bank's policy agenda,

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[99] Often defined as a "home-grown structural adjustment programme", GEAR overshadowed the socially inspired RDP not as a result of a structural adjustment programme imposed by the IFIs or the decision of a participatory body (NEDLAC), but rather by the very same persons who were active members of the Communist Party or civil society organisations during the Apartheid (e.g., the Minister of Finance) in order to address investors' confidence issues. Despite the reported failure of GEAR "in terms of forecast," a return to the RDP strategy is a non-issue. This may be an indication of the force of the dominant discourse of market liberalism.

because they were critical of "structural adjustment and neo-liberal economics"(SAPRIN report, 2004). The World Bank maintained that despite the clear outcome of the process, "expert" opinion regarded pro-poor/state-led development polices as old fashioned and ineffective. This clearly indicates that the ideological framework within which any participatory structure can take place is non-negotiable and cannot be challenged as such (see also Weber, 2004). In other words, thinking "outside the box" may not be entirely acceptable and where it takes place, it may not give rise to any meaningful follow-up. In such cases, civil society might naturally consider that it cannot challenge the dominant ideological framework from within the participatory processes, and identify action outside them as the only remaining option.[100]

Similar interrogations appear to have been raised after the conclusion of the above described European Multi-Stakeholder Forum on Corporate Social Responsibility hosted by the European Commission. Although civil society participants were given the possibility to participate on an equal basis with the social partners in "negotiations" (interview: Be, 6 June 2003, Brussels) regarding the design of a European framework in the area of CSR, the final joint report was received with mixed feelings and confusion. Even though civil society participants were convinced that the Commission would eventually "step into" the debate (de-privitising CSR?) to play an important role in making CSR more efficient and credible and that the debates would lead in this direction, 20 months of "intense discussion" did not lead to concrete results –far from it. With the exception of some "significant"–yet anodyne— progress in some areas, the final report was largely "limited" reflecting "a number of the limitations of the Forum" itself. Civil society participants were disappointed to discover at the end of the process that what was really needed in order to advance the issue of CSR at the EU level was to tackle a wide range of issues that the Final Report omitted to address (Parent, 2004).[101] Again, the issue of the ideological framework and consequent political will is key in the context of ensuring a meaningful follow-up to participatory Fora.

In conditions in which the liberal discourse is dominant within the public authority, the participation of civil society in participatory structures is likely to be ineffective for the promotion of socially sustainable development objectives. Commentators like Dryzek (2000), argue precisely that the only case where civil society's inclusion in the state realm can be desirable for civil society (and successful for its constituencies) is when the agendas of the two realms are compatible.

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[100] As SAPRIN argued: "In past years, Wolfensohn and other Bank leaders have denounced demonstrators gathering outside their meetings as irresponsible and unwilling to listen, while arguing that 'in fact there are many serious organisations with whom we are having a continuous interface'. The SAPRIN organisations, many of which have been leaders in the protests, never accepted this division. Nevertheless, their work in the review shows that 'serious' attempts at constructive engagement have not convinced the World Bank to alter its behaviour, and that publicly denouncing the institution's illegitimacy remains the only option open to those hurt by its policies." http://www.saprin.org/NewInt-SAPRIN_mar04.htm

[101] "Mandatory social and environmental reporting", "disclosure of payments and lobbying to public authorities", "provision of comprehensive point of sale information about products and services, for companies over a certain size", and "common reporting standards for all companies".

Dryzek's suggestion seems to be confirmed by the example of one of the most successful participatory processes, namely, the Porto Alegre participatory budgeting process. Porto Alegre constitutes perhaps one of the rare exceptions where the (social) agenda of civil society truly fitted the agenda of the municipal government. The process indeed allowed individuals, CBOs, NGOs and all sorts of grassroots movements to discuss in order not only to set the "means", but also the overall framework and the "goals" of the (urban development and recently education and health) policies in question (Gret et Sintomer, 2002: 28). The success of the process appears to be linked to the common understanding of the policy priorities (such as corruption, the big construction projects vs. projects improving the everyday life of poor people) and most importantly, the common ideological framework. Indeed, the relevant literature tends to explain its success by the fact that the active participation of previously excluded groups ("dominated groups" like the women, the youth, and the poor) in the design of the policy agenda, could have never taken place had the (municipal) state not adopted a pro-poor and redistribution-oriented policy (Gret et Sintomer, 2002: 75; Baiocchi, 2003).

This confirms that civil society should have confidence in participatory processes when its ideological framework is compatible with that of the public authorities. Otherwise, the parallel extra-institutional action and social mobilization maintains its particular relevance.

Political vs. technical discourse

The findings of the field research in South Africa and Brussels indicate that taking part in participatory processes requires technical knowledge and human and financial resources which civil society normally does not possess. While contributing to the creation of an information-rich discussion environment because of its proximity to the grassroots, civil society is often unable to provide quality technical input due to its overwhelming dependency on largely insufficient state and private donors' resources. Moreover, its potential contribution might be mitigated by its human rights-oriented discourse which does not find its place within processes focusing on the technical aspects (mostly economic) of policy making. Indeed, the basic political and human rights dimensions of the socially sustainable development issues which civil society aims to defend are naturally downplayed within technical bodies. Civil society risks being trapped into slow and unproductive debates as a result. In sum, civil society's discourse is value-based and contributes information from the grassroots while participatory processes tend to rely mostly on technical input and analyses. Thus, civil society's discourse might often be discredited because it is solely political or value-driven and not sufficiently technical.

As civil society is unable to participate on an equal basis in technical debates it might not be able to sufficiently emphasise the political dimension of the issues under discussion in order to contest certain policy choices. Often, a (political) discussion of the wider policy goals may not even be part of the agenda. Thus, its opposition power is

likely to be depleted and its voice effectively silenced. Civil society might naturally end up feeling captured.

Civil society's effectiveness might also be mitigated by the slowness which naturally characterises any participatory process based on consensus building. For example, in South Africa slowness in reaching consensus within SANAC over the implementation of a treatment plan for HIV/AIDS has delayed the latter's application despite five million infected people.[102] This area is a striking example of how the effectiveness or otherwise of participatory structures can have a real influence on the implementation of the substantive core elements of socially sustainable development, namely, inter- and intra- generational equity and sustainability. The implementation of a national treatment plan in order to prevent mother-to-child transmission for instance, would have literally promoted inter-generational equity by preventing this terrible disease from spreading to future generations. However, the slowness of the participatory process in implementing the treatment plan appears to weaken and in any case does not promote the prospect of eventually turning the political discourse of socially sustainable development into a practical reality in the area of health care.

Similarly, in the EU, after more than four years of discussions and consultations, the CSR process seems to be "back to square one", despite the fact that (reportedly) certain communities in the South criticize CSR practices as hypocrisy.

Often the slowness of the processes can be attributed to the need to build consensus among a wide range of participants. In all the above-mentioned examples, the participatory process created to produce issue-specific policy recommendations were transformed into endless discussions around definitional issues (e.g., what is a good therapy for AIDS or what constitutes child labour or what is CSR) especially in the light of technical and economic considerations. Because "poverty alleviation" and other similar "lowest common denominators" are the only platform that readily gathers consensus among all participants, the only issue-specific policy outcome of the Fora focus on non-polemical issues (e.g., the prevention of HIV/AIDS and the developmental aspects of child labour, exchange of best practices in the area of CSR). However, in our view, lowest common denominators can address urgent issues only indirectly and in the long term and certainly do not enable civil society to address the immediate needs of its constituents.

One way to avoid standstills based on the need to build consensus would be to provide for a vote in case the members of a participatory body fail to agree within a certain period of time. It is our understanding that such an option would be contrary to the underlying assumptions of participatory processes which reflect an implicit shift from representative democracy based on vote aggregation towards participatory democracy based on "deliberation". However, although such a shift might have been a welcome development, it might not be a realistic prospect in practice because as we explain later

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[102] According to the National HIV and Syphilis Antenatal Sero-prevalence Survey 2003, it is estimated that 5.6 million people (a rise of 300,000 compared to the 2002 estimates) were living with HIV at the end of 2002 (Department of Health, 2004: 10).

on, the participants in participatory processes are more likely to engage in traditional-style negotiations rather than deliberation. Under such conditions, the possibility to have recourse to a vote might provide an effective way to avoid standstills. It would of course raise further complicated questions about vote weighting, the selection of participants and in general, the overall design of the participatory structure.

Another form of deliberation – which is more "agonistic" and less formal compared to a "gentlemen's club" consensus (Dryzek, 1996) – exists and at times seems to be successful in influencing not only policy, but also law making in South Africa and the EU. This form of action fits within an understanding of "participatory democracy" where participation (and deliberation) is not an attribute of particular consensus-generating debates, but a systemic characteristic of a well-functioning democracy (Baccaro and Papadakis, 2004:7). It takes place in a myriad of spaces –the Habermasian public sphere – and tends to influence the (public) political opinion formation sphere, rather than the (state) will – formation sphere. According to this approach, civil society in post-traditional societies serves to distil and transmit the reactions of the public towards global societal problems to the public sphere (Habermas, 1996: 28; Dryzek, 2001: 25). It thus helps to institutionalise problem-solving discourses on questions of general interest inside the framework of an organised public sphere and thus influences policy and law. But at the same time civil society is not (and should not be) assimilated to the decision-making process similar to these examined above, which should be specialised in law making.

As Habermas notes:

"[Civil society's] initiatives are intended to produce a broad shift in public opinion, to alter the parameters of organised political will-formation, and to exert pressure on parliaments, courts, and administrations in favour of specific policies…Within the boundaries of the public sphere, or at least a liberal public sphere, actors can acquire only influence, not political power…Public influence is transformed into communicative power only after it passes through the filters of the institutionalised procedures of democratic opinion- and will-formation and enters through parliamentary debates into legitimate law making…To generate political power, the influence of [informal public discources] must have an effect on the democratically elected assemblies and assume an authorized form in formal decisions" (Habermas, 1996: 371-2).

In conclusion, one may suggest, that by maintaining the option to undertake action outside public authority-established bodies, which has traditionally been its main area of action, civil society is more likely to preserve political dialogue on alternative ways to address important questions linked to the socio-economic effects of globalisation. Civil society should therefore preserve the possibility of combining participation in formal structures with mobilisation outside these structures, often taking the form of a "social movement" rather than that of an "NGO".

The importance of the existence of a vibrant social movement parallel to the paricipation of civil society inside participatory processes can be illustrated through the examples of the Soweto Electricity Crisis Committee, the Financial Sector Campaign Coalition etc. (*supra*), but also the (more rare) examples of the action of European environmental and human rights Platforms which in the past created the impetus for

introducing the issue of CSR, non-discrimination and sustainable development in the agenda of the EU. These examples demonstrate that civil society can promote more effectively the rights and interests of its constituencies inside participatory processes when it backed up by strong societal mobilization acting outside these processes through more agonistic means. This seems to be an effective way to balance the dominance of the liberal ideological framework with the voice of the grassroots.

Legitimacy provision vs. legally binding outcomes

One of the most important characteristics of participatory processes is their relationship to law. Participatory processes are put in place essentially in order to adopt or implement some type of "soft" social regulation addressing novel facets of globalisation. These participatory structures rely on an emerging model of social regulation which is voluntary, non-binding and permissive. It is based on a participatory vision of civil society which tends to privilege self-regulatory voluntary outcomes and is founded on the assumption of the primacy of the will of the grass-roots in identifying, formulating and monitoring rules that concern them directly. The key idea is that non-state actors are given the responsibility to develop and implement their own solutions to issue-specific areas in a face-to-face transparent and information-rich environment. This model tends to replace the hitherto dominant top-down regulatory model, which involves binding legislation. In these structures, civil society and public authorities tend therefore to become part of a single regulatory framework. The underlying idea is that since the state (and law as an emanation thereof) might fail to address effectively the re-balancing of interests that has become necessary due to globalisation, and its legitimacy might suffer as a consequence, other actors, namely, non-state actors, should join in and indeed assist the bureaucracy within this process. These non-state actors often include non-traditional civil society actors like CBOs and NGOs, in addition to workers' and employers' organisations (the traditional non-state actors).[103]

While not binding, the final outcome of such processes is supposed to have been decided in an "open, free and unconstrained way" (Dryzek's authenticity), prior to becoming a "soft" obligation among the participants. The latter, either use it as a basic document upon which to develop self-regulated activities, or transmit it to the relevant public authority (e.g., European Commission) which in turn may transform it into hard regulation. In sum, the outcomes of these participatory processes are permissive rather than prescriptive. They serve either to promote self-regulation, or legitimise the public authority's possible future policy and law.

Thus, the participants in such structures including civil society bring in the policy process not only their experience and first-hand information, but also legitimacy.

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[103] The debate is ongoing. Recently, the Report of the World Commission on the Social Dimension of Globalization (under the auspices of the ILO) entitled *A Fair Globalisation: Creating Opportunities for All* (WCSDG, 2004), emphasised the need to regulate globalisation through the involvement of global civil society networks; the same suggestion is included in the follow-up response to this report by the European Commission which praises stakeholder governance in the field of "socially sustainable globalisation" (European Commission, 2004b).

Contrary to older models of social dialogue where employers' and workers' associations bargain in order to come up with binding collective agreements, here, a wide range of participants is "consulted" (or deliberates) with a view to coming up with a common understanding of the issue in debate, and adopting the most reasonable solution. This solution is vested with legitimacy in the eyes of the public because it has the "seal" of civil society including the social partners in addition to public authorities. Thus, civil society may be instrumental in providing or removing legitimacy from certain processes or policy choices.

However, when acting inside participatory processes civil society is likely to vest the dominant policy choices with legitimacy without tangible guarantees that its own agenda will be promoted (especially where its voice is weakened for the reasons explained above). Such guarantees would involve notably the adoption of legislation accompanied by effective accountability mechanisms. Civil society's participation might therefore become counterproductive if it serves only to legitimise the decisions of technical bodies which civil society cannot effectively influence from within.

To use the European experience in this area, in no case did civil society's participation produce binding law (hard legislation) or even generate a policy or an agreement with some legal effects (soft law). Quite the opposite, participatory fora such as the MSH Forum seemed in fact to have a meagre record in designing, reinforcing, or implementing existing law. The adoption of legal instruments related to socially sustainable development has been progressively excluded as an unrealistic option since the establishment of the participatory process. In this context some might perceive civil society organisations as legitimacy providers.

On the contrary, some interviewed policy makers argued that the mobilization of civil society, usually outside participatory processes, in the form of lobbying, protest, awareness-raising campaigns, civil disobedience, the lodging of legal proceedings etc., has influenced public opinion and in turn the public authority's willingness to adopt the regulatory route.

This has been the case, for instance, in the field of labour legislation in South Africa where the civil society sector was reportedly one of the major actors to have influenced the state in adopting, between 1995 and 1998, one of the most progressive legislations in the world on this issue (Constitution, Basic Conditions of Employment Act). It has also been the case with NEDLAC, which was created after the mobilisation of trade unions and civics. It has been the case with HIV/AIDS treatment legislation (Operational Plan), which was adopted largely due to continuing civil disobedience campaigns and litigation by TAC. It is precisely this form of contestation that seems to be able to shape at least parts of the agenda related to socially sustainable development often associated to basic human rights issues. In the European Union civil society's mobilisation and lobbying were reportedly instrumental in "creating the momentum" for introducing anti-discrimination in the EU Treaties (EU Commission, 2004: 5; interview: Nolan, 3 June 2003, Brussels).

Deliberation vs. negotiation

The decision making processes and new regulatory framework in which an increasing range of civil society actors is encouraged to participate, are built upon a set of assumptions which differ sensibly from those applied in traditional processes of representative democracy (and the older model of social dialogue). Specifically, by being *participatory*, that is to say open to a wide range of civil society actors and their input, the novel structures in which socially sustainable development objectives tend to be promoted, are based on a model of *deliberation* over more traditional models of *negotiation* (or *aggregation of votes*) for achieving social coordination (Baccaro and Papadakis, 2004).

As mentioned earlier, in theory "negotiation" refers to the idea of the force of the <u>stronger</u> argument whereas "deliberation" refers to the idea of the force of the <u>better</u> argument. It appears however that participants in deliberative processes do not seem to conceive of their legitimacy in the same terms. Civil society (other than workers' and employers' organisations) appears to be the only participant which relies on the force of the better argument while the public authority as well as workers' and employers' organisations rely on the force of their representativeness through the number of votes or members. Thus, civil society other than workers' and employers' organisations, is the only participant geared to engage in deliberation while the other three are more prone to engage in traditional-style negotiations. This inevitably involves a weaker position for civil society vis-à-vis the other participants. This was clearly the case during the works of the CSR Forum, but also in the similar participatory endeavours depicted in South Africa, including the NEDLAC.

There are further reasons why participatory processes might rely in practice more on negotiation rather than deliberation (and by the same token weaken civil society's voice). In the first place, these fora seem to rely on consensus building while the relative power of the participants is, as already seen above, unequal. Under these conditions, the stronger parties are likely to prevail. In the second place, the usually urgent issues that they aim to address require a quick answer whereas genuine deliberation might take time. Finally, these issues may have a serious impact on the interests of various stakeholders who may have an incentive to use what negotiating power they possess in order to push their agenda forward.

In other words, decision-making in participatory fora may more often than not reflect "power-driven" rather than "reason-driven" dynamics which do not correspond to the usual underlying theoretical assumptions. In this respect, the findings seem to be compatible with the dissenting voices depicted at the outset.[104] This critique also resonates well with the analyses of social movement theorists who often point towards the downsides of "real utopia projects" (to use Fung's and Olin Wright's expression) and highlight the need for either a "radical reform, that is, make deliberation more democratic

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[104] The works of Benjamin Barber (1984), Seyla Benhabib (1996), David Miller (1992), Nancy Fraser (1992), and John S. Dryzek, (1992; 1996) point towards the same direction.

within these structures", or specify alternative venues for deliberation "in order to make democracy more deliberative" (Dryzek, 2000).

Another more practical proposal might be that if negotiation rather than deliberation is at the core of these participatory processes, this is an additional reason for civil society to maintain its parallel action in extra-institutional arenas and perform either as social movements or interest groups, so as to be able to take advantage of systemic dynamics through protest and mobilization and lobbying in addition to face-to-face deliberation. As in the case of social dialogue, this might enable the participants to engage in meaningful negotiation on an equal basis and profit from power-driven dynamics.

Deliberative vs. representative approach to civil society and democracy

Public participation as a core element of socially sustainable development seems to be based on a set of assumptions which perceive modern democracies as increasingly dysfunctional/incomplete or not yet fully functional (as in the case of the EU in the absence of a central authority). Such approaches have come as a response to what is seen as insufficient political accountability, the opacity of state-led decision-making structures, a limited understanding of peoples' needs by Parliaments, the insufficiency of periodic voting to ensure citizen involvement in public affairs, political exclusion, and in general the lack of credibility of representative democracy. The participatory trend constitutes an effort to boost democracy and improve policy making so as to make it more "sustainable" and more "legitimate." The popularity of such catch words as "partnership, "participation," "governance," etc. all evoke the need for a participatory style of policy making, which because of its inclusiveness, may generate better possibilities for effective decision making, improved credibility, efficiency and equity (or to use a sustainable development terminology, sustainability and inter- and intra-generational equity).

In practice, participatory democratic structures dealing with socially sustainable development seem to have anticipated the decline in power of traditional actors such as the state and the social partners, especially unions (but also to a certain extent employers' organisations representing national enterprises as opposed to global economic actors such as multinational companies), in addressing social issues which go beyond strictly labour matters (e.g. health, education, etc.). In the absence of a strong trade union movement, NGOs and CBOs increasingly become key allies of the social partners in decline; the public authority tends on its part to strike deals with non-traditional policy actors such as big business and NGOs, in order to boost the legitimacy of its policies which aim to find a balance among conflicting interests.

In sum, participatory democracy is called upon to progressively complement or replace traditional command-and-control representative democracy and social dialogue mechanisms. This appears to be a necessary complement to a nascent system, which finds

its impetus in globalisation or in other words, a necessary element for the legitimation of developments due to globalisation.[105]

Thus, broadly speaking, one may identify two alternative models to address the social consequences of globalisation. The one is to deepen representative democracy and its institutions (the state and the rule of law) in order to address the inequalities and adverse effects generated by globalization which create fundamental distributive problems. The other is to complement representative democracy processes with participatory democracy ones, thus largely substituting voting or bargaining with deliberation. This last option however, does not improve the capacity of the grassroots to challenge and reject predominant policies where they feel that such policies run against their interests. Put differently, if democracy in its aggregative traditional form theoretically allows the citizenry to vote down many policies linked to globalisation (e.g., deregulation of capital markets; restriction of migration; trade liberalization), participatory processes do not seem to accommodate such radical options. On the contrary, as already seen above, they seem to be geared towards protecting democracy from its own excesses by ensuring that debates take place within specific ideological confines.

This leads us to consider that the currently fashionable participatory approaches, risk to impede rather than pave the way towards the regulation of globalisation, at national or trans-national levels, contrary to what participatory public administration theories suggest. This does not augur well with the prospect of practically implementing and legally strengthening the discourse of socially sustainable development.

Despite the widespread perception that civil society might be equally and even more efficient than the state in promoting development tasks, there is no study to our knowledge proving the effectiveness of civil society in promoting development and more specifically, socially sustainable development objectives (e.g., Petras, 1999; Yamada, 1997; Baccaro, 2001), or proving the existence of any causal relationship between increased participation of civil society in formal participatory structures and an increase in the overall effectiveness of policy making (Verweij and Josling, 2003). On the contrary, certain studies appear to point in the opposite direction.[106] The empirical

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[105] This also applies in the context of state building. The role of civil society in granting or removing legitimation from the political will-formation sphere for instance, acquires an even greater importance in South Africa, the European Union and other countries and regions, which despite their differences, share a common characteristic: they have engaged in the building up of a liberal political culture and the transformation of the political sphere through the introduction of participatory processes (under the labels of "participatory democracy" "governance" "stakeholder partnership" etc.) in order to construct a collective identity which is free of bitter memories and which can promote peace and prosperity in a sustainable way.

[106] A certain development literature emphasises the less bright side of civil society groups in particular NGOs (e.g., Petras, 1999; Yamada, 1997; Baccaro, 2001). Petras (1999) highlights for instance how NGOs have become more preoccupied with their survival rather than bringing about social and economic change; they are becoming – so the commentator shows—more and more conservative in their strategies, less innovative than in the past, increasingly dependent on donors, and extremely competitive among them. Yamada (1997) provides perhaps one of the most structured comparisons between state

findings highlighted in the present research also do not seem to confirm the rapidly spreading argument that "excluding" civil society from formal policy structures (including international organisations) undermines democracy (e.g., Nanz and Steffek, 2004). On the contrary, they seem to confirm the teachings of post-modern approaches to civil society (reminiscent of the works of Habermas, Dryzek and social movement theorists), which relied on a fundamental <u>belief</u> in the virtues of a representative, liberal, democratic state even though they recognised its weaknesses and tried to address them. One of the teachings of these theories is that the downsides of representative democracy can hardly be addressed when civil society organisations act exclusively within the very same structures they are trying to fix.

Let us conclude by recalling the Apology of Socrates with regard to the role that "civil society" – as it is named today – should perform outside the state realm:

> "If I may use such a ludicrous figure of speech, [I] am a sort of gadfly, given to the state by God; and the state is a great and noble steed who is tardy in his motions owing to his very size, and requires to be stirred into life. I am that gadfly which God has attached to the state, and all day long and in all places am always fastening upon you, arousing and persuading and reproaching you. You will not easily find another like me, and therefore I would advise you to spare me […] Someone may wonder why I go about in private giving advice and busying myself with the concerns of others, but do not venture to come forward in public and advise the state. I will tell you why […] For I am certain, O men of Athens, that […] he who will really fight for the right, if he would live even for a little while, must have a private station and not a public one" (Plato, 1999: 30e-31a and 31d-32a).

NGOs' effectiveness in the field of development; he demonstrates that in Andra Pradesh, India, participants in governmental projects tended to benefit more than those in NGO projects, and that especially the poorest of the poor tended to be better off when targeted by governmental rather than NGO initiatives. A recent report of the World Bank's Operations Evaluation Department has concluded that no link could be established between the involvement of NGOs in development projects and project success (Verweij and Josling, 2003).

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Annex

I – Growth Employment and Redistribution (GEAR): forecast and actual rates

As the Table below shows, GEAR succeeded as a stabilisation programme but failed to reach its forecasted targets with regard to GDP and employment growth. The inflation and public deficit figures were at the end of the period (2000) lower than planned. On the contrary, GDP growth was half than the forecast. Employment growth was negative while it should have been 3 percent per annum according to plan. This can be explained in part by the very high real interest rates, linked to the need to attract foreign direct investment and protect the currency from speculative capital movements and capital flight.

Gear targets/actual rates

	1996	1997	1998	1999	2000	Average 1996-2000	
GDP growth	**3.5**	**2.9**	**3.8**	**4.9**	**6.1**	**4.24**	
(actual performance)	4.3	2.6	0.8	2	3.5	2.64	RBSA
Inflation	**8**	**9.7**	**8.1**	**7.7**	**7.6**	**8.22**	
(actual 2000=100)	7.3	7.7	5.8	5.2	5.4	6.28	RBSA
Employment growth (private)	**1.3**	**3**	**2.7**	**3.5**	**4.3**	**2.96**	
(actual)	-2.4	-2.5	-4.4	-1.8	-2.5	-2.72	RBSA
Real Wage growth (private)	**-0.5**	**1**	**1**	**1**	**1**	**0.7**	
(actual)	0.2	2.1	9.1	3	1.6	3.2	RBSA
Real Bank rate*	**7**	**5**	**4**	**3**	**3**	**4.4**	
(actual)	9.7	8.3	13.58	9.58	6.41	9.514	SAS
REER (change in)**	**-8.5**	**-0.3**	**0**	**0**	**0**	**-1.76**	
(actual)	-6.3	6.5	-9.2	-5.1	-2.9	-3.4	SAS
Fiscal deficit	**-5.1**	**-4**	**-3.5**	**-3**	**-3**	**-3.72**	
(actual)	-5.3	-5.2	-3.7	-2.2	-2.1	-3.7	RBSA

*Rate at which the Reserve Bank lends to banks minus the inflation rate.

**Real effective exchange rate from the South African Reserve Bank: a multilateral trade-weighted index for the real exchange rates of four trading partners (defined as the ratio of the wholesale price index to the nominal effective exchange rate index multiplied by the trading partners' wholesale price indices): weights redefined in August, 1995 (i.e., 1995=100)

source: various issues of Reserve Bank of South Africa (RBSA) Quarterly Bulletin; South Africa Survey (SAS) 2001-2002.

II- International NGO activity

The following table and graphic give the total number of international organization secretariats (headquarters) of international non-governmental organisations (INGOs) and internationally-oriented NGOs in the 20 countries in terms of number of secretariats for the year 2001 (plus percentages). Brussels, the centre of the EU public administration, clearly holds the leadership in INGO activity, followed by London, Paris and Washington D.C. and Geneva.

|	top 20		% Top 20
Brussels	1392	Brussels	25.1
London	807	London	14.5
Paris	729	Paris	13.1
Washington D.C.	487	Washington D.C.	8.8
Geneva	272	Geneva	4.9
Rome	228	Rome	4.1
Vienna	190	Vienna	3.4
Tokyo	174	Tokyo	3.1
Amsterdam	162	Amsterdam	2.9
Madrid	140	Madrid	2.5
Stockholm	133	Stockholm	2.4
Buenos Aires	110	Buenos Aires	1.9
Copenhagen	108	Copenhagen	1.9
Berlin	101	Berlin	1.8
Nairobi	100	Nairobi	1.8
Oslo	95	Oslo	1.7
Mexico City	87	Mexico City	1.5
Montreal	86	Montreal	1.5
New Delhi	65	New Delhi	1.1
Helsinki	65	Helsinki	1.1
Total	5531	Total	100
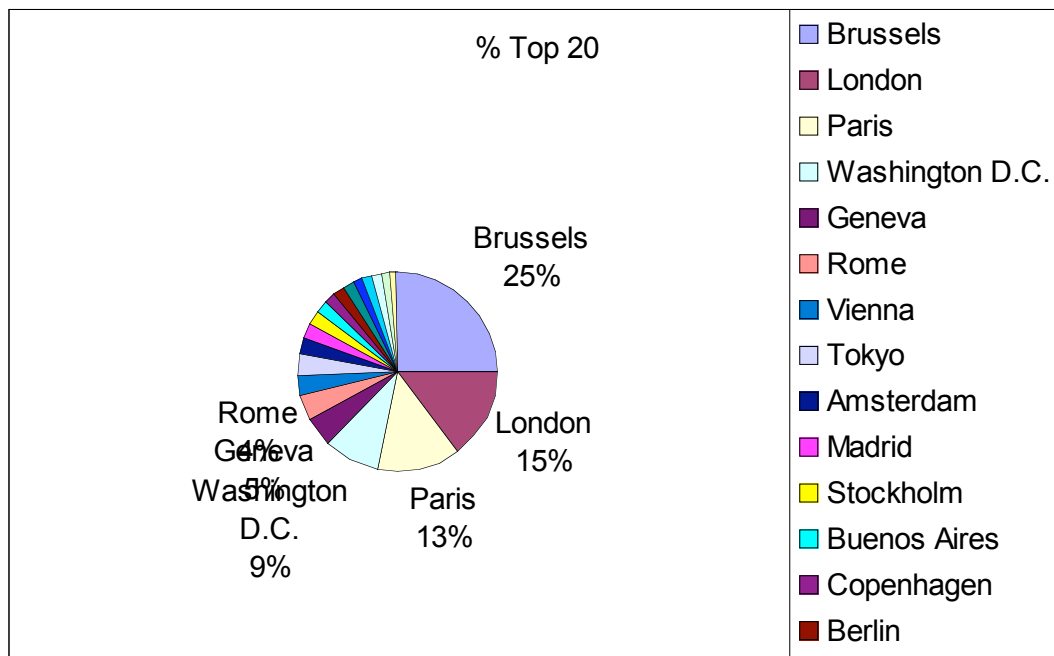
III- activities of international and internationally oriented NGOs in Belgium

On the basis of the International Classification of Nonprofit Organizations, the following table and graphic present data (percentage) indicating the main purpose of activities of international and internationally oriented NGOs in Belgium, for the 2000 and 2001 period. It should be noted that the classification does not reflect actual activities or expenditures of the organisations but only statements of intent. In addition there is no control for overlapping of activities. According to the data, "economic development infrastructure" (36.9%), corresponding to the main activity of the so-called "development NGOs", is by far the main policy focus of INGOs followed by activities like "research" (18.5%), "social services," (11.4%) and "policy, law and advocacy" (9.9%). Other policy areas, such as "education," "health," and "environment," are clearly less thriving among the agendas of these INGOs. These low percentages may be explained by the fact that issue-specific INGOs are fewer in these fields, albeit not necessarily less influential (e.g., 8 big Environmental NGOs like Green Peace dominate European environmental politics). *Prima facie*, data regarding the four most thriving INGO activities seem to depend on available EU funding. The first three activities, i.e., "economic development," "research" and "social services," are obviously a major focus of INGOs due to the availability of EU funding for purposes of implementation of EU policy and legislation in the field of trade and development (aid), research, and anti-discrimination and social inclusion. On the contrary, "Law, Policy and Advocacy," linked to lobbying and mobilisation activities for influencing national or international (including European) policy making, are rated by the INGOs as less thriving, something which is obviously due to the absence of legal basis for "civil dialogue" and the associated lack of funding by the EU for such activities.

Belgium

Purpose of activity of INGOs	% total
Culture and Education	4.2
Education	4.6
Research	18.5
Health	4.9
Social Services	11.4
Environment	3.1
Economic Development Infrastructure	36.9
Law, Policy and advocacy	9.9
Religion	2.5
Politics	3.4
TOTAL	100
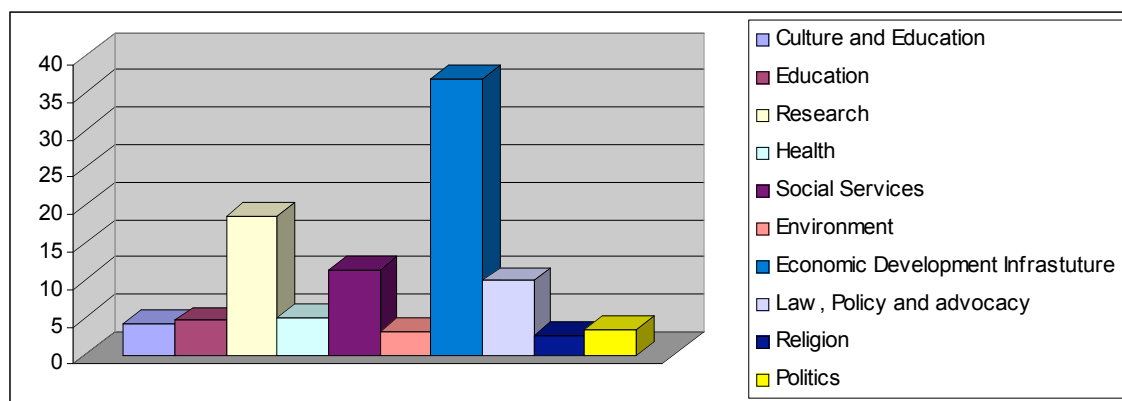
Source: Global Civil Society 2002, Oxford, Oxford University Press, 2002 and the Yearbook of International Organizations: Guide to Civil Society Networks, Brussels: Union of International Associations, 2001.