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# **Civil Society, Participatory Governance and Decent Work Objectives: The case of South Africa**

Konstantinos Papadakis

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***International Institute for Labour Studies***

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The case of South Africa***

***by Konstantinos Papadakis***

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## ***Acknowledgements***

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K. Papadakis  
International Institute for Labour Studies

August 2006

## ***Foreword***

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The ILO's constituency and governance structures are tripartite, engaging governments and organizations of workers and employers, and do not extend to other non-governmental organizations. But a wide variety of civil society organizations may contribute to the goals of the organization, autonomously or in partnership with the organizations represented within the ILO. It is therefore of great importance to better understand the roles which they can or do play at national or global levels, both in suggesting and promoting particular policy options, and as active participants in debates, dialogue and direct action.

The present study by Kostas Papadakis presents the findings of an in-depth research project carried out at the International Institute for Labour Studies from 2003 to 2005, designed to better understand how civil society organizations, working within participatory governance structures, may contribute to the goals of the ILO Decent Work agenda. The author examines the South African experience. Since the mid-1990s South Africa has become a centre of innovation in public policy making and implementation, and it is hard to find a country in either the developed or developing world that has gone further in the institutionalization of participatory policy-making processes in a range of different fields. This study focuses on three areas, all relevant to the decent work agenda: employment creation and poverty alleviation, health care and HIV-AIDS, and child labour, and examines the participatory processes set up at the national level in order to formulate and implement policies in these areas. It draws on both a literature review and the perceptions of key policy actors active in these three areas.

In general, policy actors, interviewed during a field study conducted in February-March 2002 and March 2005, considered that with few exceptions, civil society organizations included within participatory structures have not been able to maintain the vibrancy which they exhibited earlier in building the post-apartheid policy agenda. According to the interviewees, this could be explained in part by the absence of sufficient financial support from the state and other donors but also by the very participation of civil society groups in policy processes which rely on consensus-building and function within the framework of a market economy, which has tended to discourage a direct (human rights-based) approach to social

issues, where civil society organizations are particularly effective. A notable exception to this finding has been that of employers' and workers' organizations which are issue-specific, membership-based and endowed with clear representational mandates and expertise as well as an independent financial basis. The study also highlights the particular role performed by a number of social movements in influencing the functioning and outcomes of participatory governance structures, even if (or perhaps because) they operate outside such structures.

The study provides a detailed account of these issues in the context of the three policy areas noted above, and so contributes to an understanding of how synergy and complementarity between different social actors can be strengthened. It is part of a wider set of studies which examines these and related issues in Bangladesh, Brazil, Italy, Ireland, Sweden, and the European Union.

Gerry Rodgers  
*Director*  
*International Institute for Labour Studies*  
*August 2006*

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## ***Glossary***

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ACCESS:	Alliance for Children's Entitlement to Social Security
ANC:	African National Congress
ANCWL:	ANC Women's League
ANCYL:	ANC Youth League
APF:	Anti-Privatization Forum
BATNA:	Best Alternative To a Negotiated Agreement
BCEA:	Basic Conditions of Employment Act
BSA:	Business South Africa
BUSA:	Business Unity South Africa
CASE:	Community Agency for Social Enquiry
CBO:	Community Based Organisation
CCM:	Country-Coordinating Mechanism
CCMA:	Commission for Conciliation, Mediation and Arbitration
CLAP:	Child Labour Action Programme
CLAPIC:	Child Labour Action Programme Implementation Committee
CLIG:	Child Labour Intersectoral Group
CORE:	Cooperative for Research and Education
COSAS:	Congress of South Africa Students
COSATU:	Congress of South African Trade Union
CSOs:	Civil Society Organisations
DoH:	Department of Health
DOL:	Department of Labour
DTI:	Department of Trade and Industry
FSCC:	Financial Sector Campaign Coalition
GEAR:	Growth Employment and Redistribution
GDS:	Growth and Development Summit
HST:	Health System Trust
IFIs:	International Financial Institutions
IMC:	Inter-Ministerial Committee on AIDS
IPEC:	International Programme for the Elimination of Child Labour
LPM:	Landless People Movement
LRA:	Labour Relations Act
MLC:	Millennium Labour Council
MOU:	Memorandum of Understanding
NACL:	Network Against Child Labour

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NACOSA:	National AIDS Convention of South Africa
NAPWA:	National Association of People Living with AIDS
NCASA:	National Cooperatives Association of South Africa
NCRC:	National Children's Right Committee
NEDLAC:	National Economic and Labour Council
NP:	National Party
NPA:	National Programme of Action
NPO:	Non Profit Organisations Act
NPPHCN:	National Progressive Primary Health Care Network
NRDF:	National Rural Development Forum
NUM:	National Union of Mineworkers
OHCHR:	UN High Commissioner for Human Rights
ORC:	Office of the Rights of the Child
PAC:	Pan-Africanist Congress
PHCA:	Primary Health Care Approach
PHILA:	Public Health Interventions through Legislative Action
PHRC:	Provincial Health Restructuring Committee
RDP:	Reconstruction and Development Programme
SACBC:	Southern African Catholic Bishops' Conference
SACC:	South African Council of Churches
SACOB:	South African Chamber of Business
SACP:	South African Communist Party
SAHR:	South African Health Review
SAIC:	South African Indian Congress
SAIRR:	South African Institute for Race Relations
SANAC:	South African National Aids Council
SANCO:	South African National Civic Organisation
SANGOCO:	South African NGO Coalition
SAYC:	South African Federal Council on Disability, and the South African Youth Council
SAYP:	Survey of Activities of Young People in South Africa
SECC:	Soweto Electricity Crisis Committee
SETAS:	Sectoral Education and Training Activities
SMME:	Small, Medium and Micro Enterprise
STD:	Sexually Transmitted Diseases
TAC:	Treatment Action Campaign
TECL:	Towards the Elimination of Worse Forms of Child Labour
UDF:	United Democratic Front
UNAIDS:	Joint UN Programme on HIV/AIDS
UNCRC:	UN Committee on the Rights of the Child
WTO:	World Trade Organisation
WNC:	Women's National Coalition

*“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. The Apology of Socrates (translated by Benjamin Jowett): 31d-32a).*

## ***Introduction***

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The last few years have seen the emergence and proliferation of participatory forms of policy-making in many countries. Increasingly, a variety of social groups, both the social partners and other civil society organisations, are being involved in the design and implementation of public policy at various levels. As of the late 1980s, the discourse on sustainable development along with its associated practices – such as environmental impact assessments, new technology assessments, etc. – gradually put the notion of participation in the centre of policy making in an effort to ensure that the views and interests of all stakeholders are taken into account. The scope of participatory governance structures appears to have expanded considerably with the more or less explicit transition in the discourse on sustainable development from the sphere of environmental protection to that of social development (Papadakis, 2006). Today, under the auspices of various international organisations and major conferences, states are urged – notably through financial incentives – to put in place and utilise participatory processes in order to formulate and implement policies concerning a wide range of subjects, including issues which fall within the ILO decent work agenda (e.g., fundamental principles and rights at work, employment, social protection; ILO, 1999 and 2001), the UNDP human development agenda (e.g. human security, rights-based development; UNDP, 2003), or the World Bank “quality of growth” agenda (e.g., poverty alleviation; e.g., World Bank, 1989; 1997; 2000a and 2000b). Similar trends are observed in regional integration endeavours such as the European Union or recently the African Union (e.g., ECOSOCC, 2004).<sup>1</sup>

Participatory policy making is credited with equity, legitimacy and efficiency gains for it is expected to mitigate informational asymmetries during the decision making process and thereby minimize the risk of conflict and eliminate possible obstacles to policy implementation. This appears to have become a widespread view despite the lack of robust empirical evidence to support it (e.g., Baccaro, 2001; Papadopoulos, 2006).

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<sup>1</sup> For a recent account of the content of the four strategic objectives of the ILO’s Decent Work agenda, see Ghai, 2006.

It has therefore become increasingly difficult to make the case for a fair distribution of public goods, appropriate drafting of legislation, effective implementation of policies, and reception of funds linked to technical cooperation, foreign aid and investment, without showing some evidence of overt societal inclusion.

For some, this development might point to the emergence a “participatory governance entitlement” (by analogy with Franck, 1992).<sup>2</sup> In this context, the ILO tripartite model of representation, historically the first to have explicitly introduced public participation in the socio-economic policy sphere, appears more relevant than ever and seems to constitute a precursor of a more expanded “tripartite-plus” version encompassing a broad range of civil society organisations in addition to the social partners.

The present work provides an empirical case study on how civil society organisations and participatory governance structures may contribute to reaching the goals of the ILO’s decent work agenda. To do so we study the South African experience in this field. The choice of South Africa is related to the fact that since the mid 1990s this country has become a laboratory of innovation in the administration of public goods to the point that, to our knowledge, no country, in either the developed or developing world has gone further in the institutionalisation of participatory policy-making processes in a range of different fields.

The study focuses on three areas drawing on the decent work agenda, i.e., employment creation/poverty alleviation, health care/HIV/AIDS and the fight against child labour. It studies the participatory processes set up in South Africa (at the national level) in order to formulate and implement policies in the above areas. The research assesses first, how civil society organizations operating within the South African participatory governance environment have contributed to the formulation and adoption of policies in respect of employment, health care (HIV/AIDS) and child labour. Second, how social movements operating outside participatory governance structures influence the functioning of these structures and the policies developed within them.

As a preliminary matter, it is important to indicate that the underlying purpose of the present case study has been to develop a conceptual framework on participatory governance with a view to better promoting the decent work policy areas under review, rather than to test certain hypotheses or elucidate elements of a conceptual framework that had pre-

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<sup>2</sup> According to Franck (1992), a right to “democratic governance”, i.e., democratic and open elections, is emerging as the third most important right after those of “self-determination” and “freedom of expression”. The majority of governments increasingly perceive representative democracy and, implicitly, participatory governance, as something that benefits the government as much as the governed precisely because of its higher democratic legitimacy.

viously been developed. From this point of view, the approach has been agnostic and without *a priori* assumptions. At the same time however, the study also aspired to go beyond the hype, so as to complement the emerging literature on “participatory” or “deliberative” governance (largely based on unproven assumptions) with a study of the prevailing realities on the ground, as experienced by the very participants in these structures (social partners, other civil society organisations, and policy makers). This aim is reflected in the main methodological tool used for this research, i.e., empirical research. The latter consisted primarily of semi-structured interviews with key policy actors and academics, aimed to collect and analyze their perceptions and self-perceptions regarding the role of civil society in the above-mentioned policy areas of the decent work paradigm.

Section I of the paper aims at giving a snapshot of the historical background and evolution of civil society before and after the transition to democracy. It describes the background against which civil society came to be perceived as an indispensable policy actor on the eve of the first free elections in South Africa. We depict the profile and activity of the major civil society organisations including social movements during the apartheid regime. We then focus on the activities of civil society during the transition period (1990-1994) and the first ten years of democracy (1994-2005).

Section II offers an overview of the macro-economic framework within which the action of all policy actors, including civil society, takes place nowadays. In particular, we examine the sometimes uneasy coexistence of two policy agendas which at times appear to have little in common, i.e., the Reconstruction and Development Programme (RDP) which prescribes a set of objectives for the new democracy (that resonate well with the ILO’s decent work agenda), and the Growth Employment and Redistribution Programme (GEAR), which constitutes what some have defined as a market-driven “home grown structural adjustment” programme. We describe the transition from the RDP to GEAR objectives and note the consequences of this transition which seem to include, *inter alia*, an implicit but fundamental change in perceptions over civil society’s relevance in the reconstruction process, compared to that of market actors.

Section III contains a brief analysis of the situation prevailing in each area of focus, i.e., employment, health care (HIV/AIDS) and child labour. Section IV then depicts the participatory structures open to civil society in these policy areas, namely, the National Economic and Labour Council (NEDLAC) in the area of development and employment generation, the South African National Aids Council (SANAC) in the area of HIV/AIDS, and the Child Labour Intersectoral Group (CLIG) in the area of child labour.

The concluding section provides an empirical assessment of the effectiveness of civil society's action within and outside these formal policy structures and highlights a number of policy suggestions as to how one might safeguard and reinforce the effectiveness of participatory policy making.

Based on the perceptions of key policy actors active in the above-mentioned three policy areas, the present paper emphasises *the importance of safeguards against the risk of capture of civil society*, if it is to function effectively in promoting decent work objectives within participatory democratic structures established at the national level. In general, with few exceptions, civil society organisations have not been able to maintain, through their current inclusion within participatory structures, the vibrancy of their earlier initiatives which consisted mainly of informal information-provision and awareness-raising, echoing the needs of the grassroots and proposing solutions to build up the post-apartheid reconstruction agenda. According to the interviewees, the failure to maintain the vibrancy of civil society's previous action could be explained in part by the absence of appropriate financial support from the state and other donors but also *by the very participation* of civil society groups in policy processes which relied on consensus-building and functioned within a dominant policy framework characterised by a market-driven agenda.

The main thrust of the perceptions of the interviewees seems to be in particular that the effectiveness of the institutionalised participatory processes depends not so much on their comprehensive and inclusive nature, but rather on the existence of clear-cut issue-specific national policies in the areas under examination (or in major parts of them, like for example, HIV/AIDS treatment in the area of health care). In other words, the presence of a "policy software" (e.g., issue-specific policies) is key for guaranteeing the effectiveness of the available "policy hardware" (i.e., participatory processes). In turn, the adoption of issue-specific policies largely depends on the macroeconomic constraints which are often determined outside these participatory processes (agenda setting). Moreover, these macroeconomic constraints often seem to be internalised by the participants in these structures (i.e., government officials and civil society representatives).

Another important finding of the field research was that the part of civil society which continued to perform its traditional activities of information-provision, awareness-raising and mobilisation outside the participatory processes, seemed according to the interviewees to maintain its relevance and effectiveness in promoting decent work objectives. More specifically, the civil society structures and above all the new social movements which opted to remain outside the formal policy making structures, reportedly managed to maintain a clear-cut message (perhaps because

they did not have to acknowledge the dominant ideological framework or the pre-set agendas of participatory bodies) and moreover were able to use more agonistic<sup>3</sup> institutional and extra-institutional means of action (e.g. legal action and protest and mobilisation respectively) for the promotion of their objectives. As a result, they were said to be rather effective in raising public awareness and influencing the state's agenda and policies, despite their lack of "organised" structures and their defiant message.

The research also indicated that trade unions were the main bodies able to use the policy-making structures so as to push forward their agenda mainly because they could use multiple venues both inside and outside the formal processes, that is, combine the use of political opportunity structures with protest-oriented activities. To do so, they had sought to strengthen their links with the new social movements which acted outside these processes, and even participated in their creation, so as to link workplace activism with broader social demands, and exercise maximum pressure on government policies.

In sum, it emerged that the importance of the informal dialogue conducted between civil society and the state should not be underestimated as a complement to the formal dialogue taking place within institutionalised participatory structures.

A number of key safeguards are proposed in order to safeguard the vibrancy of civil society's action and ensure its genuine and unconstrained participation within participatory governance structures: (1) a clear mandate/terms of reference for the members of participatory processes; (2) accountability and follow-up mechanisms; (3) internal communication and consistency; (4) established representativeness of the participants; (5) participation of the participants at the initial stages of agenda-setting; (6) the early release of full information; (7) making sure that financing of participants does not constitute an impediment to the free expression of opinions; and (8) the necessity of dispute resolution procedures which give organizations the ability to pursue other alternatives in the absence of a negotiated agreement, without excluding a return to the participatory process.

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<sup>3</sup> In the sense of "striving to overcome in argument."

## **Note on terminology and methodology**

Defining “civil society” in the South African context is a particularly delicate exercise even for local experts as different definitions and interpretations of the term exist. In this paper we adopt the rather broad definition provided by the South African NGO Coalition (SANGOCO), which is the main umbrella organisation of NGOs in South Africa. SANGOCO defines civil society organisations (CSOs) as:

*“Those organisations and groups or formations of people operating in the space between family and the state, which are independent, voluntary, and established to protect or enhance the interests and values of their members/founders” (see, CORE and CASE, 1999: 6; for a more elaborated discussion on this issue, e.g., Swilling and Russell, 2001)*

More specifically, in this paper the term civil society applies to groups which have historically played an important role in policy making at the national level (as opposed to the provincial or community levels) and encompass employers’ and workers’ organisations, non-governmental organisations (NGOs), community-based organisations (CBOs), business-supported groups as well as other groups which are often described as “social movements” or “new social movements”. As will be seen below in more detail, the latter term refers to grassroots movements formed in South Africa after the transition to democracy in 1994 (and in particular after 2000) to represent constituencies and interests operating outside the framework of the anti-apartheid liberation movement (Buhlungu, 2005: 1). These movements tend to put forward demands for social justice in a political environment increasingly dominated by market-driven ideas and policies (*infra*). As such, they play a key informal role in policy-making related to the three areas of decent work under examination and often influence public policies on these issues despite their “physical” absence from the institutionalised participatory bodies which have a formal decision-making mandate over these issues.

As mentioned above, the research was based on field interviews, during a three-month field research conducted in South Africa in February-March 2002 and March 2005. While in most cases the issues to examine and the questions to raise were given to the interviewees beforehand, more specific questions were formulated during each interview session, according to the outcomes of previous interviews (mainly for purposes of cross-checking previously presented evidence). Most questions related to the content of policy and law with particular focus on the role of civil society in participatory policy design and implementation processes in the socio-economy. On average, interviews lasted one hour. They were all recorded (unless the interviewee requested not to be cited or recorded).

The choice of individuals and organisations to be interviewed was primarily directed by the outcomes of an in-depth preliminary research based on primary and secondary sources on the policy areas of focus. Thus, the interviewees were either selected before the field research or (for some), recommended by the policy actors who had already been interviewed. The research was enormously facilitated by the existence in South Africa of civil society umbrella organisations in practically every policy area of focus [e.g., South Africa NGO Coalition (SANGOCO), Network Against Child Labour (NACL), Congress of South African Trade Unions (COSATU), the Treatment Action Campaign (TAC)].

Particular emphasis was thus placed on civil society organisations which participate in formal policy making structures, e.g., actors participating in the National Economic Development and Labour Council (NED-LAC) and the Child Labour Intersectoral Group (CLIG), but also social movements which function outside but reportedly influenced the agenda of these bodies (e.g., the Treatment Action Campaign-TAC, or the Soweto Electricity Crisis Committee). Finally, in most cases interviews were conducted with the heads of the selected public administration or organisations or the most appropriate person within them. Where the relevant actors could not be located (e.g., the National Association of People Living with AIDS (NAPWA)) relevant information on their action and points of view came from secondary sources.

## ***Section I. Civil society in South Africa: historical overview***

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The existence of a vibrant civil society in South Africa is intimately related to the historical background of the apartheid regime and the struggle of civil society groups against it. The struggle against the apartheid regime started immediately after the accession to power of the National Party (NP) at the end of the Second World War (1948) and the subsequent institutionalisation of complete racial segregation in terms of citizens' rights with the well-known dramatic results for two generations of the black population. It was a struggle for economic and political equity but also one identified with the struggle against colonisation.<sup>4</sup> It officially ended with the first free elections held in 1994, with the memory of state repression committed during the last decades of the apartheid still fresh (CAF, 2000).

It is often argued that the struggle against the apartheid regime was one where “political” and “civil” society shared common agendas and held mutually reinforcing discourses. Indeed, during the apartheid era, the institutionalised exclusion of the black majority had created a situation where all kinds of grievances on behalf of this segregated majority, were de facto perceived by ruling political elites as revolutionary demands. An important consequence of this background was that the civil society sector was highly politicised, to the point that a clear line between “political” and “civil” society could not be drawn (Marais, 1998: 200; Landsberg, 2000; CAF, 2000: 39).<sup>5</sup>

The amalgamated civil society/political movements' resistance to the apartheid regime started from the very beginning of the system. One of the first campaigns against racial laws, i.e., the Defiance Against Unjust Laws Campaign, was organised as early as 1952 by the African National Congress (ANC) (its Youth League) in cooperation with the South African Indian Congress (SAIC), the South African Communist Party (SACP), and the Pan-Africanist Congress (PAC), the three major political voices of the country at this time. The Campaign was one of the first large-scale grass-roots social movements and was largely supported by workers' organisations, (many) South African churches, universities, women's

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<sup>4</sup> The most important apartheid laws on the one hand institutionalised a system of complete racial segregation and hidden slavery, and on the other hand maintained a hidden colonisation. Key pieces of legislation were: the *Prohibition of Mixed Marriages Act*, the *Population Registration Act*, the *Immorality Act*, the *Reservation of Separate Amenities Act*, the *Group Areas Act*, the *Bantu Authorities Act* etc. To oversee the application of these laws the apartheid regime set up a variety of structures (Dewar, 1985).

<sup>5</sup> It is common practice in South Africa to use the term “black” as a generic formula that refers to all groups that have historically been disenfranchised, namely Africans, coloureds (mixed race communities) and people of Asian origin (see, Swilling and Russell, 2001).

movements as well as artists and intellectuals. The Campaign lasted until 1953 and marked the inauguration of numerous disobedience campaigns and demonstrations (CAF, 2000; Campbell, 1987).

Especially after political movements such as the ANC and PAC were banned and went underground, and the imprisonment or exile of many leaders since the 1960s (including Nelson Mandela), the most important events in the struggle against apartheid were not generated by the political movements as such, but increasingly by some decisive and often spontaneous civil society demonstrations against specific aspects of the apartheid regime (labour, educational, etc.).<sup>6</sup> The common point of all these events was the growing mobilisation and cooperation among different civil groups which, recognising the limits of their respective ability to confront the state alone, sought to develop their links.

In that respect the creation of the United Democratic Front (UDF) in 1983, a congregation of various grassroots organisations, including youth, women, and student organisations, community-based organisations and street-based organisations (civics; *infra*), religious organisations and trade unions, was a turning point in the struggle against the apartheid regime. UDF officially marked an ideological and organisational amalgamation of various civil society and political organisations into one framework as it offered an institutional platform upon which to build homogeneous and co-ordinated action.<sup>7</sup> This growing mobilisation and coordination among the various civil and political groups came to be described by former activists (and today's businessmen, civil society activists and politicians), as the Mass Popular Movement (interviews: J. Naidoo, 11 March 2002 Johannesburg; Tsele, 17 April 2002, Johannesburg; see also Landsberg, 2000; Marais, 2000), the social movement which is credited with much of the success in the overthrow of the apartheid.<sup>8</sup>

A clear line between "political" and "civil" functions of anti-apartheid organisations could not be drawn not only because civil society and political organisations shared the same dream to overthrow the pow-

<sup>6</sup> e.g., the Durban strike wave between 1971 and 1973 and the Soweto uprising (and massacre) of 1976 was aimed at improving salary rates (*infra*).

<sup>7</sup> The UDF was created almost simultaneously with another umbrella body, the National Forum. The purpose of both structures was to defy the fake election of a tricameral parliament instigated by the apartheid regime (composed of "enfranchised whites," "coloureds" and Asians at the expense of "Africans") and the formation of black local authorities. Because of the UDF's implicit affiliation with the ANC, the National Forum was soon marginalised.

<sup>8</sup> Largely informal, the Mass Popular Movement marked a major turning point in the struggle against the apartheid regime, as the ideological and organisational amalgamation of various civil society and political organisations into one framework. This movement generated by the same occasion one of the most vocal Habermasian "public spheres" in modern history. Having said that, this public sphere was not driven only by "communicative rationality" (deliberation, pluralism and informal action) but was subordinated to "instrumental rationality" of "capturing" the state (Heller and Ntlokonkulu, 2001: 41-2).

erful apartheid regime—the source of the suffocation of good life and civil rights for “black” South Africans.<sup>9</sup> They also recognised the limits of their respective ability to confront a racist state due to international systemic constraints, such as the politico-diplomatic confusion regarding the apartheid reality and ways to address it, until the dramatic events of the early 1990s (Huliaras, 1996: 72). This ambiguity was the consequence of the multiplicity of perceptions and reactions of influential international actors, non-homogeneous because informed by different agendas and priorities (Landsberg, 2000; Marais, 1998; Cawthra, *et al.*, 2001; CAF, 2000; CASE and SANGOCO, s.d.). As one author observes and sums up,

*“[a]t the international level apartheid was conceptualised to mean different things: for the United Nations, it was a crime against humanity; for the Organisation of African Unity and the Non-Aligned Movement, it was an affront to the dignity of the black person; for the social-democratic elements in Europe and the US apartheid was a barrier to the development of full capitalist relations of production in that part of Africa, and for the conservative forces of Reagan and Thatcher, apartheid stood as a force against communism and the Soviet threat to Africa” (Campbell, 1987: 142).*

Besides the fragmented reaction of the international politico-diplomatic community, difficulties for the emancipation movement also resulted from considerable economic and financial interests, national and international. The highly investor-friendly environment based on “unlimited supplies of cheap, non-unionised and super-exploitable labour” (Campbell, 1987: 147), made the business and financial community appear among the supporters of the preservation of the economic and social structures set by apartheid regime (Habib and Padayachee, 2000; Huliaras, 1996; Campbell, 1987).<sup>10</sup> The international capital flows that South Africa had managed to attract from all over the world due to its abundant wealth, stood as an obstacle to the liberation movement. In parallel however, the abundant investment forged a consciousness among South African workers which generated a strong trade union movement and transformed it in turn into a de facto surrogate and key “inside” leader of political developments in South Africa, when most political movements had either been suffocated or forced to exile (see, Friedman, 1987, Maree, 1987, Baskin, 1991).

<sup>9</sup> The apartheid state divided the country’s people into African, “coloured”, Indian and White population groups. The term “black” tended to be used to refer to all South Africans who were not white, and included what the apartheid state determined as “coloured”, African and Indian population groups.

<sup>10</sup> In figures, the “advantages” flowing from labour exploitation were obvious. These were translated into an unprecedented 15 to 20 per cent annual return on investment, leading to amortised investment and profits in only 5 to 6 years (Campbell, 1987).

To sum up, during the apartheid era political and civil society organisations that managed to survive the persecution of the state (inside or outside the country), sought to develop a mobilisation that reflected a spontaneous but coherent cooperation among students, youth, women, workers and political organisations, aimed at influencing and utilising international public opinion (including civil society organisations located in other countries) with a view to putting pressure on the state to accept system change (and some, to overthrow the state, e.g., the armed wing of the ANC *Umkomto weSizwe*). System change was an unreachable objective for many years, transformed into slightly more than a possibility only on the eve of the first free elections. Protest and mobilisation from extra-institutional spheres (e.g., streets, townships) aimed at resisting white domination and raising awareness regarding the need for such resistance, became inevitably the two most crucial (and ultimately effective) tools of action, in the pure tradition of social movements.

### ***Composition of civil society during the apartheid period***

#### ***Unions***

The struggle for equity and justice at the workplace was the most important dimension of the struggle in South Africa since key elements of the apartheid regime were based on a combination of colonial and racist principles which structured relations of production so as to make cheap labour available to a white-dominated economy (Campbell, 1987; Standing *et al.*, 1996: 12-16).<sup>11</sup> Hence, the role of the working poor (in particular their umbrella structures) was by definition a key dimension in the process leading to socio-economic equity and, in turn, to the overthrow of apartheid. Unless the action of these organisations could transform the imposed labour structures, access to other forms of freedom and human rights would have been impossible (e.g., Gostner and Joffe, 2000; Fine and Van Wyk, 1996; CAF, 2000).

The development of independent unions in South Africa and the mass mobilization of workers were based on a two-fold strategy of intense shopfloor organization and grassroots action. This strategy was key in maintaining a strong union movement despite state repression and the detention, torture and murder of trade union leaders during the apartheid era.

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<sup>11</sup> Besides the above-mentioned apartheid legislation associated to racial control per se, a number of pieces of legislation provided for “regulated labour market rigidity”, i.e., a complex (not to say schizophrenic) structure of progressive labour regulations aimed to promote the interests of the “white” labour force while exempting at the same time the “black” labour force from the same regulation. These Acts were mainly the Labour Relations Act of 1956; the Mines and Works Act 27 of 1956; the Wage Act of 1957; the Manpower Training Act 56 of 1981; and the Basic Conditions of Employment Act of 1983. Standing *et al.*, 1996: 13.

The 1971-1973 strikes in the area of Durban-Pinetown that mobilised over a hundred thousand workers have been viewed as the key starting point of successive mobilisations of workers in South Africa. A massive mobilisation of workers backed by organisations of students, women and youth succeeded in paralysing an important part of industrial production in Durban and ultimately achieving significant increases in their wages.<sup>12</sup> From an organisational point of view, the most vital moments in the history of the union movement in South Africa came a decade later with the creation of the Congress of South African Trade Unions (COSATU) in 1985 and the National Council of Trade Unions (NACTU) in 1986. These organisations became the organisational linchpin of major strikes, long-standing stayaways, public protests, and civil disobedience campaigns (CAF, 2000; Baskin, 1991; see also Fine and Van Wyk, 1996).<sup>13</sup>

By far, COSATU was (and still is) the strongest umbrella organisation in terms of number of members.<sup>14</sup> In many respects it has also been the most important civil society organisation *tout court* (e.g., Marais, 1998: 199). Overall, its action has been extremely successful. Over the years its core assumptions, i.e., non-racialism, grassroots participation, participatory democracy and open debate, prevailed and are today reflected not only within the industrial relations system of the country (e.g. NEDLAC; *infra*) and labour laws [e.g., Labour Relations Act (LRA)] but in the new political system as a whole.

As mentioned above, the importance of the role of the trade union movement cannot be evaluated without reference to the dynamics created by the interaction between the Union movement and the grass-roots

<sup>12</sup> Interestingly, part of the success of this operation was due to the fact that the movement refused to elect a specific leadership. The combined effect of mobilisation and the absence of a leadership “immunised” the movement from state repression or co-optation. It also made business owners realise that an unorganised but mobilised black labour force, was potentially more menacing to their interests and incited them to call for the constitution of free black trade unions and a controlled industrial relations framework (Campbell, 1987: 149). On the first crucial years of the democratic Union movement see Maree (1987).

<sup>13</sup> Broadly, the main difference between these two organisations was one of approach. On the one hand, COSATU with its 33 affiliates and 500000 members (representing at that time 33 per cent of workers who were members of registered trade unions) adopted a non-racial agenda; on the other hand, NACTU, which consisted of 23 affiliates and some 170000 members, adopted a more radical agenda based on a rejection of aspects of COSATU’s non-racialism. In terms of action, however, the differences among trade unions were minimal (Bezuidenhout, 2000: 6; *see*, also SAS 1999/2000). For more on COSATU *see*, Baskin, 1991.

<sup>14</sup> Even today COSATU faces no serious opposition from its rival Unions as it totalises more members than all the other federations put together. In the year 2000 South Africa counted 464 registered Unions, totalising 3.552.113 members or 19.4 per cent of the (expanded definition of the) economically active population (EAP) (SAR, 2001/2002: 225). COSATU is by far the largest trade union federation with approximately 1.5 million (paying) members. It is followed by the Federation of Unions of South Africa (FEDUSA) with approximately 533.000 in 1998 and the National Council of Trade Unions (NACTU) with approximately 200’000 members. COSATU therefore accounted for 46 per cent of registered union membership, FEDUSA for 14 per cent and NACTU for 8 per cent (SAR, 1998/1999: 32). In addition, COSATU claims to be one of the fastest growing trade union movements in the world (see, <http://www.cosatu.org.za/aboutcos.htm>).

mostly reflected in the so-called civic associations (*infra*) (e.g., Mbongo, 2000). However, this interaction would not have been enough to create the appropriate environment for transition, had a strong strategic alliance between the trade union movement and political movements, especially the ANC, not existed (Landsberg, 2000: 107). The trade union movement was indeed highly politicised and oriented towards “radical reform” (Adler and Webster, 1995). It was also under the sway of nationalistic forces which sought to use the powerful labour movement in order to create a “mythology of the nation against the state” (Fine and Van Wyk, 1996). On the basis of this experience, some commentators have argued that the institutionalisation of participatory policy making processes in the post-apartheid political system (*infra*) was not only aimed to effectively protect workers’ rights but above all, create yet another mythology, i.e. that of “popular unity” in the post-apartheid era necessary for the smooth transition to democracy and reconstruction in a context of deep disparities (Fine and Van Wyk, 1996: 19-29). The strategy of political organisations, in particular the ANC, to “capture” the powerful labour movement was part of a broader deliberate strategy. This strategy consisted of putting under the auspices of the national liberation movement led by the ANC, all groups of civil society (often through a mix “of coercion and consent” according to Marais (1998: 201)), so as to maximise the chances of overthrowing the state while, at the same time, curtailing the capacity of the falling state or other political forces to capture these civil society groups.<sup>15</sup>

In sum, the organisational strategy based on intense shopfloor and “grass-roots” activity, not only distinguished trade unions from other civil society organizations and social movements. It also appears to be one of the reasons that some of the post-Apartheid “new social movements” adopting similar organisational strategies (rather than strategies based on charismatic leadership and interest representation) have been so successful in mobilizing campaigns (for instance, the Treatment Action Campaign; see, Friedman, 2006 and *infra*).

### **Civics**

The next most important civil society component perceived by the ANC in instrumental terms was that of “civics”. The term “civic associations” refers to informally constituted associations of township residents dealing with all kinds of community issues. The formation of these community-based and street-based associations responded to the need to put pressure on public authorities to provide better living conditions at the local level and express widespread political discontent. Civics were fight-

<sup>15</sup> Building a strong civil society and supporting its mass mobilization was a pragmatic tactic responding to the fact that, contrary to political organisations, CSOs could not be easily repressed even after the arrest of key political leaders (Landsberg 2000: 112).

ing day-to-day struggles to make sure that basic necessities such as housing, electricity, water, sewerage and reasonable rents, were made available to the grass-roots. However, civics later on directed their actions towards addressing the root causes of these problems, namely, the exploitative force of the apartheid system (Nthambeleni, 2003). The first civic associations were formed in the early 1980s mainly as a response against rent increases and discredited white-imposed township councillors (see, CAF, 2000: 40; Campbell, 1987; Hymans and White, 1991: 4).<sup>16</sup>

Their action consisted of public protests, rent boycotts, and stayaways and was almost exclusively organised on an *ad hoc* basis, and, more often than not, with the concurrent support of unions and other associations. Besides their protest-oriented activity, civic associations might have functioned as the training ground of today's participatory democracy, as professional bodies like traders' associations, cultural clubs, schools, hospitals, clinics or old age homes were expected to consult with them on public projects (Botha, 1992: 58). In sum, the formation of civic associations reflected a need to find alternative channels for expressing discontent and, when possible, channelling demands from the grassroots to the state (Seekings, 1992: 216).

The absence of a clear manifesto and agenda that characterised civics was counterbalanced by the choice of the movement to adopt "voluntarily or coercively" the discourse and anti-apartheid agendas articulated by either the ANC or unions, reflecting an ensemble of shared norms and commitments which was a powerful ideological glue for the movement (Heller and Ntlokonkulu, 2001: 17; Landsberg, 2000; Lanegran, 1995; CASE and SANGOCO, s.d.). As for the absence of formal organisational structures at the local and national levels, it appears that this lacuna was counterbalanced by the creation of the UDF in 1983, which as said above, offered a first formal platform for better co-ordination among, *inter alia*, civic associations (Campbell, 1987; CASE and SANGOCO, s.d., 41). Comprised by a broad coalition of groups representing a diversity of ideologies and sectors "united only in their opposition to the government" (Lodge *et al.*, 1991: 34) UDF's action was primarily directed against political decision of the apartheid regime which aimed to further marginalise and manipulate blacks (such as the Black Authority Act of 1982). Civics played a leading role in the UDF campaigns (Swilling, 1993: 18).

Despite the successive states of emergency (1986 to 1989) and state-orchestrated repression, the civic movement literally replaced in some cases the legal structures of the state at the local level, especially in the

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<sup>16</sup> The larger civic associations included the Soweto Civic Association (1979) and the Black Civic Organisation (1979), followed by the Housing Action Committees in Durban (1980) and Cape Town (1981).

ending days of the apartheid regime. This was one of the direct consequences of intensified rent boycotts and the refusal to obey “white” or “black” local authorities.<sup>17</sup> Civics rendered the townships ungovernable and filled in the vacuum left by the collapsing local authorities (CASE and SANGOCO, s.d.: 17; Seekings, 1992: 222; Motala and Husy, 2001). For this reason, civic associations during the last days of the apartheid were also called upon to perform officially a mediating function between township residents and the failing apartheid state, in an effort of the latter to restore public authority (Botha, 1992; Seekings, 1992: 224; see also *infra*).<sup>18</sup>

Overall, civic associations were one of the most vibrant segments of civil society during the apartheid era, after the Unions. More than a clearly defined organisational structure they represented a diffuse and powerful social movement. Many today consider that the dynamic created by the action of civics was central not only for meeting the political and social needs of the excluded coloured majority in the townships, but also for creating the appropriate destabilising environment for the apartheid regime, and in turn strengthening assent on all sides to democratic transition (Botha, 1992; CASE and SANGOCO, s.d.; Landsberg, 2000; Seekings, 1992; Lanegran, 1995).

### ***Women, student and youth groups***

The 1970s and the early 1980s witnessed the creation of new or the reinvigoration of older organisations of women, student and youth. These organisations progressively became a major source of resistance to the gender, youth and educational components of the apartheid regime, especially after the intensified repression suffered by the ANC and its relevant branches, e.g., the ANC Women’s League (ANCWL) and ANC Youth League (ANCYL). The struggle of women’s groups was mainly directed against the consequences of the pass laws requiring Africans to carry a special permit when present in predominately white-occupied areas. It was eventually also directed against the effects of the women’s own gradual integration into the country’s exploited labour force.<sup>19</sup> One of the key events generated by women’s groups took place on 9 August 1956 (now celebrated as South African Women’s Day) when over 20,000 women marched to the Union Buildings in Pretoria in protest against the exten-

<sup>17</sup> The strategy of the National Party government against the dismantling of the apartheid state consisted in taking advantage of the presence of a black power-seeking elite and the more moderate segments of the anti-apartheid struggle movement willing to accept less radical solutions than system change (CASE and SANGOCO, s.d.: 14; Landsberg 2000; Seekings, 2001).

<sup>18</sup> It should be noted that while the option of negotiations offered by the National Party opened the possibility for some improvement of the well-being of township residents, the ANC (following its un-banning in the 1990s) was overtly hostile towards such negotiations which were viewed as a subtle effort of the National Party to co-opt the civics by offering some concessions to black people at the local level and splinter the ANC’s power and unity to oblige them to reject the ANC’s demands for radical system change (e.g., Lanegran, 1995 offers some examples of the absence of autonomy of the movement and its co-optation by the ANC).

sion of the pass laws to women and the Sharpeville demonstration against pass laws and massacre (21 March 1960). The intensified persecution of ANC leaders since the mid-1960s and the *de facto* disappearance of the ANCWL, pushed organisations such as the Women's Defence of the Constitution (the Black Sash), the United Women's Organisations (Western Cape), or the Federation of South African Women (Witwatersrand), to play a key role in the representation of women's voice and human rights in general.<sup>20</sup>

Student groups' main battleground was the educational system promoted by the NP. The latter was built around the necessity to maintain and reproduce race-based inequality. Groups such as the Congress of South Africa Students (COSAS) progressively became key human rights voices in the anti-apartheid movement (e.g., CAF: 2000: 40). One of the most famous actions of the student movement was the spontaneous protest in Soweto in the late 1970s against the apartheid regime's educational system and ideas of black inferiority. It was followed by the massacre of hundreds of people. Among other consequences, the Soweto uprising forged the Black Consciousness political culture, an intellectual force among students which influenced South African students' and youth's perceptions of white domination and largely contributed (until its banning in 1977) to the creation of influential black organisations such as the Azanian Students' Organisation (AZASO) (e.g., Campbell, 1987: 149).

Finally, youth groups also played a crucial role in the struggle against apartheid since the early years of the struggle. Besides their participation in most protest and mobilisation activities that took place during that period, African youth groups shaped many of the political developments in South Africa liberation politics. The ANC Youth League Manifesto and the Youth League Basic Policy Document, drafted among others by Nelson Mandela, constituted, as early as 1944-48, very influential policy documents not only among African youth groups but also for political developments in toto. It was drafted well before the ANC Freedom Charter of 1955.<sup>21</sup>

It should be noted that of the nearly 600 grassroots organisations registered for the first National Conference of the UDF (August 1983) roughly 37 were student associations, 82 were youth organisations, and 33 were women's associations (Campbell, 1987). Like in the case of civics (rough-

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<sup>19</sup> On the condition of women during the apartheid see Berger, *Threads of Solidarity: Women in South African Industry, 1900-1980*, Bloomington: Indiana University Press, 1992.

<sup>20</sup> While the focus of the present study is not on white civil society, it should be noted however that black women's organisations had to count with the reactionary presence of conservative Afrikaners' Women's groups (e.g., Kappiekommando, Afrikanervroue-Kenkrag) supportive of the apartheid principles of racial segregation (at least until the early 1990s).

<sup>21</sup> See, <http://www.anc.org.za/ancdocs/history/ancylman.html>

ly the rest of them), these organisations progressively became the object of persecution by the state due to their decision to back collective actions of the mass popular movement but also for being members of the UDF.

### **Churches**

The growing repression directed against all UDF members in the late 1980s, strengthened the role of religious organisations viewed as alternative structures for political expression, as they were the last group which were relatively immunised from overt state repression. The participation of religious organisations in the fight against the anti-apartheid struggle was crucial not only because of their tremendous moral appeal to international public opinion, but also because they acted as major channels for foreign funding when the rest of non-white civil society groups were prevented from receiving direct financial assistance. Churches (Christian, Hindu, Islamic, African traditionalist), religious organisations such as the South African Council of Churches (SACC) or the Southern African Catholic Bishops' Conference (SACBC), and religious personalities like Desmond Tutu, Rev. Allan Boesak, and Dr. Beyers Naude, provided the needed moral support and legitimacy, and facilitated the channelling of financial support to protest actions (such as the 1989 Defiance Campaign; CASE and SANGOCO, s.d.: 17; CAF, 2000: 41). A study touching upon the role of churches during the last days of the apartheid regime, shows that, until the transition period, people perceived churches ahead of their political party or other organisations as “primary components of civil society” and “the institution with which they are most closely identified” (James and Calliguire, 1996: 65; CASE and SANGOCO, s.d.: 25).<sup>22</sup>

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<sup>22</sup> Having said that, it appears that some churches may have participated in the struggle in a rather uneven way. Some, like the Dutch Reformed Church, played in fact a key role in justifying rather than fighting the apartheid regime's choices. Others, like the South African Council of Churches (SACC), have at times been accused with adopting equivocal and uncertain positions on key questions of the anti-apartheid struggle, such as the call for international sanctions against the regime and the use of violence as a means of resistance, (unlike in countries of Latin America where religious leaders recognised overtly the need for the oppressed to use insurrectionary violence; Campbell, 1987: 157).

## **Transition period (1990-1994)**

### **Reorganisation of the non-Union CSO sector**

The transitional period started theoretically with the un-banning of the ANC in 1990 and ended in 1994 with the first free elections.<sup>23</sup> This period signalled an important qualitative transformation for non-union civil society organisations (CSOs) under two major developments. On the one hand, the UDF was (voluntarily) disbanded to the profit of the ANC. On the other hand, national associations representing the civics, the women, and the youth (with close links to the relevant ANC branches representing these constituencies) were established in order to ensure “the continuity of an autonomous and institutionalised voice of grassroots movements” (CASE and SANGOCO, s.d.: 19). Among the most important umbrella organisations created during this period were those of civics, i.e., the South African National Civics Organisation (SANCO), and women, i.e., the Women’s National Coalition (WNC). 1992 also witnessed the formation of the National Youth Development Forum (NYDF), a platform aimed to unify the voice of the South African youth. However, due to “institutional capacity problems, vague mandate, no clear programmes”, the forum became largely dysfunctional. It collapsed in 1995.<sup>24</sup>

SANCO was established in 1992, officially to secure an independent voice of civics in the transition politics. SANCO appears to have played a key role during that period, both passively and actively. Passively, as it declined the option of direct negotiations offered by the apartheid regime in an effort to avoid splintering the unity of the mass popular movement (under the leadership of the ANC).<sup>25</sup> More actively, as in late 1993, SANCO joined the ANC-SACP-COSATU electoral alliance comprising the ANC, the South African Communist Party (SACP) and COSATU and also participated in the drafting of the post-apartheid main political manifesto, i.e., the Reconstruction and Development Programme (RDP; *infra*). The presence of SANCO was key at the local level too, as SANCO participated in various policy activities aimed at preparing the ground for new local government structures (such as the Local Government

<sup>23</sup> Many in South Africa argue that in fact, 1994 and the first years of democracy signalled a transition to democracy from a civil and political rights point of view. On the contrary, a transition to democracy from an economic, social and cultural point of view, the main indicator of which would be socio-economic equity, is still an ongoing process and far from been concluded.

<sup>24</sup> Two years latter a South African Youth Council (SAYC) was established as an autonomous, non-partisan representative body of youth civil society groups. SAYC aims at ensuring participation of young people in national development and reconstruction initiatives. Like for most political, public or issue-specific youth bodies, SAYC’s main battlegrounds are HIV/AIDS, unemployment and racism. See, [www.sayc.co.za](http://www.sayc.co.za)

<sup>25</sup> SANCO rejected the specific offers made by the apartheid party to improve the well-being of townships’ residents, because its leadership acknowledged and internalised the ANC’s fears that the National Party could co-opt the civic movement. This would have drifted away SANCO from ANC and its demands for system change (e.g., Lanegran, 1995).

Negotiating Forum; CASE and SANGOCO, s.d.: 25; Seekings, 1997: 10). SANCO was in fact handed over the lead role of shaping the Local Government Transition Act (Heller and Ntlokonkulu, 2001: 15). Most importantly, SANCO's representatives became part of various participatory policy-making *fora* dealing with all sorts of issues, in particular the Housing Forum. These fora eventually led to more institutionalised participatory processes such as the NEDLAC, to which SANCO was also officially invited to become a participant (*infra*; interview: Naidoo, 11 March 2002, Johannesburg).

The WNC was also formed during the transition period to ensure that various aspects of gender equality were guaranteed in the new political system and reconstruction politics (set by the RDP; *infra*). Following an inaugural meeting among some 70 national women's organisations (April 1991), a Steering Committee and eight regional coalitions were established with a view to drafting a women's political manifesto on the basis of which to draft the future Constitution. In an ambitious nationwide public hearings process which involved hundreds of focus groups, some three million women expressed their aspirations and grievances on their position in South Africa's society. On the basis of these hearings a 12-Article Women's Charter was drafted. This document dealt with all kind of issues.<sup>26</sup> It was officially handed to the new President on August 9, 1994 with a view to forming part of the overall documentation which determined the final Constitution of South Africa (adopted in 1996). Another success of the WNC in the transition years was an agreement reached with the negotiating parties to integrate a number of women in the negotiating process that led to the transition (Beck, s.d.). It should be noted however that the insertion of clauses guaranteeing gender equality and other socio-economic rights for women (e.g., reproductive rights) in the future Constitution met with strong opposition from several traditional leaders who argued that such suggestions conflicted with custom and tradition laws and practices. But the WNC managed to resist such pressures rather successfully and enjoy, during the first years of its existence, a high profile as a non-partisan national women's organisation capable of "breaking free of the divisive shackles of apartheid" (e.g., Gersharter, 2001; Hassim, 2000).

In sum, in the transition years, SANCO and the WNC (and to a lesser extent the NYDF) incarnated the next most influential national social movement in South Africa, after that of unions. Available literature and the numerous interviews conducted in South Africa in 2002 and 2005 testified that by the eve of the first free election in 1994, civil society's power

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<sup>26</sup> i.e., equality, law and the administration of justice, the economy, education and training, development infrastructure and the environment, social services, political and civic life, family life and partnerships, custom, culture and religion, violence against women, health and media.

of mobilisation associated with the activities of the union, civic, women and youth movements, demonstrated compatibility with the agenda of the ANC but also an extraordinary degree of coherence.<sup>27</sup> This homogenous, albeit diverse, civil society mobilisation ultimately proved to be crucial not only to the peaceful transition to democracy but to transition *tout court*.<sup>28</sup>

It also paved the way to ensuring that the new Constitution and reconstruction efforts would not ignore the needs of their constituencies, i.e., the socio-economic needs of the people who suffered the most under the apartheid; better – that the new political system would institutionalise their representation in policy making. This institutionalisation was achieved through two ways: first, through the progressive absorption of civil society leaders into the ANC and government structures (one study estimates that 70 per cent of SANCO’s leadership has passed to local government and the Parliament since 1994; Lodge cited in Heller and Ntlokonkulu, 2001: 16); second, through the establishment of participatory democracy structures not only at the local level, but also at the national level.

However, as it is explained in the course of this study, another critical development linked to civil society’s action, has been a phenomenon of “co-option” or “capture” of SANCO and WNC interests by the very same participatory processes which gave these organisations the opportunity to play an active role in the post-apartheid policy landscape (*infra*).

### ***The introduction of participatory democracy***

Moves for the institutionalisation of civil society’s presence in the post-apartheid political life, were therefore far from being an historical accident or the outcome of a single political decision. Because of the contribution of civil society, but also because large segments of the new state apparatus emerged from it (the training ground of today’s South African elites) many of the first steps of the new democratic government were naturally directed towards demonstrating its willingness to actively involve civil society in the development and reconstruction process (Fine and Van Wyk, 1996; interviews: J. Naidoo, 11 March 2002 Johannesburg; Dexter, 26 February 2002, Johannesburg; Mbongo, 5 March 2002, Johannesburg; Thoko, 15 April 2002, Pretoria). This approach entailed that regular representative democracy institutions (e.g., elections) would not be sufficient to redress the legacy of discrimination and inequality inherited from the apartheid period and that participatory fora and institutions at various

<sup>27</sup> “Voluntarily or coercively” according to Marais, 1998: 201; Landsberg, 2000.

<sup>28</sup> As noted in the early days of the transition: “a mobilized civil society and powerful social movements –especially the labor movement- played a central and constructive role in creating the conditions for the transition, in shaping its character, and indeed in legitimising the transition process itself” Adler and Webster (1995: 76) .

levels, open to civil society organisations, should complement the Western-type representative democracy.

This was largely demonstrated in the “reconstruction programme” of the ANC articulated in the so-called Reconstruction and Development Programme (RDP, 1994), the overarching policy programme of the ANC, itself negotiated and drafted by a wide spectrum of actors drawing on the ANC, COSATU, and SANCO (interview: Bond, 3 March 2005, Johannesburg). As the RDP stated:

*“The RDP vision is one of democratising power. Democracy is intimately linked to reconstruction and development. We will not be able to unleash the resources, neglected skills and stunted potential of our country and its people while minority domination of state and civil institutions persists. Without thoroughgoing democratisation, the whole effort to reconstruct and develop will lose momentum. Reconstruction and development require a population that is empowered through expanded rights, meaningful information and education, and an institutional network fostering representative, participatory and direct democracy” (RDP, 1994, para. 5.2.1).*

*“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 (e.g. the various sectoral fora like the National Economic Forum) and facilitate direct democracy (people’s fora, referenda where appropriate, and other consultation processes)” (RDP, 1994, para. 5.2.6).*

*“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, para. 5.13.7).*

This commitment to participatory democracy was going to be embodied in many important institutions at the national level (e.g., the NEDLAC), 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 promulgat-

ed (e.g., the Nonprofit Organisations 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., the legislative, executive and judiciary branches of the state (Swilling and Russel, 2001).<sup>29</sup> 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 White papers and the adoption of a Bill by Parliament, also testified the commitment of the new democracy to enrich its institutions with direct public participation.

In addition to the main historical and ideological reason for including civil society into a single regulatory framework with the state, i.e., civil society participation in the struggle for social equity and against the apartheid regime, more practical ones appear to have played an important role. On the one hand, it was believed that the implementation of the post-apartheid economic and social objectives in a context of huge needs would greatly benefit from such openness. For instance, civil society organisations were the most informed actors on the real needs of the previously disadvantaged majority. On the other hand, the close links which forcibly existed between former civil society activists (former civil society “fellows” who now populated the government sphere, e.g., Trevor Manuel, the Minister of Finance, once a UDF leader also affiliated to the South African Communist Party or SACC) and those that “stayed behind”, would facilitate this process.

Overall, the first free elections of 1994 were not only historical times for the ANC and other anti-apartheid movements. It was also “pay back” time for civil society. Not surprisingly therefore, the first years of democracy raised many hopes in civil society as it was invited to play an important role in the policy design and implementation of the new socio-economic agenda (interview: Dexter, *op.cit.*). It also raised many hopes among “radical democrats and reformed socialists around the world” who saw in South Africa the incarnation of models of “associational democracy” (Baccaro and Papadakis, 2004).<sup>30</sup>

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

## ***The state of the civil society sector after the transition***

Besides broadening and institutionalising “political opportunity structures”<sup>31</sup>, the transition to democracy in 1994 brought about a fundamental change also in terms of the composition and nature of the voluntary sector as a whole: while the apartheid era was dominated by the so-called “struggle” and “welfare” organisations, the transition activated a process of reorientation of the struggle-type civil society and some welfare-type organisations towards what are generally described as “developmental” objectives, i.e., engaging with the public sector at the local, provincial and national levels, to meet the huge reconstruction and development needs (CAF, 2000). SANCO, for instance, was to perform a key role in the design and implementation of housing programmes. However, after 1994 the difficulties of such cooperation became clearer. Due to what many interviewees interpreted as “lack of resources and political will”, many “developmental” civil society organisations resumed their responsibility in providing minimum social (“welfare”) services to the most disadvantaged (poverty alleviation) while others stressed their role as independent pressure groups working to accelerate the objective of “social justice” (*ibid*).

In addition, shortly after the transition to democracy and while being offered the unprecedented opportunity to formally participate in the numerous participatory fora, many civil society organisations started facing a peculiar “survival crisis”. This crisis was peculiar in the sense that it appeared in a context of overall healthy finances for the “non-profit” sector as a whole, as abundant development aid came from both foreign and local, public and corporate sources (e.g., Swilling and Russell, 2001; CASE and SANGOCO, s.d.). What was perceived to be a crisis for the sector was largely due to: *a*) the redirection of donors’ priorities; *b*) the managerial drain or migration of the former activists of the civil society sector to either the business or the state sectors; and *c*) the lack of appropriate technical skills for participating in development endeavours (Hearn, 1999; Adler and Webster, 1999; Marais, 1998; Cawthra *et al.*, 2001; Landsberg, 2000; Pieterse, 1997).<sup>32</sup> However, as we explain below, fundamental changes in the economic and social policy as well as the dominant perceptions and priorities of the new political elites might have played a non-negligible role in the deterioration of civil society’s vibrancy in the post-apartheid era. Eventually, the ambitious plans for people-driven redistribution and structural transformation of the state and the socio-economy

<sup>30</sup> Another radical promise of the pre-1994 era was that of legislative reform to permit the representation of trade unions and other civil society organisations on the Board of Directors of the Reserve Bank (Habib and Padayachee, 2000: 251).

<sup>31</sup> In the sense of Tarrow, namely, a trend of a specific political system that provides formal “incentives for people to undertake political action by affecting their expectations for failure or success” (Tarrow, 1998: 85).

were to be dropped under the pressure of constraints associated to the dominant market-driven agenda (e.g., Marais, 1998; Mattes and Thiel, 1998).

In this context, one of the most interesting developments in the South African civil society landscape has been the progressive emergence of “new social movements” as the most vocal part of civil society. As noted above, the term “new social movements” refers to grass-roots movements formed in South Africa after 1994 (and in particular after 2000) to represent constituencies and interests operating outside the framework of the anti-apartheid liberation movement.

The history, politics, strategies and campaigns of these movements, are relatively recent since most of them have existed only for the last 5 years. Nevertheless, they have recently been described in a series of research papers conducted by well-known South African academics under the auspices of the Centre for Civil Society of the University of KwaZulu-Natal, Durban. According to these studies and relevant interviews, the most vocal “new” social movements in South Africa would be the Anti-Privatization Forum (APF) and its affiliates like the Soweto Electricity Crisis Committee (SECC; see *infra* perceptions on NEDLAC); the Treatment Action Campaign (TAC; *infra* section on perception on SANAC); the Anti-Eviction Campaign (Western Cape); Jubilee South Africa; the Concerned Citizens Forum (CCM); or the Landless People Movement (LPM) (Bhlungu, 2005; Egan and Wafer, 2004; Freedman and Mottiar, 2005; Greenberg, 2004; Oldfield and Stokke, 2004; interviews: Bond, *op.cit.*; Habib, 17 April 2002/18 March 2005, Johannesburg/Pretoria; Dor, 17 March 2005, Johannesburg; Ngwane, 17 March 2005, Johannesburg; Mbele, 8 March 2005, Johannesburg; Mnisi, 16 March 2005, Johannesburg). The paper will return to the analysis of the action of some of these movements in due course. However, for the sake of clarity, a short description of the most important ones is provided below.

**Treatment Action Campaign (TAC):** TAC was launched in December 1998 with the active support of COSATU. TAC is one of South Africa’s most effective and active social movements. It was founded by,

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<sup>32</sup> Recent studies (CASE and SANGOCO, s.d.; CAF, 2000; Swilling and Russell, 2001; Kraak 2001) demonstrate that these reasons have largely been overemphasised and even exaggerated. According to them, the sector is relatively well-resourced (generating some Rand 10bn per year or 1.2 per cent of the 1998 GDP) as both the government and foreign actors channel more and more funds through civil society organisations (see, Cawthra *et al.* 2001; Swilling and Russel, 2001). The business sector also supports civil society through corporate social investment activities (Kraak, 2001: 84). Even more interestingly, as of 2001 the staff of civil society organisations totalled 645 317 (increasingly composed of professionals), a fact which placed the non-profit sector workforce in the first position even compared to other significant employment sectors such as mining (534,000) and the public service (436,187). The reality seems to lie somewhere in between (see, Hearn, 1999, 2000).

among others, current chairperson Zackie Achmat and national secretary Mark Heywood, in order to advocate for access to affordable treatment for HIV/AIDS victims through anti-retroviral drugs (ARVs), as well as the prevention and elimination of new HIV infections particularly through mother-to-child transmission. Because its methods are often reminiscent of the anti-apartheid struggle movements, i.e., civil disobedience, sit-ins, pickets, street demonstrations and legal action, TAC has often been accused by the ANC and some of its allies (e.g., the National Association of People Living with AIDS) of having a hidden anti-government and anti-black agenda. Having said that, TAC has successfully supported or combated the government in courts. It has 40 staff and some 8 000 formal members, mostly HIV-positive women with an important power of mobilisation. "TAC is a master of flexible strategy, engaging in everything from formal negotiations in the NEDLAC to a defiance campaign" (Friedman and Mottiar, 2004; see also *infra*, section on perceptions on SANAC).

**The Soweto Electricity Crisis Committee (SECC):** 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; *infra* section on perceptions on NEDLAC).

**The Landless People's Movement (LPM):** LPM was formed in July 2001 by leaders of landless people's organisations from all over South Africa to take action against the slow pace of land reform. It advocates a people-centred rather than a market orientated approach to social delivery. The LPM was formed with the financial and organisation support of an NGO, the National Land Committee (NLC). It has many ties with its Brazilian counterpart, i.e., the *Movimento dos Trabalhadores Rurais Sem Terra*. It appears that there has been considerable tension between the LPM and the NLC due to the financial dependence of the movement on the NGO which according to some reports has been used in order to "curtail anti-government activities within the LPM" (Greenberg in Ballard *et al.* 2005).

**Jubilee South Africa:** Launched in November 1998, Jubilee SA is the local branch of the international Jubilee movement which aims at erasing the debt of poor countries. In South Africa the campaign focuses on the debt that financed the apartheid regime repression machinery in South Africa and the whole region. The campaign calls upon foreign banks and corporations to cancel this debt as an act of reparation to the people of South Africa. Banks and creditors have rejected this demand. As a result, Jubilee embarked in legal action, not only against the foreign banks and

corporations to which this debt was owed, but also against a number of other banks and corporations that had co-operated with the apartheid regime. Legal action launched on US soil is still pending (*Khulumani Support Group et al. v. Barclays et al.* case). The Jubilee's legal argument is that as successor government, the ANC should regard this debt as "odious" according to the Doctrine of Odious Debt and the condemnation of apartheid embedded in treaty and customary international law.<sup>33</sup> The campaign is supported by a wide array of civil society organisations including COSATU, the South African Council of Churches (SACC) and South Africa NGO Coalition (SANGOCO) and prominent anti-apartheid personalities including Archbishops Desmond Tutu, Dennis Hurley, Ndungane, Beyers Naude, Professor Fatima Meer (Ballard *et al.*, 2005; for more on this; see also *infra* section on perceptions on NEDLAC).

**The Western Cape Anti-Eviction Campaign:** The Western Cape Anti-Eviction Campaign is a platform of community-based organisations composed of poor people fighting against evictions and water cut-offs. The Campaign started operating in February 2001 but has been going through internal tensions which reflect the diversity of the various CBOs composing the movement. One of the major disagreements concerned the issue of the formalisation of its leadership as well as whether to engage with the government or against it (e.g., Oldfield and Stokke, 2004).

**The Basic Income Grant Campaign Coalition (BIG):** The BIG Campaign Coalition is a loose platform of organisations promoting the idea of the establishment of a universal grant of approximately 100 Rand per month per person in order to mitigate the severe levels of poverty and socio-economic inequality that prevail in South Africa and tend to take huge dimensions (South Africa's Gini coefficient places this country in the ranks of the most unequal societies in the world; UNDP, 2003: 43).<sup>34</sup> The Coalition is composed of well-known civil society organisation, such as COSATU, the Black Sash, South African Council of Churches (SACC), Alliance for Children's Entitlement to Social Security (ACCESS) or the Community Law Centre of the University of Western Cape. As seen below, realizing that its success is meager, the platform increasingly is considering adopting the philosophy and methods of more agonistic new social movements, such as those of the TAC (see, Makino, 2004; see also *infra* section on "perceptions on CLIG").

<sup>33</sup> see <http://www.cmht.com/casewatch/humanrights/apartheid.html>.

<sup>34</sup> The Gini coefficient is a measure of income inequality that ranges between 0, indicating perfect equality, and 1, indicating complete inequality. According to UNDP, "income distribution in South Africa is very skewed compared to other countries and has been worsening in recent years. In 1995, the Gini coefficient for South Africa was 0.596 [while in] 2001 [it rose] to 0.635, suggesting that income inequality has been worsening" (UNDP, 2003: 43).

**The Anti-privatisation Forum (APF):** Formed in 2000 the APF struggles against privatisation and cost-recovery-based service provision in the areas of electricity, water, housing and education. The APF claims a support base of 10 000 people, primarily women, represented by 21 organisations and four political groups. One of the most prominent protest actions of the APF was the 31 August 2002 march during the World Summit on Sustainable Development, which reportedly overshadowed the official works of the UN Conference and embarrassed its organisers, the former anti-apartheid “struggle organisations”. The march was organised by an alliance of social movements in South Africa called Social Movements Indaba (“United”), which besides the APF, also included the LPM, the SECC, the Environmental Justice Networking Forum, and Jubilee South Africa. During the march, participants “toy-toyed” through the streets of the township Alexandra, under the chants of “Land! Food! Jobs!” and “Phansi (Down) World Bank Phansi” (Njehu and Watkins, 2002). During this event the APF seems to have developed also its links with the global “anti-globalization” movement and anti-neo-liberal organisations from around the world with which it maintains frequent contacts (through email and by participating in key events organised abroad, such as the Porto Alegre Social Forum). The APF is frequently accused of anti-state ultra-left and radical action, and is therefore more often than not excluded from the formal governance spheres, such as the numerous participatory policy making structures and public debates (e.g., Buhlungu, 2005).

Most of these new social movements were founded around the year 2000 in an effort to challenge policy choices often associated with the market-driven agenda (e.g. privatization and “cost-recovery”) and/or the slowness of the post-apartheid government in responding to social crises (e.g., AIDS), which de facto exacerbated the vulnerability of the poorest segments of the population. While less structured and organised compared to the rest of the civil society sector (e.g., unions, NGOs, CBOs), the new social movements enjoy massive support from poor South Africans living in townships such as Soweto in the Gauteng province and its informal settlements. Having said that, the emergence of these movements in South Africa is also linked to and draws additional legitimacy from the “anti-globalization” or “alternative globalisation” struggle driven by social movements in other parts of the world (e.g., the Landless People Movement in Brazil). As one student of the South African social movements argues, these movements “claim legitimacy not only because they are fighting just struggles within their local areas and countries, but also because they are part of a global movement for justice in a world dominated by neo-liberal ideas” (Buhlungu, 2005: 28).

The new social movements are composed of three major constituencies: *a)* former ANC and union leaders who have been expelled from the ANC-SACP-COSATU alliance for having criticised the government;

b) “left-wing” students or youth activists; and c) groups representing activists who draw on local communities and have been formed to resist policies associated with the deterioration of their livelihoods and the lack of access to basic goods and services (e.g., privatization and the cost-recovery policy of major public companies in quest of private investments). While sometimes officially labelled as “NGOs” for technical reasons (e.g., in order to register and legally receive funds), most of these organisations are in reality more or less unstructured fora of people affected by a specific policy and its discriminatory impact on their lives (e.g., absence of a treatment policy for pregnant mothers in the area of HIV/AIDS). The fora offer these people the possibility to channel their voice to the regular institutional arenas of policy making and a “sense of solidarity” which regular policy venues cannot offer because they are not easily accessible to these movements (Buhlungu, 2005; Greenberg, 2004: 1).

The general characteristics of the members of these movements have been described in detail by Buhlungu (2005) and Ballard *et al.* (s.d.). According to them, first, the members come from marginal and vulnerable sections of society, in particular the unemployed and some at the bottom end of those in employment. Second, there is a significant presence of older members mostly pensioners (“the grannies of Soweto”) who suffer the most the burden of the “bills” as they are the only government recipients of old age pensions. Third, with few exceptions (the Landless People Movement), the majority of their members are women. This is natural to the extent that free-market policies and the discriminatory effects of the absence of proactive response to serious social issues (e.g., HIV/AIDS), “tend to shift the burden or providing for families and caring for the weak onto women” (Buhlungu, 2005: 8-9).

Not surprisingly, most social movements draw their membership mostly from black townships, with Soweto in the Gauteng taking the lead, but also informal settlements and underdeveloped urban areas in general. By contrast, the leadership of these movements is young, mainly composed of middle-aged men and women with relatively high levels of formal education and specific expertise in the main subject matter of the social movement. It should be noted that a key, although more discreet, constituency of these social movements is a small circle of intellectuals, legal experts and sympathisers located in high policy spheres who have decisively assisted these movements in organising and formulating their discourse into a “language” which is better understood by the donor community, courts of justice and the political sphere.<sup>35</sup>

These social movements are often labeled by traditional policy actors (i.e., those related to the former anti-apartheid struggle and in particular the allies of the Tripartite Alliance, namely COSATU, ANC, SACP, and SANCO) as “ultra-left” and are – at least rhetorically – usually ostracised

from the sphere of institutional politics for being “extremist”, “revolutionary” and “anti-system” (e.g., Buhlungu, 2005: 1). This ostracism appears to be explained by the fact that their preferred methods of action, such as mass street demonstrations, marches to Parliament, civil disobedience campaigns, are reminiscent of the mass liberation movement during the apartheid era. In this context, on the one hand the new social movements regard the ruling party and its allies (including the union leadership and SANCO) as “sold-out” elites who act in an effort of “self-preservation”; on the other hand, the Tripartite Alliance leadership and supporters dismiss them as “peace-time revolutionaries” and unorganised falling stars (interview: Coleman, 25 March 2005, Cape Town).

Despite these accusations, and the fact that it is quite early to evaluate their action, the action of these movements is apparently non-violent and claims of “anti-system” militancy do not seem fully substantiated. First, it appears that many individual members of these movements backed by their respective movements (e.g., SECC) have decided to participate in local elections (Buhlungu, 2004: 12) and in general try to be listened to by institutionalised policy making fora from which they are usually rejected (officially for technical reasons such as “limited number of seats allocated to civil society organisations”; e.g., interview: Mbele, *op.cit.*). However, as seen below, some social movements like the TAC are at times allowed to participate in institutionalised policy making structures (*infra*). Efforts to connect with, rather than condemn, “institutionalised” spheres of policy making is arguably not a revolutionary or anti-system attitude.

Second, the majority of the leadership of social movements interviewed during the field research argued that they saw unions and their affiliates as their best allies and necessarily supported all their actions when it came to promoting common agendas (e.g., the Basic Income Grant Campaign was jointly driven by unions, NGOs and social movements). This is certainly the case of “moderate” movements like the TAC but also of more “radical” ones like the APF. As one of the most well-known “radical” leaders of the new social movements stated:

<sup>35</sup> One of these intellectuals is Patrick Bond, currently a professor of development economics at the University of Witwatersrand who has contributed to the constitution of the SECC and the APF. Bond has been an active anti-apartheid campaigner and has among other things participated in the drafting of the Reconstruction and Development Programme - the first economic and social policy of the post-apartheid era (RDP, *infra*). One of the well-known experts and activists of TAC is Mark Heywood of AIDS Law Project of the University of Witwatersrand and Geoff Bundlender, an attorney advocate of the High Court of South Africa and member of the Cape Bar, who has been the attorney of TAC against the government in the Mother-to-Child Transmission (MTC) and the Grootboom cases (*infra*). Mr. Bundlender used to be a member of the provincial government of Western Cape during the first post-apartheid years. Finally, the founder of the AIDS Law Project, Justice Edwin Cameron is one of the most active and high-profile TAC activists.

*“Social movements like ours cannot move unless they understand the political context. And they can’t move without organised labor, clearly!”*  
(Interview: Ngwane, *op.cit.*)

In addition, it appears that the labour movement becomes increasingly aware of the necessity to strengthen its ties with the new social movements. Despite the fact that during the first ten years of democracy the labour movement tended to distance itself at least from the most militant of these social movements (with the notable exception of the TAC), the works of the COSATU 2005 Conference called on COSATU activists and leaders “to engage in open discussion forums with different social movements [and] left intellectuals rather than shying away behind our historical relationships or position” (COSATU’s Resolution, 2005). This change in attitude appears to be a response to calls from inside the labour movement to reverse an observed loss of influence within the ruling Tripartite Alliance and strengthen COSATU’s voice, by linking struggles in the workplace with struggles at the community level (interview: Webster and Buhlungu, 11 March 2005, Johannesburg).

The emergence of the new social movements in early 2000 marked a re-orientation of the civil society sector in the post-apartheid era from development- to struggle-oriented (reversing the opposite trend observed since the first free elections in 1994). This shift has often been associated with the radical re-definition of national economic priorities to bring them in line with the dominant market-driven framework. These priorities have been entrenched in the Growth Employment and Redistribution (GEAR) macro-economic policy of the ANC government (*infra*).

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## **Section II.** ***The passage from RDP to GEAR as the overarching policy framework***

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Despite the fact that the formal rhetoric of the new state focused on empowering -politically and financially- civil society organisations so that they would be able to provide effective input to the reconstruction effort, new macro-economic policy choices may have decreased not only the technical capacity of, but also the legitimacy initially accorded to the civil society sector for designing and implementing policy. In particular, the adoption of the Growth Employment and Redistribution (GEAR), which established the new macro-economic policy framework for the country and which it should be noted, was negotiated outside the relevant participatory structure (NEDLAC), implicitly made the case that “unless the fundamentals are put in place,” namely, until structural adjustment policies are successfully put in place, the needs-driven policy of the state reflected in the RDP of the Alliance, was going to be frozen (e.g., interviews: Masilela *et al.*, 11 March 2002; Darroll, 9 April, 2002, Johannesburg). It would be unfrozen, once the market-driven setting had generated sufficient means for implementing the RDP objectives.

### ***Reconstruction and Development Programme (RDP)***

The RDP (ANC, 1994) constituted in the early years of the post-apartheid period the main political manifesto of the new democracy and the “backbone” of the post-apartheid socio-economic policy in South Africa (CAF, 2000). Drafted by the ANC, the SACP, COSATU and SANCO, 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. 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 have been its main objectives.

To overturn poverty and inequality, the RDP emphasised the role of the public sector and civil society actors (sometimes at the expense of more market-oriented approaches).<sup>36</sup> Above all, it advocated a state-interventionist approach coupled with an active participation of civil society

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<sup>36</sup> Even though for many the RDP document was the result of an attempt to reconcile different views and policy priorities (Webster and Adler, 1998). For instance, chapter four of the RDP appears to be a more free market-driven analysis and the one that is today often advocated by the government to promote a “growth and redistribution” agenda (interview: Dor, 17 March 2005, Johannesburg).

organisations in the design and delivery of RDP goals. The policy making and planning process of the RDP was supposed for instance to include a variety of local, provincial, and national “development forums”, in which all stakeholders, including the social partners, NGOs and grassroots organisations, would be represented.<sup>37</sup> The RDP went as far as to recommend a legislative reform to permit the representation of trade unions and civil society on the Board of Directors of the Reserve Bank (Habib and Padayachee, 2000: 251). At the implementation level as well, civil society was supposed to play a crucial role.<sup>38</sup> Money from the RDP Fund was to be channelled through different civil society organisations for the purposes of implementation of the different components of the programme (e.g., CASE and SANGOCO, s.d.: 33).

Following the RDP guidelines, Community Development Fora were established at the community level, and at the national level a National Economic Development and Labour Council (NEDLAC) composed of state, social partners and other civil society participants (*infra*). In sum, the RDP established an institutionalised participation of civil society in the socio-economy. It should be noted that, with the exception of the representatives of unions and the new social movements, many interviewees argued that the RDP document did not address the issue of the means to use or policies to pursue, in order to meet its objectives. Thus the RDP was often viewed as a declaration of intent (“about how to spend money”) or a “wish list” but certainly not a policy which was feasible in the absence of growth (interviews: Keys, 5 April 2002; Masilela *et al.*, *op.cit.*; Dowie, 5 March 2002, Johannesburg; Darroll, *op.cit.*; Van Heerden, 7 March 2002, Johannesburg; see, also Webster and Adler, 1998).<sup>39</sup> The adoption of GEAR was supposed to address this need (interview: Masilela *et al.*, *op.cit.*).

<sup>37</sup> For instance, under the heading “Civil Society”, one could read, “5.13.8. Forums such as the National Economic Forum constitute important opportunities for organs of civil society to participate in and influence policy-making.” RDP, 1994: 132.

<sup>38</sup> For instance, under the heading “Implementing and Coordinating Structures” one reads “6.3.5. The RDP national coordinating body must also ensure that the structures of civil society are involved in the programme.” RDP, 1994: 139.

<sup>39</sup> Besides seeing it as a “wish list”, some viewed the RDP as an election manifesto which resulted from the ignorance or a problematic perception on the part of the ANC of the resources necessary for its implementation. Put differently, only after the ANC came into power did it realise that it had designed an economic and social programme that aimed at meeting the expectations of the people without having the appropriate resources necessary for this task. It soon became clear that the RDP “would not deliver” in the short-term given the lack of resources and huge public deficits.

## ***Growth Employment and Redistribution (GEAR)***

Announced in June 1996, the GEAR is the macro-economic policy framework of South Africa. As such it is 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.

The major ultimate objectives ("forecast") of GEAR, i.e., 100,000 jobs on average per year in 5 years and 6 per cent as target growth rate, would be achieved through a 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 minimal 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" the model suggested by the RDP.<sup>40</sup>

It should be noted that GEAR was drafted under the auspices of the Ministry of Finance in 1996. Reportedly, big business represented by lobbying groups such as South African Foundation (and its think tank, the Centre for Development and Enterprise), largely influenced the content of the document (interview: Van Heerden, *op.cit.*). Immediately after its release, GEAR was adopted by the government as the official macro-economic policy framework. More importantly perhaps, GEAR was adopted outside the available participatory process, i.e., the NEDLAC (*infra*). NEDLAC's executive director at the time of GEAR's adoption explained that the document came to be seen as "non-negotiable" as a result of a "bad experience during the negotiation of the Labour Relation Act (LRA)" when "many friendships were destroyed" (interview: Naidoo,

<sup>40</sup> 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 simply 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: this view emphasizes that there is a need to re-divide the excessively large white-controlled cake for development to be achieved.

*op.cit.*). Put differently, knowing about the difficulties during the negotiation of the LRA and the sloppiness of the participatory NEDLAC process<sup>41</sup>, the Minister of Finance (a member of the SACP and former leader of the UDF), opted for a “secret and swift process” (interview: Naidoo, *ibid.*).

GEAR has therefore been one of the most controversial policy documents. Not only did it attract widespread criticism for the way it was adopted, but also, and perhaps most importantly, it has not demonstrated its effectiveness in terms of growth and employment generation. The available literature and perceptions of the people interviewed during the field research regarding GEAR could be summed up as follows:

First, GEAR has been described as a “home-grown” structural adjustment programme as it is widely believed that the document was indirectly shaped by the International Financial Institutions (IFIs) and business intelligentsia and technocrats (interviews: Naidoo, *op.cit.*; Van Heerden, *op.cit.*; see, also, Bond, 1997).<sup>42</sup> It appears that at least some components of this policy may have been negotiated with the IMF or the World Bank as early as 1992-1994 as part of a “largely unconditional loan” received by the South African government to address a drought crisis during these transition years (Bond, 2000; interview: Keys, *op.cit.*).

Second, by the year 2000 GEAR had not reached its growth and employment targets. As shown in the Annex, GDP growth should have been double of what had been achieved on average. Employment growth had been negative while it should have been 3 per cent per annum according to plan. The inflation and public deficit figures were lower than planned at the end of the period (2000). Part of the reason why GEAR appeared to have fallen short of its targets may have to do with the fact that real interest rates were much higher than planned. In turn, this was linked to the need to protect the currency from speculative capital movements and capital flight. This overly restrictive fiscal and monetary policy may have depressed growth (interview: Masilela *et al.*, *op.cit.*; see also, Nattrass and Seekings, 2001; Friedman, 2002).

By December 2005, the same macro-economic programme reached some of its targets, at least as a stabilisation programme. The improved economic fundamentals (e.g., 3.3 per cent real growth rate, strong exchange rate, controlled budget deficit, and low inflation) did not lead

<sup>41</sup> “business and government would spend days and nights negotiating with the tireless chief negotiator of COSATU” (interview: Naidoo, 11 March 2002, Johannesburg).

<sup>42</sup> A document from South Africa Foundation, an association representing big business in South Africa, had a strong influence on GEAR’s content (interview: Van Heerden, 7 March 2002, Johannesburg; see, SAF, “Growth for All: An Economic Strategy for South Africa”, 1996)

however to an improvement in addressing the problems of widespread unemployment and poverty.<sup>43</sup>

Third, while from a certain point of view GEAR clarified the limits and means of action of the South African economy and set an overall different agenda for the reconstruction process, it also suddenly modified the framework within which participatory democracy as a whole was going to function: what was perceived as a shift of economic and political strategy from “growth through redistribution” to “first growth, then redistribution” (which meant in effect “first stability and then growth”), automatically redefined the weight of the actors involved in the reconstruction process and the role each actor should play within it. This gave the impression that GEAR largely put the emphasis on the role and agendas of market actors (private for-profit business, employers’ organisations and business-supported CSOs etc.); and that it limited the role of the state to that of addressing the “fundamentals of the economy” (e.g. keep inflation low) while avoiding market intervention (e.g., inflexible labour laws) and public deficits (e.g., carry on privatisations). Seen under this prism, GEAR had redefined the role of non-union civil society actors: NGOs and grassroots organisations were now entrusted with caring for the most deprived and most vulnerable groups until the growth and jobs targets were reached.

A good illustration of the implied effects of GEAR is provided in the field of employment creation, where the state’s function became primarily one of training-provision aimed towards meeting labour market demands, rather than focusing on micro-sector activities and public works to create short-term employment opportunities (interviews: Masilela *et al.*, *op.cit.*; R. Naidoo *et al.*, 7 March 2002, Johannesburg; Roberts, 18 March/4 April 2002, Cape Town/telephone interview). In this context, civil society organisations appear to have been assigned the care for the “primary unemployable”, i.e., a category composed of (roughly) 2 million long-term unemployed persons (interview: Bhorat, 22 March 2002, Cape Town).<sup>44</sup> The challenge for addressing the needs of these people was not understood anymore as a “job creation challenge but largely a poverty alleviation one” (*ibid*). Accordingly, the responsibility of addressing their needs would not fall on the state’s (training) programmes aimed at improving the chances of the unemployed to get a job (e.g., the SETAS of National Skills Development Strategy), or the various private (e.g., the Business

<sup>43</sup> This draws on <http://www.reservebank.co.za>. The phenomenon of “jobless growth” is often seen as evidence of low employment absorption rates, rather than the consequence of the economic policy choices as such (in that sense see, Torres, Hayter, and Reinecke, 2001). Having said that, in general high rates of unemployment and poverty despite sound economic indicators (growth, inflation etc.), might also indicate that employment is not at the centre of the macro-economic priorities (e.g., Bhaduri, 2005).

<sup>44</sup> “old people, who haven’t got a job for the last decade or two, and are probably never going to get one”.

Trust) or public funds (e.g., the Umsumbomwu Youth Fund). This responsibility should rather fall on civil society organisations, and would consist of relief provision (*ibid*).<sup>45</sup>

Fourth, the shift from RDP to GEAR may have also influenced the working culture within public development agencies, now faced more or less explicitly with more market-driven and less demands-driven expectations. A good illustration of “the encroachment of market principles into arenas that not so long ago were held to be governed by principles of justice and social citizenship” was the case of government policies of cost recovery in the provision of services and the increasing reliance on the private sector for housing delivery (Heller and Ntlokonkulu, 2001: 40). In turn this has been accompanied by political and administrative centralisation, the dissolution of local participatory spaces, and increasing reliance on technocratic vision of development and transformation (*ibid*).

With few exceptions (e.g., the National Development Agency), it was observed for instance, that the staff from state development agencies like Khula, Ntsika or the Usumbomwu Youth Fund who were interviewed, appeared to have internalised this shift so that they tended to perceive groups with private sector characteristics and strategies, as far more appropriate for channelling their development funds in an “effective and sustainable” way. On the contrary, the interviewed staff tended to perceive civil society (not-for-profit) groups as less effective and their intervention was “rarely sustainable”, despite the fact that their agencies’ terms of reference usually required the active involvement of civil society organisations in the implementation of their programmes “due to the detailed knowledge of the field” and “proximity to the grassroots” (interviews: Mbatha, 17 April 2002, Johannesburg; Tabrizi and Mlkandawire, 19 April 2002, Johannesburg; Silo, 27 March 2002, Johannesburg).

More specifically, Khula, is an agency of the Department of Trade and Industry (DTI) and provides access to credit for Small, Medium and Micro Enterprise (SMME) development through intermediaries which are named Retail Financial Institutions (RFIs). The interviewee from Khula argued that although until recently, non-profit RFIs, such as credit-granting NGOs, had usually been preferred to private for-profit ones since they were perceived as more in touch with local realities, the recent tendency was to favour private for-profit RFIs. Based on his personal experi-

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<sup>45</sup> A declaration of the Minister of Social Development after the adoption of GEAR sums up the new expected role of civil society organisations: “The basic twin expectations of government are that NGOs will firstly continue to act as monitors of the public good and safeguard the interests of the disadvantaged sections of society [...] The government’s second expectation is that NGOs will assist in expanding access to social and economic services that create jobs and eradicate poverty among the poorest of the poor” (quoted in D. Barnard, and Y. Terreblanche, *PRODDER: The South African Development Directory 2001 Edition*, Pretoria, Human Sciences Research Council, 2001).

ence and a recent internal evaluation study, the interviewee, who was a Marketing Executive of Khula, argued that NGOs' business experience was limited; that they remained dependent on Khula's loans for long periods of time; and that they rarely became self-sufficient contrary to for-profit RFIs (interview: Mbatha, *op.cit.*).

This tendency was also confirmed from a different perspective by an SMME development CSO based in Western Cape. The NGO's representative argued that the high repayment rates (almost 95 per cent) required by development agencies such as Khula for loans given to RFIs were not pragmatic and that in any case did not correspond to the current capacities or targets of non-profit RFIs or the SMME sector (interview: Roberts, *op.cit.*). It should be noted that according to official estimates of the DTI, only 6 per cent of micro-enterprises had been served by NGO RFIs by 1998 (Schoombee, 1999: 419).

Fifth, some of GEAR's policies such as privatisation, deregulation and lowering of public spending were very costly in terms of social peace. While not all proposals were implemented entirely due to the vocal opposition of unions (part of the Governing Alliance) the indecision of the government created a climate of uncertainty and distrust on both the "unions" and the "investors" side. On the one hand, the slow pace of privatisation and relaxation of labour legislation, was perceived by business as "the missing parts of the puzzle" for attracting foreign direct investments (FDIs) and generating growth and thus more jobs (interviews: Masilela *et al.*, *op.cit.*, Van Heerden, *op.cit.*; Dowie, *op.cit.*; Darroll, *op.cit.*; O'Brien and Oosthurzin, 11 April 2002, Johannesburg). On the other hand, unions perceived these two issues as being the last opportunity for saving jobs after the failure "in terms of forecast" of GEAR in the field of employment creation (e.g., interview: Cunningham, 26 February 2002, Johannesburg). Consequently, unions were in favour of a policy radically opposed to GEAR as the only means of boosting growth and generating employment and reversing the macro-economic framework of the state, an approach closer to the RDP philosophy.<sup>46</sup>

In fact, whatever their earlier positions, unions—with few exceptions<sup>47</sup>—were ferociously opposed to GEAR (e.g., COSATU, 1999: Declaration on GEAR). COSATU's response to GEAR was a steadily escalating protest campaign, culminating in a one-day "anti-privatisation strike" in late 2002. In this campaign, COSATU joined forces with non-union civil society organisations, in particular the South African NGO Coalition

<sup>46</sup> Even though according to some there has been some "understanding" between the government and COSATU on the necessity to stop criticising GEAR (interviews: Van Zyl, 20 March 2002, Cape Town; Habib, 17 April 2002, Johannesburg; Dor, *op.cit.*).

<sup>47</sup> E.g., more moderate was FEDUSA which adopted a more bread and butter position (interview: Milani, 25 February 2002, Pretoria).

(SANGOCO) and the South African Council of Churches (SACC). While before 1996 all these organisations were supposed to serve the reconstruction effort by implementing RDP projects following the RDP guidelines, they resumed their protest and mobilisation activities and launched (always with the assistance of COSATU) important protest campaigns against the new state's macro-economic choices that they viewed as costly in terms of social justice and socio-economic equity which constituted the motor of the anti-apartheid struggle (interviews: Dithlake, 9 April 2002, Johannesburg; Scheepers, 26 February 2002, Johannesburg; Tsele, 17 April 2002, Johannesburg).<sup>48</sup>

Interestingly, SANCO and WNC, like most civil society organisations participating in NEDLAC, had little to say about GEAR (*infra*). This stance was in contrast with the attitudes of other umbrella civil society organisations that did not participate in NEDLAC (e.g., SANGOCO) and in particular the so-called "new social movements" like the APF, the LPM, the SECC or the BIG Campaign Coalition. As we explain below, similar dynamics were depicted in the area of HIV/AIDS (*infra*). The sequence "collapse of the apartheid regime, civil society institutionalisation, reorientation of the dominant macro-economic framework", may in fact have provoked a situation where some umbrella civil society organisations were integrated in formal policy processes through which they tended to internalise the official choices and provide them with legitimacy. It may also have led a number of civil society organisations to choose to remain outside the institutionalised policy fora (even when they were given the opportunity to participate) in order to be able to resume protest and mobilisation against certain policies which they considered as illustrative of a lack of transition to the promised socio-economic equity.

Before describing these dynamics more in depth below, it is important to analyse the factual and institutional background in which they operate. The next section depicts the main characteristics of the policy areas under examination, i.e., poverty alleviation/employment, health care/HIV/AIDS and child labour, followed by a brief description of the origins and functioning of the participatory policy making bodies which had the responsibility of addressing these issues, i.e., NEDLAC, SANAC, CLIG.

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<sup>48</sup> SANGOCO was in fact created in response to the state's request for better co-ordination within the NGO sector in order to achieve an efficient allocation of RDP funds (Cawthra *et al.*, 2001; CAF, 2000; Marais, 1998).

## **Section III.** **Situation analysis in the areas of focus**

### **The issue of unemployment**

Together with the HIV/AIDS epidemic (*infra*), the issue of unemployment undoubtedly constitutes one of the most urgent issues in South Africa. Unemployment rates and income inequality are among the highest in the world. At the time of the field research, unemployment in South Africa had fallen somewhere between 24 per cent and 29 per cent 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 per cent and 41 per cent.<sup>49</sup> Since 2002 the situation has not changed dramatically: according to recent official data, strict unemployment rate was 28.4 per cent in September 2003 and 27.8 per cent in March 2004, and its expanded rate was located at 42.0 per cent and 41.2 per cent respectively (see, Statistics South Africa on-line database).<sup>50</sup>

Related to this, as mentioned above, South Africa remains one of the most unequal societies in the world (UNDP, 2003: 43). In the 1990s, it was the world's second most unequal nation (after Brazil), with roughly 50 per cent of the population living with just 11 per cent of national income (May *et al.*, 1998). Similar trends were observed in the 2000s. In 2003, about 48.5 per cent of the population (21.9 million people) fell below the national poverty line and income distribution remained 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).

Overall, most of the interviewees argued that the apparent lack of effectiveness in re-organizing the economy and reducing poverty and unemployment levels could be explained by the long apartheid legacy which created and sustained poverty and huge income inequalities on the

<sup>49</sup> These figures are close to estimations provided by the South African Survey (2000/01: 333-4). The National Treasury staff sets the unemployment rate somewhere between 24 per cent and 33 per cent (strict and expanded definition). For the National Union of Mineworkers, the most left-wing Union interviewed during the research, unemployment is "in reality" somewhere between 29 per cent and 41 per cent, while COSATU set the rate somewhere between 26 per cent and 40 per cent. It should be noted that many unions argued that the official methodology for measuring "strict" unemployment has a tendency to underestimate the real figures as it excludes people that are "desperate for a job but have given up looking for one" (interview: Scheepers, 26 February 2002, Johannesburg).

<sup>50</sup> See, <http://www.statssa.gov.za/keyindicators/lfs.asp>

basis of race. These trends could not change easily, in particular within the current global economic environment to which South Africa is very exposed, as well as to the successive imported global crises (such as the Asian crisis in the late 1990s) (e.g., interview: Masilela *et al.*, *op.cit.*).

Since the adoption of GEAR, the dominant approach of the government regarding the issue of unemployment is expressed by the discourse of the National Treasury. The Office of Macro-Economic Policy of the Ministry of Finance placed emphasis on two factors to explain the unemployment problem. First, the bad economic conjuncture prevailing in the global economy; second, the bad signals sent to national and foreign investors by the South African labour laws as well as the (related) issue of slow pace of structural adjustment (e.g., privatisation). To address the issue, the only solution from a macro-economic point of view would be to accelerate growth. This could in turn be facilitated by tackling the issues of labour laws (too inflexible),<sup>51</sup> push forward the privatisation programme, and finally improve skills, education, transport and infrastructure (interview: Masilela *et al.*, *ibid.*). In this context, the government has launched specific employment creation interventions aimed at improving the education and skills of the unemployed, but also more specific ones aimed at promoting small, medium and micro enterprise (SMME) development (considered to be one of the most appropriate employment generation engines in the South African context). The ultimate objective of the first set of interventions would be to improve the employability of the previously disadvantaged categories of the labour force in South Africa and thus enhance their employment opportunities.<sup>52</sup> These interventions include the Presidential Job Summit Fund, the Umsombomvu Youth Fund, the Skill Development National Strategy (SDNS) (e.g., interviews: Bhorat, *op.cit.*; Kimmie, 13 March 2002, Johannesburg). The second category would comprise SMMEs supporting institutions.<sup>53</sup> A third category for creating temporary job opportunities, based on public works<sup>54</sup>, used to be considered in the early years of the post-apartheid era as one of the most promising employment creation initiatives in South Africa (see, RDP). However it is no longer perceived as an important part of the government strategy. In fact “the public work strategy “never really took off” (interviews: R. Naidoo *et al.*, *op.cit.*; Cunningham, *op.cit.*) mainly because

<sup>51</sup> On the role of the discourse of “labour flexibility” in South Africa as a tool for public opinion formation, see, e.g., Bezuidenhout, 2000: 25-7.

<sup>52</sup> These interventions are considered by some as additional state grant schemes for poverty alleviation and employment creation, such as the grants for old age, war veterans, disability, and child. According to Bhorat (2002) the latter implicitly form the basis of the South African social safety net.

<sup>53</sup> It should be noted that depending on the nature of the intervention, the responsibility for the implementation is conferred to various departments such as the Department of Labour (DOL), the Department of Trade and Industry (DTI), the Department of Public Works and the Department of Water Affairs and Forestry.

<sup>54</sup> e.g., Community-Based Public Works Programme; the National Public Works Programme (NPWP)

the adoption of the GEAR undermined a key prerequisite of public works, i.e., public spending.<sup>55</sup> However, the last two annual budgets show some evidence of increased spending in public works to ease joblessness (interview: Masilela *et al.*, *op.cit.*; see also Makgetla, 2005).<sup>56</sup>

Many argued that the government's approach was implicitly shaped by major IFIs, e.g., the World Bank and the IMF, (interviews: Sengenberger, 3 July 2001, Geneva; Naidoo, *op.cit.*) as well as business associations. The "home-grown" structural adjustment approach to employment is quite in the same line of thought as the dominant business-ess perceptions regarding the issue. Business South Africa (BSA, today renamed as "Business Unity South Africa" or BUSA after a merger between BSA and several other business' and employers' associations as well as chambers of commerce), the main employers' organisation in the country, argued that South Africa experiences a "growth without jobs" situation.<sup>57</sup> This is not to be ascribed to "the fundamentals" (GEAR) "which are fine" but to the lack of attractiveness for FDIs and the volatile currency. Besides boosting the flexibility of the labour market, BSA also suggested that training and education provision would be most appropriate for employment generation (interview: Dowie, *op.cit.*). It should be noted that besides Employers' organisations, business-initiated NGOs also seem to have had a strong influence on the content of GEAR and policy design in general related to employment creation (e.g., Small Business Act).<sup>58</sup> They have also provided support to the government vis-à-vis criticism from unions and other CSOs against the GEAR (interviews: Van Heerden, *op.cit.*; Darroll, *op.cit.*; Fourie, 7 March 2002, Johannesburg).

The Congress of South African Trade Unions (COSATU) illustrated the approach of the unions and most of the interviewed civil society organisations (including social movements) to the issue of employment creation.<sup>59</sup> COSATU argued against the "orthodox" approach adopted

<sup>55</sup> "[Gear's] increased fiscal discipline narrows the policy network and the viable options. The reduction of the budget deficit (to about 2,5 per cent of GDP, down from 5 per cent in 1995) was achieved only at the expense of public infrastructure investment. It proved impossible for largely political reasons to make extensive cuts in either administration of health or education (all three of which in fact increased in real terms). The only item on the budget that could give way was public infrastructure" (Darroll, 2001: 7).

<sup>56</sup> This was partly confirmed by recent evidence showing that a number of employment generation/poverty alleviation policies and legislation are in the process of being adopted, e.g., the Expanded Public Works Programmes (*see*, NEDLAC, 2004: 3). Growth-oriented policies rather than demand-driven are seen however as the "fundamental solution in SA" because the country's model "is not a welfare state" one (interview: Masilela *et al.*, 11 March 2002, Pretoria).

<sup>57</sup> The employers' organisations interviewed have been chosen according to whether they hold a seat at the National Economic Development and Labour Council (NEDLAC).

<sup>58</sup> e.g., the South Africa Foundation, the Consultative Business Movement eventually transformed into today's National Business Initiative (NBI) and the Sunnyside Group eventually transformed into today's Small Business Project (SBP) (interviews: Van Heerden, 7 March 2002, Johannesburg; Darroll, 27 March and 9 April 2002, Johannesburg; Fourie, 7 March 2002, Johannesburg).

<sup>59</sup> On COSATU's approach regarding job creation, see, e.g., COSATU, 1998.

through GEAR on the grounds that “structural adjustment” examples had so far demonstrated increased costs, more unemployment and lower quality of services. COSATU argued that the government’s macro-economic programme had failed dramatically. To the extent that people without employment in South Africa lived in “abject poverty”, GEAR should be dropped and the state should step in: “If businesses don’t provide jobs the government should step in and do it instead”. The interviewees emphasised the need to address basic needs, establish a social safety net such as a Basic Income Grant (BIG) (interview: Scheepers, *op.cit.*) and accelerate the process of land reform and black economic empowerment (interviews: Yeni, 24 March 2005, Cape Town; Leshika, 22 March 2005, Johannesburg; Mnisi, 16 March 2005, Johannesburg).

### ***The issue of primary health care***

Like in practically every policy area, the issue of health care in South Africa is intimately related to its apartheid past. During that period, the available resources were misused in order to create and sustain a fragmented and inequitable health care system at the expense of the majority of the population. The health care system was at best insufficient for those considered by the regime as “different” or “inferior” on the basis of racial distinctions. For these people primary health care was severely underrated and in some cases virtually non-existent (e.g., interview: Dasoo *et al.*, 4 March 2002, Johannesburg). In this context people largely depended on NGO or CBO health care services or traditional healing practices. Ironically, during the apartheid period, health care and in particular tertiary or curative care for whites was one of the most developed and sophisticated in the world.<sup>60</sup>

Not surprisingly therefore, during the transition period civil society organisations (such as the National Progressive Primary Health Care Network (NPPHCN) and Health System Trust (HST)) were instrumental in mapping the health care situation that prevailed at the grassroots level. CSOs facilitated for instance a nation-wide census which took place at the grassroots level, i.e., the National Health Care Consultations. This process

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<sup>60</sup> The provision of health care was in fact so fragmented and inequitable that while the white population enjoyed first class health care, black people especially in rural areas and Homelands, received care of a much lower standard compared even to many Third world countries. Some interviewees illustrated the awkwardness of the system by underlining that while the first heart transplant operation worldwide took place in Cape Town during the apartheid era, sick black people or pregnant black women would walk many kilometres until they would reach a frequently under-resourced medical premise where basic medicaments were scarce. It should be noted that discrimination didn’t only take place at the level of service provision but also at the level of the medical personnel. Until 1994 qualified non-white medical personnel (mainly coloured and Indian origin doctors, nurses and medical managers) were indeed supposed to work exclusively in premises reserved for non-whites (interview: Dasoo *et al.*, 4 March 2002, Johannesburg).

aimed to assess peoples' expectations on health issues affecting the grass-roots with a view to designing the future health policy agenda (interview: Dasoo *et al.*, *ibid.*; Mametja, 10 April 2002, telephone interview/Durban; Mathijs Furniss, 10 April 2002, Johannesburg). On the basis of these consultations, the first post-apartheid government embraced two overarching principles, i.e., an "equitable access to quality health care for all" and the "priority to primary health care". These two principles were instilled in the so-called "Primary Health Care Approach" (PHCA)<sup>61</sup>. Besides ensuring that health care is accessible, equitable and affordable for all, the PHCA recommends active collaboration between public administration and the civil society organisations in order to make the most out of "all available resources" (White paper for the Transformation of the Health Care System in South Africa).<sup>62</sup> In this context, HST and the NPPCHN are still in close contact with the health authorities. In fact, these organisations perform crucial information-provision functions (research and dissemination) for health practitioners the ground and for public servants involved in health care policy making and implementation (e.g., PHILA, 1999).

Having said that, the available data and the majority of the interviewees emphasised that despite the high spending on health<sup>63</sup>, the apartheid legacy in the field of healthcare has still a long way to go before it reaches the expected level of equity, establishes a sufficient level of primary health care provision, and erases the distortions created by the apartheid administration (e.g., interview: Mathijs Furniss, *ibid.*). The health care system is still rather unequal from the point of view of the quality and accessibility of services. As the most prestigious scientific review in South Africa noted in its latest edition, the "ongoing inequity between those with access to private medical care and those dependent on the public sector remains one of the biggest challenges for the South African health system" (SAHR, 2004: 4).

In general, South Africans seem to enjoy two very different health care coverage systems in terms of quality and cost. On the one hand, a

<sup>61</sup> The definition of the PHCA is given by the White Paper on the Transformation of the Health Care System (1997): "Primary Health Care approach: The underlying philosophy for the provision of health care services that is based on the Alma Ata Declaration, i.e., comprehensive care that includes curative, preventive, promotive and rehabilitative care within the context of, amongst others, community participation and intersectoral collaboration."

<sup>62</sup> The long awaited National Health Bill was promulgated into law in November 2003 (Department of Health, 2003c) to replace the National Health Act of 1973 and become the overarching legal document of the new national health system. Until its promulgation, health workers and patients relied upon policy statements such as the White Paper on Health Care (Department of Health, 1997), as well as on a plethora of Acts relevant to the issue of health care, such as, the Bill of Rights (Sections 7; 9; 10; 11; 27), the Medicines and Related Substances Act (No. 90 of 1997) or the South African Medicines and Medical Devices Regulatory Authority Act (No. 132 of 1998).

<sup>63</sup> According to the most recent information available in the WHO (2001), the total expenditure on health as a per centage of GDP was 8.6. This admittedly very high per centage for the standards of a developing country placed South Africa in the 13th position worldwide [right after Sweden (8.7) and before Denmark or Italy (both 8.4)].

public health-care coverage which is extensive and covers all South Africans (and which is overwhelmed). On the other hand, a private coverage (numerous medical schemes) which offers health coverage of excellent quality, but is expensive and reserved to those who can afford it.<sup>64</sup> It is estimated that as of 2002, while annual public coverage spending was some 34 billion Rand to cover 35 million people, private medical spending was some 40 billion Rand to cover 7 million recipients (SAIRR, 2000/2001: 229).<sup>65</sup> The difference in health care services in terms of quality and cost between the public and the private sector can also be reflected in the figures regarding the distribution of qualified medical personnel in the public/private sector. According to data from the South Africa Survey and an interview conducted with the largest association representing the private medical schemes sector, in 1998, while 62 per cent of doctors in the category of general practitioners catered for 7 million people (16 per cent of the population) in private practice, 35 per cent of doctors in the same category catered for 35 million people (84 per cent of the population) in public sector health care facilities (SAIRR, 2000/2001: 232; interview: Dasoo *et al.*, *op.cit.*). According to the South African Health Review (2003/2004: 5), ratios of public sector health personnel to the population have not improved, and for some categories of personnel appear to be even worsening. In fact, the public health sector's doctor-patient ratio is steadily decreasing. In 2003 there were 19,7 medical practitioners per 100'000 of the population, compared to 19,8 in 2001 and 21,9 in 2000 (SAHR, 2003/2004: 373).

It appears that one of the major problems of the South African health care system is related to the "drain" of experienced medical personnel (doctors and nurses who leave the country to find better terms and conditions of employment abroad). This creates huge vacancies in terms of health professional posts, mainly in the public sector. In 2003 these vacancies reached 31 per cent of the total available posts nationally (SAHR, 2003/2004: 5). In addition, one study found that between 20 and 45 per cent of community service personnel intended to work overseas once they finished their training (SAHR, 2003/04: 5).

Health personnel usually blame "low levels of job satisfaction, poor working conditions, despondency in the face of the HIV epidemic, and unsatisfactory management, as well as inadequate salaries, as underlying their dissatisfaction with working in the public sector". Some interviewees

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<sup>64</sup> For an overview see, <http://www.medhunters.com/articles/healthcareInSouthAfrica.html> According to the most recent information available in the WHO (2001) General Government Expenditure on health as a per centage of total expenditure on health was at 41.4. Correspondingly, private expenditure on health as a per centage of total expenditure on health was 58.6 in 2001, which ranked South Africa in the 9th position worldwide after Côte d'Ivoire, Kenya, Nigeria, Malawi, Cameroon, Mali, Niger, and Ethiopia.

<sup>65</sup> See, <http://www3.who.int/whosis/country/compare.cfm?language=en&country=zaf&indicator=StrPrvEOHPctOfTotEOH2001>

also hold affirmative action programmes responsible (interview: Scheepers, *op.cit.*; Mathijs, *op.cit.*) and, to a lesser extent, GEAR's stringent directions with regard to public spending (interview: Cunningham, *op.cit.*).

### ***The HIV/AIDS pandemic***<sup>66</sup>

South Africa has more people living with HIV/AIDS than any other country in the world. 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).<sup>67</sup> This estimate included 3.1 million women and 2.4 million men, aged between 15 and 49 years. The national prevalence of HIV amongst pregnant women in the country was estimated to be at the end of the same year at 26.5 per cent, as opposed to 7.6 per cent in 1994, and 1.7 per cent in 1991. In fact, South Africa is one of the few countries where more women are infected than men. Data presented in the South Africa Health Review (2003/2004: 199) show that HIV prevalence among women is 15.0 per cent compared to 11.5 per cent among men and that it is rising rapidly among young women, whereas it rises more slowly among men. The same survey shows that by the end of 2002, some 96,228 babies were infected by the virus as the rate of mother-to-child (MTC) transmission was about 30 per cent. Finally, the number of orphans in 2002 was estimated to be over 885,000 (under 18 years), of whom 38 per cent were estimated to have been orphaned as a result of AIDS (UNAIDS, cited in SAHR, 2003/04: 201).

The AIDS pandemic affects the labour market, the educational system (given the high number of teachers affected), as well as the extent of child labour in the country (given the orphans' need to work in order to sustain their households). It has also been estimated that the pandemic will contribute to greater income inequality and be an enormous burden on South African development.

A recent ILO study estimates that in the country's labour force approximately 3,698,000 persons aged 15-64 were HIV positive (see, ILO, 2004: 74). One of the most profitable economic sectors in South Africa, the mining sector, seems to be the sad leader in terms of the impact on the labour force. The National Union of Mineworkers (NUM) in South Africa estimated that there could be between 12 000 and 14 000 AIDS-related

<sup>66</sup> This is the term commonly used for the human immunodeficiency virus (HIV) leading to the acquired immune (or immuno-) deficiency syndrome (AIDS). Transmission of this disease, its progression and dire consequences are set out in lay language in the *Hoffmann Case*, 2001: para 11 ff (cited in, *The Mother-to-Child Transmission Case*, 2002: para 1, p. 2).

<sup>67</sup> More recent ILO information (2003) on the prevalence and impact of HIV/AIDS in South Africa raises the percentage of estimated prevalence for persons aged 15-49 to 21.5 per cent (see, ILO, 2004).

deaths among mine workers per year by 2010 (SAHR, 2003/04: 209). The South Africa Health Review 2003/04 also argued that the two major economic impacts of AIDS on the economy were a reduction in the labour supply and increased production costs because of the high infection in the labour force (2003/04: 208). “The most significant costs for companies are likely to be indirect, e.g., costs of absenteeism due to illness or funeral attendance, lost skills, training and recruitment costs, reduced work performance and lower productivity” (*ibid*).

Natras (2002) also highlights the negative repercussion on the labour market of high HIV/AIDS rates among the South African skilled workforce and argues that in the absence of an effective state-sponsored prevention and treatment campaign, it may be more economic for firms to provide Anti Retroviral medication (ARV) directly to their skilled workforce (at an estimated cost of R4,800 per year/patient). In this context some businesses have reacted by adopting private anti-HIV/AIDS policies – sometimes involving treatment. According to a survey on the impact of HIV/AIDS on business conducted by the South African Business Coalition on HIV/AIDS (SABCOHA) in 1000 companies in South Africa, some 25 per cent had an HIV/AIDS policy in place. Only 13 per cent of small companies (under 100 employees) had implemented a policy compared with 90 per cent of large companies (with more than 500 employees). Of the companies who had implemented a workplace HIV/AIDS programme, the majority indicated that the cost of these programmes had been small (cited in the SAHR, 2003/04: 209).

It should be noted also that among the five million HIV infected people who risk dying of AIDS by 2005 (unless they receive adequate treatment) many are students today. While it is hard to know the exact number of HIV/AIDS infection rates in university campuses, one survey of HIV prevalence among university students and teaching personnel at the University of Western Cape estimated the infection rates at approximately 20 per cent (Barnes, 2000: 13) Another University, that of Durban-Westville, has reportedly 16 per cent of infection rates among its ranks.<sup>68</sup> In strictly economic terms, this means that the state seems to be spending large amounts of its annual budget on the education of people who might die prematurely, thus creating a burden to the country’s economy rather than an additional input to its labour force (Skordis and Natras, 2002; see also interview: Tsele, *op.cit.*).

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<sup>68</sup> See, <http://www.hst.org.za/news/20040359>; similar figures were provided by Crewe, Director, Centre for the Study of AIDS (University of Pretoria) and former National Aids Convention of South Africa (NACOSA) Convenor.

Government policy in the field of HIV/AIDS underscores the need for education, prevention and other forms of intervention such as nutrition and counselling. Until a few months ago, the government policy did not include a large-scale treatment campaign based on a cocktail of anti-retroviral medications that are believed to decelerate the progress of AIDS by improving the immunization system of the HIV-positive patient, and to prevent mother-to child transmission of the virus (MTC).<sup>69</sup> The government has often justified its position by reference to medical, economic and, at times, cultural considerations. On the medical side, it underscores the toxicity of anti-retroviral medications and the need for the drugs to be administered under close medical supervision in order to minimise serious collateral effects.<sup>70</sup> On the economic side, it has argued that since South Africa lacks the appropriate infrastructure to follow patients in the various phases of prophylaxis, large-scale distribution is not advisable (interview: Mametja, *op.cit.*). Implicit in the government's position is also the problem of the high cost of a treatment campaign – given the high number of patients that would be potentially involved. According to the Minister of Health for instance,

*“In South Africa, we cannot afford these medicines. The budget for medicines is R2 billion. We face a number of diseases in this country, and if we bought anti-retrovirals, we couldn't afford to treat any of the others. At the meeting with the pharmaceutical companies in June, we all agreed that the medications we're very expensive. You also need to keep a supply of twelve different cocktails, because resistance builds up so quickly.”* (Minister's Parliamentary Media Briefing September 13, 2001).<sup>71</sup>

Finally, cultural arguments also appear to have influenced the decision of the government to prioritise prevention over treatment. Among other things, the government appears to consider that the search for a response to this “specifically African” epidemic requires “all opinions” to be considered. In the eyes of many national and international observers, reference to the “African specificity” is linked to the President's publicly-announced position that there is not enough scientific proof on the links between HIV and AIDS and that poverty and AIDS are intimately related, a view described by HIV/AIDS activists as “denialism” (e.g., interviews: Heywood, 10 March 2005, Witwatersrand; Mabele, 16 March 2005, Johannesburg; Jacobs, 26 March 2005, Cape Town).<sup>72</sup>

<sup>69</sup> In some cases it has been observed that such therapy may even eradicate the HIV virus or at least made it undetectable in the patients' blood. The founder of AIDS Law Project, one of the most active NGOs in the HIV/AIDS area, Justice Edwin Cameron, is believed to have profited from such therapy. The HIV virus is apparently no longer detectable in his blood samples.

<sup>70</sup> As the President of South Africa has often stated: “large volume of scientific evidence alleging that, among other things, the toxicity of this drug is such that it is in fact a danger to health” (Wakin, D. 1999).

<sup>71</sup> See, <http://www.pmg.org.za/briefings/010913health.htm>.

<sup>72</sup> See also <http://www.tac.org.za/Documents/Other/Mbeki-on-HIVAids-October2003.doc>

It is therefore not surprising that until the adoption of the Operational Plan, the 2000-2005 Strategic Plan for HIV/AIDS/STD devoted very little attention to the issue of treatment except for the treatment of opportunistic infections or “targeted” use of anti-retroviral drugs. It therefore did not provide any specific guidelines to national or provincial Departments of Health regarding the treatment strategy. The official position of the Department of Health (DoH) was summed up in its official statement at the International AIDS conference held in Durban from the 9th to the 14th July 2000, which ended as follows:

*“The battle against HIV and AIDS has to be won, and therefore will be fought tenaciously at all fronts that employ affordable, effective and sustainable strategies. In this regard prevention remains our vanguard, while we continue to work tirelessly to investigate other options and interventions. Our health status, socio-economic situation, together with our level of infra-structural development firmly put us in a position where, at this stage, no other weapon against HIV/AIDS will, in the long-term, achieve benefits to the level that prevention will; hence our aggressive information, education and communication campaign against HIV/AIDS, our full involvement in local initiatives in vaccine development, and our interest in mother-to-child transmission. All these preventive measures, which fully recognize and accommodate our circumstances, are guaranteed to put us on top of the scourge, and ensure that we stay there. Remember, prevention is better than cure!!”* (Department of Health, 2000b, emphasis original).<sup>73</sup>

It appears that the position of the government has not changed even after the adoption of the Operational Plan which formally committed the government to massively rollout ARVs to HIV patients. Thus, non-treatment responses, such as prevention or good nutrition, have remained the privileged means of action to combat the pandemic. At times, even the prevalence of the disease is often underestimated. As the South African Health Minister stated during the national conference on HIV/AIDS (June 2005), the public should “focus on diseases other than HIV/AIDS”. During the same Conference she reiterated the official view that prevention and issues with obvious links to poverty alleviation, like nutrition, water provision and sanitation, were more important than antiretroviral drugs for tackling the AIDS pandemic.<sup>74</sup> This appears to be also the position of the President. In answering a question raised by a doctor on how his colleagues were supposed to treat people living with and dying of HIV/AIDS in the wake of the government’s slow roll-out of anti-retroviral drugs, President Mbeki himself argued:

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<sup>73</sup> In the same conference, according to a press report, President Mbeki “reiterated his controversial view that HIV is not wholly responsible for Aids” (BBC NEWS, 2000).

<sup>74</sup> See, <http://www.hst.org.za/news/20040841>.

*“You can’t say the response to a healthy human body is drugs. Your first response is proper feeding. The minister of health repeats this thing every day and what do they do, they mock her. It’s like she’s some crazy person of the moon! Doctors know extremely well that you need proper nutrition; you need clean water; you need these health conditions. That’s the broad spectrum of a response you can say to the people in the hospital and that’s what the government will do.”<sup>75</sup>*

An analysis of the different dimensions and arguments related to the issue is beyond the scope of the study. Rather, we focus exclusively on the difference in attitude and response by civil society organisations, depending on whether they are formally involved or not in participatory policy fora.<sup>76</sup> As in the case of NEDLAC, civil society representatives which participate in the relevant body (SANAC, *infra*) appear to either have embraced the government’s approach and agenda with regard to HIV/AIDS, or to have been unable to effectively express their opposition to this approach. On the contrary, those that stayed outside this process have not only adopted an opposing stance, but have also successfully managed to influence the government’s agenda through the use of confrontational means, in particular, mobilisation and legal means (*infra*). As we explain below, the role of the “new” social movement TAC constitutes one of the clearest illustrations of this point, by opposition to “insider” organisations like the National Association of People Living with AIDS (NAPWA).

### ***The issue of child labour***

The problem of child labour in South Africa is not as extensive as in other Asian or African countries, at least in the so-called formal sector of the economy where the employment relationship between worker and employer is usually based on a contract. There is little or no child labour in the formal sector of the economy, specifically in manufacturing (e.g., interview: Scheepers, *op.cit*; Camay, 12 March 2002/ 7 March 2005, Johannesburg; Solomons, 18 March 2002, Cape Town; Thoko, *op.cit.*). Also, South African legislation is among the most advanced and comprehensive in the world on this issue. The South African Constitution is one of the few worldwide to make explicit reference to child rights and child labour.<sup>77</sup> South Africa has undertaken several commitments at the international

<sup>75</sup> “Mbeki meets faith leaders”, SABC News, 30 March 2004, cited in <http://www.sabcnews.com/politics/elections/0,2172,76916,00.html>. Accessed 7 April 2004.

<sup>76</sup> For a recent overview of the political and institutional aspects of the issues and the historical background see various contributions in Kauffman and Lindauer, 2004; See also, Chirambo, 2004: 1-63. For an accessible overview of some of the medical and policy issues, see Munjanja, 2000.

<sup>77</sup> e.g., Section 28 (1)(e)

level to eliminate child labour.<sup>78</sup> It has also signed, as mentioned above, a Memorandum of Understanding (MOU) with the ILO International Programme for the Elimination of Child Labour (IPEC) which provides funds and technical assistance aimed at assisting the South African government to implement any commitment made in the field of child labour, in exchange for the establishment of a participatory policy body (the National Steering Committee which came to be known as the Child Labour Intersectoral Group – CLIG) aimed at coordinating the activities of the various stakeholders involved in this field (*infra*). In addition, it has adopted various pieces of legislation that deal, directly or indirectly, with this issue. The Basic Conditions of Employment Act (BCEA), 1997, administered by the Department of Labour (DOL), stipulates in Section 43 that it is illegal to employ children and prohibits employment of children under the age of 15 or of children who are “under the minimum school-leaving age in terms of any law.” Although no specific legislation exists on issues like child trafficking, child prostitution and child domestic work, all of these are outlawed and may be persecuted by more encompassing legal instruments.<sup>79</sup> Related to this, a Children’s Bill is currently under preparation. The Bill is expected to introduce coherence into the area of children’s rights, at least from a legal perspective. It represents a complete overhaul of welfare legislation aimed at children (e.g., Child Care Act of 1996) and a codification of most laws pertaining to children, with the exception of education, health, child justice and sexual offences.<sup>80</sup> Most importantly perhaps, compulsory education, a major preventive measure against child labour, is in place for all children until the age of 15 or completion of the 9<sup>th</sup> grade<sup>81</sup> and seems to be well-enforced since rates of primary school completion are very high in comparative perspective.<sup>82</sup> In sum, as many experienced interviewees argued, child labour is not as big a problem in South Africa as in other developing countries.

Nonetheless, the problem has not been entirely eradicated. A number of children continue to engage in informal or even illegal work activities. The Survey of Activities of Young People in South Africa (SAYP, 2000) which officially constitutes the main source of information when it

<sup>78</sup> South Africa has ratified the United Nations Convention on the Rights of the Child as well as the ILO’s Minimum Age Convention, 1973 (ILO, 1973), and the Worst Forms of Child Labour Convention, 1999 (ILO, 1999); Memorandum of Understanding (MOU) between the Government of the Republic of South Africa and the ILO, signed on 3 August 1998.

<sup>79</sup> e.g., the Constitution (1996), the Child Care Act (1983), the Domestic Violence Act (1998), the Basic Conditions of Employment Act (1997), the Sexual Offences Act (1957), and the Prevention of Organised Crime Act (1998).

<sup>80</sup> At the time of the interviews however, the part dedicated to child labour was removed from the Bill.

<sup>81</sup> This is according to the South African Schools Act of 1996, which falls under the remit of the Department of Education. Rates of primary school completion are very high in comparative perspective (around 90 per cent in 2000). World Bank, 2001.

<sup>82</sup> According to the UNDP Human Development Indicators, the combined gross enrolment ratio for primary, secondary and tertiary schools (male and female) was 77 per cent in 2001/02. See, [http://hdr.undp.org/statistics/data/cty/cty\\_f\\_ZAF.html](http://hdr.undp.org/statistics/data/cty/cty_f_ZAF.html)

comes to mapping the issue of child labour in South Africa (interviews: Camay, *op.cit.*; Loffell, 14 March 2002; see also Bundlender and Bosch, 2002)<sup>83</sup> and other official data show that in 1999, among 13.4 million children between 5 and 17, approximately 36 per cent were found to be engaged in some form of work activity.<sup>84</sup> According to one interviewee, child labourers are to be found in rural areas (e.g., fetching wood and water), in the agricultural sector (helping their families with seasonal farm work), in the taxi industry, in street hawking (e.g., selling for instance newspapers or coal, assisting with car-parking, and performing security tasks in urban streets), and in domestic service (interview: Solomons, *op.cit.*).

It should be noted however, that the SAYP study did not cover all forms of child labour, in particular those “issues which needed investigation” such as street children and those engaging in illegal activities such as prostitution (Loffell and Camay, 2002; Rau, 2002). These areas could not be easily depicted through the statistical method of “household survey” which was used (interview: Ozel, 26 May 2004, Geneva). In addition, the survey did not take into consideration the impact on child labour of the HIV/AIDS pandemic (e.g., interviews: Cassiem, 22 March 2002, Cape Town; Camay, *op.cit.*). With respect to these issues, the most authoritative data are to be found in the research conducted by a few experienced NGOs (e.g., the study of Molo Songololo; see, Koen *et al.*, 2001), a Cape Town-based NGO focusing on child trafficking and prostitution. Also, independent researchers conducting studies commissioned by the ILO/IPEC have worked on the issues of HIV/AIDS and child labour (Rau, 2002) and on child domestic workers in South Africa (Bundlender and Bosch, 2002). According to these studies, child domestic labour (paid or unpaid) is estimated to concern some 55,000 children between 5 and 17, that is, 5 per cent of all working children. Of these, 10,000 may fall in the category of “worst forms” of child labour (for instance, long hours of work and possibly sexual abuse) (Bundlender and Bosch, 2002: 43). One interviewee estimated that some 28,000 to 38,000 children may work as prostitutes (interview: Solomons, *op.cit.*).

It should be noted that recently a joint DOL/IPEC/ILO initiative in South Africa named *Towards the Elimination of Worst Forms of Child*

<sup>83</sup> Although at the time of the field research the SAYP report was not officially released due to controversy around definitional issues regarding child labour in South Africa (e.g., Loffell and Camay, 2002), with few exceptions (interview: Cassiem, 22 March 2002, Cape Town) most of the interviewees would refer to the data provided by the study as the most authoritative, or at least as the most updated ones. This situation appears to have changed. During the 2005 field research most interviewees argued that the SAYP was an outdated document for the reasons discussed below. The SAYP Report is available at <http://www.ilo.org/public/english/standards/ipec/simpoc/southafrica/report/rep1999.pdf>

<sup>84</sup> Department of Labour, 2002. “Presentation to the Joint Committee on the Improvement of the Quality of Life and Status of Children, Youth and Disabled Persons 01 November 2002” (available at: <http://www.pmg.org.za/docs/2002/appendices/021101labour.ppt>)

*Labour* (TECL), has undertaken an in-depth research aimed at mapping and exploring ways of eliminating four specific extreme forms of child labour, namely, child domestic work, child trafficking and sexual exploitation, the use of children by adults to commit crimes and fetching wood and water for long distances (interview: Bosch, 2 and 8 March 2005, Pretoria). In fact, as the 2005 field research demonstrated, the focus of the South African state and practically all policy actors involved in the field of child labour in this country, is almost exclusively placed on these “worst” forms of child labour as defined by ILO Convention No. 182. Thus, other areas where child labour has been prominent have presumably been left outside from the current priorities for the moment. These areas include for instance, farm work, the taxi industry, street hawking. As we explain below, the progressive shift of focus towards these four areas considered as “worst forms” of child labour, seems to be explained by the low levels of mobilisation and awareness within the policy elites and society as a whole, regarding the harmful effects of other forms of child labour which are seen as less “detrimental” to the child, e.g., child farm work (although it could be argued that farm work qualifies as hazardous work and therefore as a worst form of child labour according to Convention No. 182).

In sum, it was observed that the general perception prevailing among the interviewed civil society activists, unions and public servants is that there is a lack of “political” and “societal” will to enforce anti-child labour legislation. When it comes to action beyond the adoption of legislation, i.e., to addressing the issue of child labour pro-actively through law enforcement and legal prosecution, the state seems to hesitate while civil society as well as the wider society, often seem to endorse this hesitation. Thus, with the exception of its worst forms (which can be viewed after all as criminal offenses), enforcement of child labour legislation for other (non-worst) forms, appears to be a “very unpopular” issue in particular among farmers and the families of child farm workers (interview: Jackson, 22 March 2002, Cape Town) where the phenomenon of child labour seems to be more recurrent. The lacunae in law enforcement against the non-worst forms of child labour seem to be illustrated in the rarity of legal prosecutions: according to most interviewees despite the prevalence of the problem in the farm sector, rarely are cases brought before the courts.<sup>85</sup>

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<sup>85</sup> The Waranice van Wyk case was one of these. The Department of Labour prosecuted a farmer in Ceres in the Western Cape after a 1999 accident in which an 11-year-old girl lost her leg. The owner of the farm had employed children to pick fruit during the school holidays. Waranice van Wyk and other children were being transported on a trailer when she slipped and her leg was crushed between the trailer and the tractor. Her leg was amputated about two weeks later. The farm owner faced charges of contravening the Basic Conditions of Employment Act (BCEA) and the Occupational Health and Safety Act. During the hearings in the Ceres Magistrate's Court (SAPA) the farm manager of Daytona Stud (Pty), Michael Barnard, appeared on behalf of the company to plead guilty and was eventually fined R25 000 for employing a child under the age of 15. Despite the prevalence of the problem in the farm sector, DOL has only a few similar cases pending in three provinces Northern Province, Mpumalanga and North West.

As we argue below, the absence of an anti-child labour “social movement” appears to constitute the principal reason explaining the lack of sufficient pressure on the state and its organs (labour inspectors) to move forward with the implementation of existent child labour legislation, and the society’s lack of spontaneous denunciation of such practices. In turn, the absence of a societal mobilisation is clearly related to the fact that, as mentioned above, rare are those policy actors which view the fight for the elimination of child labour as a priority issue in South Africa.

## **Section IV. Participatory governance structures**

### ***The socio-economy: the National Economic Development and Labour Council (NEDLAC)***

When the political transition negotiations started between the National Party (NP) and the ANC in the early 1990s, many argued that the NP should not have full control of the economy. In this context, since 1991, the COSATU, the ANC, community-based organisations and the UDF (shortly before its dismantling) initiated a process of establishing a number of fora aimed at dealing with various economic issues in order to “curtail the ability of the apartheid state to implement new policies” (interview: Gostner, 7 March 2002, Johannesburg).

These fora, which aimed to address issues “sector by sector” (some 20 - 25 fora e.g. the Electricity Forum, the National Housing Forum, the Local Police Forums, the Drought Crisis Committees) were highly representative in nature as they were composed of ANC leaders, NGOs, CBOs, mass-based structures, independent activists, municipal workers, as well as representatives from state departments (for instance, the main participants in the *National Housing Forum* NGOs, were CBOs, construction workers and businesses, community leaders and Department of Housing staff).

All the interviewees confirmed that this process based on the establishment of various fora, played a crucial role for the peaceful transition to democracy in South Africa and that it was largely led by COSATU on the basis of the “civics” experience (see, also Adler and Steinberg, 2000).<sup>86</sup> Among the various fora established during this period, a non-statutory tripartite structure, the National Economic Forum, was given the task to address general economic issues and paved the way for the creation of the post-apartheid participatory forum NEDLAC.<sup>87</sup>

Drawing on the experience of the various fora, as well as past “social dialogue” experience (e.g., National Manpower Commission) in Septem-

<sup>86</sup> Former NEDLAC executive director Jayendra Naidoo stated that “while the ANC was the leader of the Constitutional process”, through these fora, COSATU engineered the economic transition “even though there was an overlapping with the Reconstruction and Development Programme (RDP) which was negotiated within the ANC” (interview: Naidoo, 11 March 2002, Johannesburg).

<sup>87</sup> The NEF was created in 1992 when there was a severe clash between the National Party (NP) Finance Minister and labour movements over the issue of VAT increases and other economic policy issues. At that time, COSATU was pushing for recognition by the government of a formal consultative role in the formulation of the economic policy of the country. “To avoid an impasse,” the newly appointed (independent) Minister of Finance Mr Derek Keyes “decided to establish an open cooperation with all the stakeholders” (interview: Keys, 5 April 2002, Johannesburg).

ber 1992 the newly appointed (independent) Minister of Finance (Derek Keys), created the NEF with representatives of business, labour and the government.<sup>88</sup> The Minister made sure that these representatives were “consulted with regard to every major issue in the economy and on general economic issues” and in parallel established a “counsel of representatives of all parties”. The Consultative Business Movement (CBM, a business-supported group) functioned as its secretariat (interview: Fourie, *op.cit.*).<sup>89</sup>

The desire of all parties to contribute their input to the economic policy was soon followed by some real events that needed to be addressed (interview: Keys, *op.cit.*).<sup>90</sup> These policy questions provided the “raw material for the consultative basis” and its success in dealing with these issues proved its necessity during the transition. Because of this “highly participatory process” during that period the then Minister argued that there was no major social unrest regarding economic issues (interview: Keys, *ibid.*).

With the coming into power of the new government, the NEF ceased to exist mainly because its participants (in particular government and business) believed that the *raison d'être* of this structure had ceased to exist.<sup>91</sup> The void created after the end of the NEF (for approximately 18 months) entailed important unforeseen risks in terms of social peace. This realisation led to the establishment of NEDLAC (e.g., Naidoo, 1995: 1-11;

<sup>88</sup> The National Manpower Commission (NMC) was an old tripartite institution of the apartheid era, which the free trade unions had previously boycotted, but to which they agreed to participate following the signing of an agreement (in May 1990). In that agreement the employer associations and the Department of Labour committed themselves to consult the unions on all labour market policy issues (see Webster, Gostner, and Nkadimeng, s.d.: 3)

<sup>89</sup> CBM currently National Business Initiative (NBI) headed by André Fourie.

<sup>90</sup> The most important were:

1. the renegotiation of the standing orders with the international banking community;
2. the application for “a largely non conditional assistance loan” from the IMF “after a draught”;
3. the negotiation of the Uruguay Round.

<sup>91</sup> It is worth referring in some length to the testimony of one of the founders of NEF. According to him, for approximately 18 months there was no official meeting among business, labour and government representatives. This inactivity (characterised as “a very sad event”) was due to the unrealistic interpretation by the government and business of the new political context prevailing in South Africa after the transition. On the government side, the ANC thought that “labour views” were represented in any case through COSATU’s participation in the government and therefore there was no need for further consultations with the labour movement. (“The leaders of COSATU became Ministers. For instance, Jay Naidoo (the RDP minister) and Alec Erwin (deputy Finance Minister) used to be prominent union leaders.” Interview: Naidoo, *op.cit.*) On the business side, being endowed with a Constitution which recognised and afforded protection to private property, the businessmen “thought that they lived in some kind of Paradise in which they could pursue profit in an almost Victorian industrialist-type of way. Thus, they ceased to be partners of the labour movement.” [“Which they had never really been - but at least they would talk to each other.”] While “the government was too busy in finding its way” during the first months of the ANC rule, “and the business wouldn’t care less about not being the partner of labour anymore” the labour movement, which was weakened by the transfer of leaders to the government, increasingly felt marginalised and looked for a structure within which all economic issues would be discussed. This structure was to be the National Economic and Development Council (interview: Keys, *op.cit.*).

interview: Keys, *ibid.*). NEDLAC came to be viewed as a key part of the “social contract” in South Africa (see, Naidoo, 1995; interviews: Dor, *op.cit.*; Webster and Buhlungu, *ibid.*).

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 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 legislation 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.

The usual policy-making process is as follows: the government takes the initiative in a particular area by submitting a Green Paper through the relevant government department.<sup>92</sup> The green paper goes to the relevant NEDLAC chamber depending on its content. Here it is discussed (or, often, negotiated) among the constituents. The amended Green Paper then forms the basis of a White Paper that is submitted to Parliament. The proposed Bill is discussed in Parliament and then sent back to NEDLAC for further consideration. At this point, NEDLAC issues a report, which is usually considered by a Portfolio Committee in Parliament. This “either agrees or disagrees” (interview: Moleme, 7 March 2002, Johannesburg). Clearly, if a consensus emerges among the NEDLAC constituents, it becomes difficult – albeit not impossible – for the government or the Parliament to bypass it.

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. The constituency is composed of Community Based Organisations responding to three criteria spelled out in the Act. These criteria automatically exclude most NGO participation. It only 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

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<sup>92</sup> The Green Paper is sometimes subcontracted by government to specialised consultants.

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. However, according to the Overall Convenor of the community constituency, its “informal” participation in other chambers “has never been refused” (interview: Mbongo, *op.cit.*) (for instance they were part of the discussions on the 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). More recently (2002), the Financial Sector Campaign Coalition (FSCC), a platform of organisations with an interest in the issue of democratisation and de-racialisation of the financial sector, was allowed to join the community constituency. However, the FSCC is not part of the development chamber but only of 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 (see *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.

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. Both Summits gave rise to important agreements. For example, from the Presidential Job Summit emerged an important agreement on skill enhancement and its funding; from the GDS, emerged for instance an agreement on the expansion in public investment initiatives (PIIs) to develop and maintain economic and social infrastructure by the government. The two Summits also decided upon the themes that would be tabled in the NEDLAC for negotiations.

This led to the latest focus of NEDLAC which from 2003 to 2005 fell on two interrelated issues: *a*) the implementation of the GDS agreement and the examination of a number of related key policy proposals in the areas of employment generation and poverty alleviation, e.g. the Labour Job Creation Trust, Expanded Public Works Programmes, or a Draft Bill and Co-operative Development Strategy; and *b*) reviewing the role of the institution.

Interviews with NEDLAC constituencies revealed that the structure might soon be undergoing a restructuring phase. The purpose of this exercise would be to make NEDLAC more effective for implementing the policies and agreements that have been decided in the two Summits. One of the proposals put forward by the constituencies would be to review the role of the community constituency and the way it participates in the work of the structure. This could be achieved in particular by allowing it to participate in “working groups” or “task teams” discussing cross-cutting issues (e.g., the financial sector transformation) and also by allowing participation in these task teams of additional civil society actors which have issue-specific expertise as in the case of the FSCC. As explained below, the need to reform this institution and in particular the role of its community constituency seems to stem from a widespread perception that the commitment of its constituents in NEDLAC seems to have decreased in recent years, just like the effectiveness of this structure as a whole in implementing its policies and legislation decided in its premises.

### ***The area of HIV/AIDS: the South African National Aids Council (SANAC)***

Numerous state-initiated structures and activities have been established since the transition from the apartheid to democratic rule to deal with the issue of HIV/AIDS and put on track the overall approach of the post-apartheid state regarding health policy. Most of them intended to actively involve civil society organisations in their activities.

One of the first of these efforts was initiated during the transition period when the ANC and the then Department of National Health and Population Development initiated a process aimed at formulating a national strategy for HIV/AIDS (1991). This process eventually culminated in a national conference, the National AIDS Convention of South Africa (NACOSA), a congregation of representatives drawing on the ANC, other political forces, unions, the business sector, civics, religious associations, health workers and in general civil society groups dealing with HIV/AIDS issues. This participatory forum produced the first nationwide policy Plan to combat the epidemic and led to successive National Sexually Transmitted Diseases (STD)/HIV/AIDS Strategic Plans, includ-

ing the 2000-2005 Strategic Plan (Department of Health, 2000a, hereafter the Plan).<sup>93</sup>

The 2000-2005 HIV/AIDS SDT plan constituted the main policy manifesto of South Africa in the area of AIDS and other communicative diseases, until the adoption of another seminal policy document entitled “Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment for South Africa” (Department of Health, 2003b). This document consists of 16 chapters. Each of the 16 chapters expresses various commitments made by the government in respect to the Operational Plan and its implementation, ranging from a commitment to provide care at different levels of the public health system (Chapter 1); nutritional assistance to people living with HIV/AIDS (chapter 2); access to treatment with anti-retroviral drugs (ARVs) to over a million people with AIDS by the end of 2007/8 financial year (Chapter V); or hiring additional health workers (Chapter V). As we explain in more detail below, this document was adopted due to the pressure put on the government by the TAC.

It should be noted that the 1991 NACOSA Plan also envisaged the creation of an office located in the Presidency responsible for facilitating its implementation. The underlying assumption was to give the plan more political weight and improve its implementation process by involving the various interested actors. This formula had previously been successfully used in Uganda (Rwomushana, 2000 in van der Vliet, 2004: 54). However, a decade latter, the office idea has remained unimplemented and the participatory approach to HIV/AIDS in general rather flawed. This was probably not unrelated to the government’s above-mentioned views on AIDS, and the subsequent tensions created between the “AIDS world” and the government (van der Vliet, 2004: 58-59).<sup>94</sup> These tensions culminated in an implicit divide between those in favour of and those against the adoption of a national treatment plan, which de facto stood as an obstacle to the creation of a genuinely participatory forum dealing with the implementation of the plan.

In 1999 a review process of the 1997 NACOSA Plan which aimed to address the slow implementation of the latter and produce a new plan (the 2000-2005 Plan), brought again to the fore the necessity to create some

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<sup>93</sup> The participatory approach to address the issue of HIV/AIDS was also reflected in other state-initiated activities which in fact complemented the 1994 and 1999 Plans on HIV/AIDS, e.g., the Beyond Awareness Campaign, the Partnership Against AIDS, the Department of Health HIV/AIDS policy or the South African Vaccine Initiative.

<sup>94</sup> e.g., the Virodene scandal: “In 1997 the government was rocked by a scandal regarding an unregistered drug, Virodene. Trials on this drug, a supposed “cure” for Aids, were conducted at the University of Pretoria without ethical approval or the knowledge of the national regulator (the Medicine’s Control Council). Outrage was expressed when the DoH supported a funding application to assist the researchers despite the illegal nature of their work” (Chirambo, 2004: 48).

“stakeholder partnership”.<sup>95</sup> The latter was viewed by the government as the most efficient way to coordinate the activities of the various concerned actors, but also efficiently channel foreign and local funds.<sup>96</sup> The establishment of such a body was also compatible with the broader “governance” approach in the field of HIV/AIDS which had prevailed in the meantime at the international level and was being promoted by *inter alia* the UN High Commissioner for Human Rights (OHCHR) and the Joint UN Programme on HIV/AIDS (UNAIDS).<sup>97</sup>

The establishment of a participatory body could be seen as a response to the requirements of the Global Fund for HIV/AIDS, TB and Malaria, which make the disbursement of funds conditional on the establishment of a Country-Coordinating Mechanism (CCM) with the participation of a wide range of civil society sectors.<sup>98</sup> In South Africa, this participatory body came to be known as the South African National Aids Council (SANAC).<sup>99</sup>

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<sup>95</sup> Other policy structures exist but in principle exclude civil society participation. These are mainly:

*a)* the Inter-Ministerial Committee on AIDS (IMC): Established following the recommendation of the SDT/HIV/AIDS Review (1997) it consists of Ministers and Deputy Ministers who meet on a monthly basis to “discuss” issues related to HIV/AIDS and provide policy guidance especially to the HIV/AIDS & STD Directorate of the Department of Health which is responsible for co-ordinating South Africa’s response against HIV/AIDS;

*b)* the National Inter-Departmental HIV/AIDS Committee: This Committee has been mandated to develop workplace policies as well as “minimum HIV/AIDS programmes” for the various government departments;

*c)* the Provincial Health Restructuring Committee (PHRC): This Committee consists of all the Provincial Heads of Health. It meets on a monthly basis and discusses strategic issues of national and provincial interest. In particular the Committee discusses and approves reports from the Inter Ministerial Committee, the National HIV/AIDS/STD Directorate and Provincial HIV/AIDS Coordinators. Once approved these documents are referred to the MinMec (*infra*) for political approval; and

*d)* the MinMec: This body consists of all Provincial Health Members of Executive Committees (MECs) and the national Minister of Health. MinMec meets every six weeks, and approves national policies and guidelines. HIV/AIDS is a standing item on the agenda of the committee and therefore all reports on national and provincial programmes related to the issue are dully discussed.

<sup>96</sup> The 2000-2005 strategic review stated that “all sectors of government and other stakeholders in civil society shall be involved in the fight against HIV/AIDS” so as to effectively reduce both the number of new infections (especially among the youth) and the impact of HIV and AIDS on individuals, families and communities.

<sup>97</sup> Guideline 1 of the International Guidelines on HIV/AIDS and Human Rights states: “States should establish an effective national framework for their response to HIV/AIDS which ensures a co-ordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities, across all branches of government.” ([http://www.unaids.org/en/in+focus/hiv\\_aids\\_human\\_rights/international\\_guidelines.asp](http://www.unaids.org/en/in+focus/hiv_aids_human_rights/international_guidelines.asp))

<sup>98</sup> The function of the CCMs is to select, review, monitor and evaluate project proposals at the national level and forward them to the Secretariat of the Global Fund. The Secretariat transmits the proposals to an independent Technical Review Panel which makes recommendations to the Board. The latter makes the final decision as to the appropriateness of the proposals for funding (Global Fund, s.d.: Section VI.B-F and Section VIII)

See, [http://www.theglobalfund.org/en/files/publicdoc/Framework\\_uk.pdf](http://www.theglobalfund.org/en/files/publicdoc/Framework_uk.pdf).

<sup>99</sup> For more on the roots of SANAC, e.g., Chirambo, 2004.

SANAC was established in January 2000 and is made up of 15 government representatives and 16 civil society representatives appointed by the state. It is composed of one representative each from business; people living with HIV/AIDS; NGOs; faith-based organisations; trade unions; women; youth; traditional healers; legal and human rights; disabled people; celebrities; sport; media; hospitality industry; and local government. The members of the body participate in their individual capacity and are selected according to their reputation and their achievement in the areas of HIV/AIDS. Most of the members are prominent leaders of various civil society groups. Among them, the most important umbrella organisation represented in the civil society constituency is the National Association of People Living with AIDS (NAPWA).<sup>100</sup>

The Council is called to play a central role at the level of policy making in the field of HIV/AIDS. Chaired by the Deputy President, SANAC's mission consists of bringing together "all the stakeholders and role-players" in order to discuss issues related to HIV/AIDS, facilitate collaboration between the state and other sectors, advise the government on all matters relating to HIV/AIDS, monitor the implementation of the Strategic Plan and mobilise resources." Since the adoption of the HIV/AIDS National Treatment Plan in 2003 (Operational Plan; Department of Health, 2003b) SANAC is also responsible for its implementation.

A number of specialist technical task teams are also established to advise SANAC on specific policy issues. Those task teams comprise experts in the following areas: *a*) prevention; *b*) care and support; *c*) social mobilisation; research, monitoring, Surveillance and evaluation; and *d*) legal issues and human rights. It should be noted that until the adoption of the above-mentioned "Operational Plan", the treatment aspect was almost absent from SANAC's agenda, reflecting the official position that HIV and AIDS can be combated more effectively through prevention. In turn, this de facto excluded most activists and specialists focusing on the treatment side: high profile civil society organisations like the AIDS Law Project or the TAC had no representative in SANAC. The launch of SANAC in January 2000 was therefore greeted by the "AIDS world" at best cautiously and sometimes with anger and concern (van der Vliet, 2004: 58; see also SAHR, 2001).

In 2003 SANAC was restructured along lines closely reflecting the revised Guidelines of the Global Fund Board on the Purpose, Structure and Composition of CCMs and Requirements for Grant Eligibility (Global Fund, 2004). The restructuring may have come as a response to

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<sup>100</sup> NAPWA was represented by its president.

consistent complaints by many civil society organisations active in the area of HIV/AIDS against the body's incapacity to address the policy issues related to HIV/AIDS and therefore, effectively function as a CCM. Two major changes were introduced, aimed at "strengthening the representation of civil society". On the one hand, SANAC participants were urged to be "chosen by the sectors themselves" rather than being handpicked by the government. On this point, it is interesting to note that the revised Part 3 section 8 of the Global Fund's Guidelines now provides that "CCM members representing the non-government sectors must be selected/elected by their own sector(s) based on a documented, transparent process, developed within each sector." As a result of the restructuring, key SANAC sector participants became more representative as they were elected "democratically" to the forum. For instance, in a Summit organised by the most neuralgic sector, the People Living and HIV/AIDS, two PWA representatives were elected (Ms. Prudence Mabele and Mr. Voyani Jacobs, two leading figures in the "HIV/AIDS world", both interviewed).

The second change concerned the composition of the sectors representing the various societal interests which was slightly modified to become more broadly representative of other civil society constituents, mainly by adding new sectors such the "human and legal" sector (Department of Health, 2003a). Whereas during the first SANAC term representatives of TAC was excluded, this time many individuals representing civil society groups affiliated to TAC (including Mark Heywood of the AIDS Law Project), were allowed to participate.<sup>101</sup> In this respect, it is interesting to note that the revised Part 5 section 12 of the Global Fund's Guidelines provides that "The Global Fund requires all CCMs to show evidence of membership of people living with and/or affected by the diseases."

Overall, one may say that SANAC actively involves broad civil society participation and constitutes the equivalent of the Development Chamber of NEDLAC in the field of development, and of the Child Labour Intersectoral Group (CLIG) in the field of child labour, to which we now turn.

### ***The area of child labour: The Child Labour Intersectoral Group (CLIG)***

The CLIG was formally launched in 1998 in the aftermath of the Global March Against Child Labour, an international campaign which was led and financed by the ILO's IPEC and aimed at raising awareness

<sup>101</sup> In particular, Mark Heywood (see, *supra*) now participates as "legal and human rights sector" representative.

globally on the issue of child labour. In fact, CLIG originated in the MOU signed between South Africa and IPEC, which as mentioned above, required a governance structure (“National Steering Committee”) with the participation of civil society to draft a national programme of action (interview: Pamla, 7 March 2005, Pretoria). Specifically, the 1998 MOU states in its Preamble:

*“Recognising that the attainment of the objective of the elimination of child labour and the protection of children requires not only vigorous action by South Africa but also the active involvement of employers’, workers’ and non-governmental organisations, and that therefore South Africa should to the extent possible encourage, promote and support action by non-governmental organisations.”*

And in its article 3:

*“(1) South Africa shall co-ordinate the co-operation of all institutions of the country with the ILO in the field of child labour; (3) A national Steering Committee shall be established by South Africa [...]; (4) The Committee will comprise representatives of state departments whose work relate to the problem of child labour, representatives of employers’ and workers’ organisations and representatives of non-governmental organisations active in the field of child labour. ILO representatives shall participate in an advisory capacity. Furthermore the Committee may solicit the support from representatives of UNICEF and UNESCO in South Africa.”<sup>102</sup>*

Under the auspices of the Department of Labour (DOL) CLIG identified itself as “a national stakeholders’ forum” or a consultative structure which aimed at coordinating the activities of the line departments and civil society organisations active in the fight against child labour. The major issues with which the CLIG dealt were awareness raising, participation in events, and the development of a legislative framework. The CLIG also participated in an advisory committee for the Survey on Young People’s Activity (see *supra*).

Up until 2003, CLIG offered civil society organisations the right to participate in the process for the design and implementation of anti-child labour policies and legislation at both the national and provincial levels, and both at the Plenary and Executive Committee of the body.<sup>103</sup> Approximately 55 organisations participated in the (national) CLIG debates. The main civil society umbrella organisation participating in CLIG was the Network Against Child Labour (NACL). The NACL is the only civil society umbrella organisation in South Africa with a clear focus

<sup>102</sup> See <http://www.ilo.org/ipec/>.

<sup>103</sup> 10 Provincial CLIGs have been created.

on child labour (most NGOs focusing on general child rights). Established in 1990, NACL consists of 50 organisations involved in anti-child labour awareness raising and advocacy activities (interviews: Camay, *op.cit.*; Loffell, *op.cit.*).

CLIG was also one of the subcommittees of the National Programme of Action (NPA), which as noted above, has a more general focus on children rights and was established in 1994 in the context of the UN Convention on the Rights of the Child (UNCRC). The UNCRC required from every signatory state the creation of a “programme of action” addressing the issue of children’s rights. South Africa committed itself to design and supervise the implementation of appropriate policies related to 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 (UNCRC) on the state of children’s rights (Article 44, CRC). As in the case of the Global Fund for HIV/AIDS, TB and Malaria and also IPEC, the UNCRC urged the states to draft these reports with the active collaboration of child rights civil society organisations.<sup>104</sup>

At the time of the field research, in 2002 and 2005, South Africa had drafted and transmitted to the UN three reports on the progress made in protecting and promoting children’s rights (1997; 1999; 2001) plus an end-of-decade report (2000) (see, ORC, 2001a and 2001b). Child labour constituted one of the chapters in the reports. Generally, the Report explained the main causes of child labour (mostly poverty and HIV/AIDS) without mentioning any figures. The reports addressed to UNICEF were drafted by the Office of the Rights of the Child or ORC (interview: Thoko, *op.cit.*), i.e., the secretariat of the NPA. These reports – which focused also on child labour – were prepared through an extensive process of national and provincial consultations with relevant government departments and civil society organisations that wished to participate (interviews: Jackson, *op.cit.*; Timpson, 11 April 2002, Johannesburg; Mamiki and Abdool, 5 April 2002, Johannesburg). It should be noted however that since 2001, due to a series of internal management problems, the ORC failed to transmit further reports to the UN Committee on the Rights of the Child (interview: Bower, 23 March 2005, Cape Town).

The main civil society structure which usually participates in these state/civil society consultations is the National Children’s Right Committee (NCRC). After NACL, the NCRC is the next most important civil society organisation umbrella body in the area of child labour. Contrary to NACL however, the NCRC focuses more generally on child rights rather than child labour and is more involved in the NPA process. Established in 1990 the Network’s task is to co-ordinate the activities of

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<sup>104</sup> See <http://www.unicef.org/crc/crc.htm>.

approximately 200 civil society organisations active in the field of child welfare, (similar to umbrella organisations in other sectors such as the disabled, and women) and covers the issue of child labour only in an auxiliary way.<sup>105</sup> The main activity of the organisation is advocacy, capacity building, awareness raising and education, and lobbying at the national, provincial and community levels. Its activities are structured at three levels, namely, National, Provincial, and Regional. The NCRC was reported to be of central importance from a policy-making perspective in the field of child rights.

Until recently, both umbrella organisations (NACL and NCRC) and their members had reportedly important stakes in the elaboration of a Child Labour Action Programme (CLAP) since it was expected that once a CLAP for South Africa would be adopted they were likely to receive financing from national and international donors for its implementation (interview: Camay, 12 March 2002, Johannesburg). However, with the exception of a US-funded NGO (COULISA), until March 2005, neither NACL nor the NCRC or their members had been able to receive the long-awaited funds despite their participation in tenders launched by the DOL, reportedly “due to the poor quality of their projects” (interviews: Bosch, *op.cit.*; Bower, *op.cit.*).

The elaboration of the CLAP was planned as a three-step, highly inclusive process which was expected to produce a consensus strategy in the field of child labour. As in most policy and legislative initiatives in South Africa, as a first step, the government issued a *Green Paper*, a policy paper drafted in 1998 by a private consulting company which tried to map all the views around the issue of child labour and ways to address it, expressed in the national and (latter on) provincial CLIG process. The final version of what came to be named the “Discussion Paper” (instead of White Paper), was widely discussed at both the national and local levels from November to December 2002 during a series of inclusive workshops conducted at the provincial level where several hundreds of civil society groups provided their input. Following these broad consultations officially concluded in October 2003, a White Paper was expected to be drafted and sent to Parliament for discussion and approval. The CLAP White Paper would in reality provide the agenda upon which the CLIG and its participants will build future technical cooperation and promotional activities and the terms of reference upon which to co-ordinate its implementation. However, so far, the task of overseeing the implementation of the CLAP is attributed not to CLIG but to yet another participatory process, the CLAP Implementation Committee (CLAPIC).

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<sup>105</sup> The head office is in Johannesburg and each Province has a Provincial Director Head of the office. Each provincial representation of the NCRC chooses and deals with a particular issue. Gauteng Province for instance has chosen to focus on child labour. The interview was conducted in Gauteng.

Since the final phases of the CLAP process in 2002-2003, CLIG effectively ceased to exist at the national level and continued to function only at the Provincial level, and this only sporadically (mainly in the Gauteng and Western Cape, the two wealthier provinces in South Africa). At the same time the CLAP Implementation Committee, which de facto replaced the CLIG (and its executive committee), has been the main body responsible for the implementation of the CLAP, since June 2003. Contrary to CLIG, the CLAPIC structure is tripartite, composed of government departments', workers' and business' representatives, mainly drawing respectively on the DOL, COSATU/FEDUSA/NACTU, and BUSA (especially the agricultural farmers association, namely, AgriSA; interviews: Van Zyl and Chabalala, 18 March 2005, Tswane; Le Roux, 10 March 2005, Johannesburg; Kleynhans, 2 March 2005, Pretoria). Civil society's presence other than the labour and employers (such as NACL or the NCRC) is virtually inexistent.

It should be noted that after many delays attributed to the highly participatory nature of the process (and other reasons reported below), it appears that the issue-specific CLAP is currently under examination for "cost analysis" by the Cabinet. It should then be handed over to Parliament for final approval (interview: Jensen, 18 May 2004, telephone interview/Pretoria; Bosch, *op.cit.*). While waiting for that approval, the CLAPIC, under the impulse of the IPEC/ILO and the TECL venture, seems to place emphasis on the "most urgent projects" mentioned in the CLAP, i.e., those related to the "worst forms of child labour." This concept seems to be understood as confined to the issues of child domestic work, child trafficking, commercial sexual exploitation, the use of children by gangs to conduct criminal activities, and the fetching of water and wood in selected remote rural areas, on which research and "pilot projects" are envisaged (interview: Bosch, *op.cit.*).

As explained below, the views expressed during the 2005 field interviews with regard to the focus on the "criminal" and "developmental" dimensions of child labour, and also the degree to which the CLIG as well as the participatory process of the NPA and the CLAP were seen as "genuine", were variable. Some praised them as an expression of a genuine participatory process; others expressed doubts as to the true value and representativeness of civil society's views within this process (*infra*).

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## **Section V.** **Perceptions on the role of civil society in participatory governance structures**

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### **Perceptions on NEDLAC**

Interviews with the major actors involved in NEDLAC emphasised that 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” are the driving forces of this structure. The statement of Business South Africa (today Business Unity South Africa)’s Secretary General “if NEDLAC stops, we will have to create another one” illustrates the perception of practically all the interviewees, including those who represent the interests of big business in South Africa (interviews: Dowie, *op.cit.*; Van Heerden, *op.cit.*).

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, civil society’s participation in NEDLAC came “almost as a natural event” (e.g., interview: Dexter, *op.cit.*).

NEDLAC works very successfully. At the time of the field research more than 100 agreements had been successfully reached through the NEDLAC process on key economic acts and policies 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 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.*).

Two events have interrupted the regular rhythm and procedures of the above-described NEDLAC process and demonstrated at the same time that the social partners and the state may not be fully committed to the NEDLAC process (e.g., interview: Webster and Buhlungu, *op.cit.*). The first was the adoption of GEAR by the Ministry of Finance which as mentioned above, established the macro-economic framework of South Africa in 1996. The second was an ad hoc mechanism, the Millennium Labour

Council (MLC), created at the initiative of President Mbeki and composed of COSATU representatives and (big) business leaders in 2000, to deal with specific (and very sensitive) issues outside the NEDLAC framework (*infra*).<sup>106</sup>

The part of this 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). However, the tripartite-plus one chamber, i.e., the development chamber, where the community constituency is allowed to participate does not seem to work as well. According to several interviewees, the Development chamber makes no difference and is described as “toothless and sidelined” (interview: Darroll, 27 March and 9 April 2002, Johannesburg). The non-union civil society component of NEDLAC composed of the five civil society organisations representing the civics, the women, the cooperatives, the handicapped and the youth, has so far played a purely symbolic role.

With no exception all the interviewees argued that this constituency suffered from an acute lack of human and financial resources,<sup>107</sup> which diminished its weight and scope. 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.*). 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-overall convener 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 very specific issues such as health issues (in particular those related to the HIV/AIDS epidemic) and poverty alleviation. In sum, as one of the most

<sup>106</sup> The Millennium Labour Council was a bilateral ad hoc institution established by (big) business and union leaders in order to discuss strategies for job creation outside the NEDLAC framework and adopt a common stance on related issues such as the sensitive Labour Relations Act amendments.

<sup>107</sup> 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).

experienced students of South African industrial relations noted, NEDLAC's fourth constituency has shown only limited problem-solving capacity despite their 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 – 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 issue of the LRA amendments, while the unions adopted a strategy of direct confrontation and immediate mobilisation, the community constituency seems to have urged for more moderation and negotiations before any action took place (interview: Mbongo, *op.cit.*). Even more illustrative seems to be the case of GEAR: with the exception of COSATU, the rest of civil society organisations represented in NEDLAC had (until recently) little to say about the adoption of market-driven policies by the ANC in the context of GEAR.

There seem to be various reasons for this lack of activism and effectiveness. The deep financial problems affecting all civil society organisations in the development chamber seems to be the main explanation. These problems led in the past one of the initial participants of the NEDLAC, the (now defunct) National Rural Development Forum (NRDF), to completely withdraw from NEDLAC (interview: Dexter, *op.cit.*). A similar situation may be faced today by the WNC.

More importantly, the representativeness of the organisations, namely, their claim to speak on behalf of particular groups, is often challenged (interview: Botha, 19 June 2002, Geneva; see also Friedman and Chipkin, 2001; Reitzes and Friedman, 2001; interview: Webster and Buhlungu, *op.cit.*). Another reason is that these organisations are confined to the development chamber only (referred to as “a dumping ground for any issue”; see, interview: Dexter, *op.cit.*) and, in this way, are institutionally prevented from influencing discussions on trade, finance, and labour issues, which are important for development. As explained below in more detail, this was inversely illustrated in the only case where exceptionally the community constituency (led by the Financial Sector Campaign Coalition) managed to participate on an equal footing with the other constituents. In that case, the perceptions on the community constituency's weight were dramatically improved (interview: Mkhize, 11 March 2005, Johannesburg).

Another reason appears to be linked with their lack of independence from the ANC of the community constituency. While the creation of national structures for each of these organisations was a prerequisite for participation in the participatory reconstruction effort and participatory processes such as NEDLAC, none of them has managed to propose a clear agenda of activities or discourse distinct from those of the government. Most of the interviews conducted with former SANCO activists and studies focusing on the once most vocal organisations involved in NEDLAC, i.e., on SANCO and the WNC, seem to corroborate these findings. Overall, they argue that these organisations rarely lobby the government at the request of their respective basis despite the fact that some of the government's policies have negative repercussions upon the interests of their constituencies (women and civics). It is argued that this may be due to their historically close relationship with the ANC.

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 of "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). Because these organisations lack an independent agenda or a credible threat of withdrawal, they appear to be stuck in a process which prevents them from shaping an independent policy let alone organising anti-government mobilisation which in the South African context, is more often than not, interpreted as anti-liberation movement action. The ultimate illustration of SANCO's "capture" by the government was offered between 2001 and 2002 during the COSATU-led nation-wide anti-privatisation strikes. While SANCO's leadership considered and indeed participated in the organisation of the strikes, when COSATU launched the second wave of strikes in 2002, SANCO pulled out its support in the last minute calling its members through the media to withdraw from the strikes (Gershater, 2001; Heller and Ntlokunkulu, 2001; Seekings, 2000; Reitzes and Friedman, 2001; Zuern, 2004; Balard *et al.* s.d.).

The lack of critical voice and opposition capacity within the community constituency is in contrast not only to the past of these organisations (*supra*), but also the current attitude of their members who increasingly join the new social movements. Local branches of SANCO and social movements such as the Anti-Privatisation Forum (APF), the Landless People Movement (LPM), or the Soweto Electricity Crisis Committee (SECC), not only supported COSATU's anti-privatisation strike; they have been continuously launching mobilization campaigns in townships and undertaking protest action against water and electricity privatisation and other aspects of GEAR (Buhlungu, 2005; Ballard *et al.*, s.d.; interview: Habib, 17 April, 2002, Johannesburg; Heller and Ntlokunkulu, 2001; interviews: Ngwane, *op.cit.*; Mnisi, *op.cit.*).

It is interesting to note that the most prominent example of successful action by SANCO from 1994 to 2005 to the benefit of its main constituency, i.e., the poor township and informal settlements residents – has been a series of agreements reached between this organisation and ESCOM, the national electricity company. In 2002, SANCO participated in negotiations with ESCOM and government representatives, which led to an agreement that township residents with faulty meters would pay a flat fee of R120 per month until their meters were repaired (Zuern, 2004: 18-9). Most importantly perhaps, 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 cut-offs due to unpaid electricity 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 benefited from the write-off of some 1,39 million Rand in arrears (Zuern, 2004: 20; Egan and Wafer, 2004: 12; Banda, 2003). The costs of this agreement were afforded not only by the state, the lawful owner of the assets of the company, but also by private shareholders who have managed the network of electricity provision since its privatization.

Having said that, many students of civil society and social movements in South Africa indicate that SANCO's action and success in this field was not the result of its own strategy, let alone political struggle. 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 "responsible" for this spectacular "success story" was the huge mobilization action of township residents and their social movement which had previously created the momentum for this pro-poor agreement, i.e., the Soweto Electricity Crisis Committee (SECC).

The SECC – named by reference to the Soweto Educational Crisis Committee which during apartheid constituted a major oppositional force against the racist educational laws of the regime – is one of the most active members of the Anti-Privatisation Forum (*supra*). This township social movement reflected the mass discontent of poor Soweto residents. It emerged in 2000 following a series of workshops and demonstrations against the decision of municipal authorities in Johannesburg to implement a programme of liberalization of municipal assets (known as Igoli 2002 municipal reforms). The decision of ESKOM to go ahead with aggressive "cost-recovery" in Soweto led the SECC to combine protest actions with "militantism" involving illegal activity. For instance, the SECC conducted the operation "Khanyisa" (in Zulu, "to bring the light") which involved illegal electricity reconnection of houses by trained local members free of charge. This action aimed at resisting the privatization of elec-

tricity distribution and the “cost-recovery” policy of ESCOM which had led to frequent electricity cut-offs for unpaid bills. Within six months, the SECC had reconnected over 3000 households without discriminating between houses (Egan and Wafer, 2004 cited in Labour Bulletin “The Soweto Electricity Crisis Committee: does size count?” Labour Bulletin, 28(5), 2004: 25.)

Because the campaign of reconnecting electricity households to ESCOM meters increasingly acquired all the characteristics of a civil disobedience campaign similar to those launched by civics during apartheid, public authorities and ESCOM were compelled to “negotiate” a peaceful resolution of this crisis. However, due to the revolutionary nature and as an obvious maneuver to avoid the “legitimization” of this “new” social movement, SANCO was revived and indeed presented as the official counterpart of ESCOM (Zuern, 2004: 19-20; interviews: Bond, *op.cit.*; Ngwane, *op.cit.*; Mayekiso, *op.cit.*; Mbele, *op.cit.*). In sum, without the key mobilization of, massive rent boycott by, and pressure coming from the SECC, ESCOM and the government might have probably never accepted to write-off such large amounts of electricity debts to the benefit of the poor township residents. This was confirmed inversely on at least one occasion. 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.”*

The lack of an effective voice by SANCO and the other community constituency structures is also in contrast with the attitudes of other umbrella civil society organisations that neither participate in NEDLAC nor undertake spectacular protest action like in the case of the new social movements. The South African NGO coalition (SANGOCO) for instance, an umbrella organisation coordinating about 4,000 NGOs, argues for a radical redefinition of NEDLAC’s role and structure. According to this organisation, macro-economic policy should be part of the agenda of all NEDLAC chambers, including the development chamber. This constituted in the past one of the pre-conditions for SANGOCO’s participation in NEDLAC (interview: Dithlake, 9 April 2002, Johannesburg).<sup>108</sup> While SANGOCO rarely joins mass mobilizations led by the APF or the SECC

<sup>108</sup> It should be noted that according to both the head of NEDLAC and that of SANGOCO, informal negotiations are underway for SANGOCO’s inclusion in NEDLAC. This would however require a modification of the NEDLAC Act, which, at present, restricts participation to membership-based organisations only (interviews: Dithlake, *op.cit.*; Dexter, *op.cit.*).

against deregulation and privatisation, it has joined COSATU<sup>109</sup> and other NGOs, like the South African Council of Churches (SACC) (which, like SANGOCO, does not participate in NEDLAC) in a campaign aimed at introducing a universal minimum income for all (known as the Basic Income Grant (BIG) Campaign Coalition).<sup>110</sup>

The idea of a “solidarity grant” for all South Africans has been discussed since 1994. At the Presidential Jobs Summit in 1998 organised by NEDLAC, civil society and local and international experts recognised how crucial a Basic Income Grant or a universal social grant of not more than 100 Rand per person per month, would be to address poverty. In March 2002 a government committee known as the “Vivian Taylor Committee of Inquiry on Comprehensive Social Security” confirmed this finding and stated among other things that a “Basic Income Grant has the potential, more than any other possible social protection intervention, to reduce poverty and promote human development and sustainable livelihoods.” While so far the idea of BIG has not been materialised, the members of the Coalition including SANGOCO and SACC, were reported to have played a critical role in this campaign (interview: Tsele, *op.cit.*; Scheepers, *op.cit.*; Steele, 4 April 2002, Johannesburg; Dithlake, *op.cit.*).

Interestingly, despite their non-participation in NEDLAC, the BIG Coalition members recently marked one major success in their campaign when the government (under intensive lobbying) announced the extension of the existing child support grant for children of 6 to all children up to 14 years. It should be noted that interviews with the leadership of the BIG Campaign seem to reveal that BIG and its affiliates argue that the only way to oblige the government to accept the principle of a universal grant is the transformation of the campaign into a “social movement” (interview: Yeni, 24 March 2005, Cape Town). Thus, one of the main aims of the platform is to move away from an exclusive focus on lobbying in order to embrace “social movement strategies such as those of TAC”, including “awareness-raising, education, social mobilisation and soon litigation”, in order “to educate the people about how to support their own rights and put pressure on the government to implement its legal obligations related to the provision of appropriate social security for all and the findings of the (Taylor) Report” (interviews: Yeni, *op.cit.*; Leshika, *op.cit.*).

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<sup>109</sup> Most unions support such demands but with variations: NAFCOG’s position were more radical, proposing inter alia the freezing of speculative capital movements for a decade (interview: Cunningham, 26 February 2002, Johannesburg). FEDUSA have adopted a “bread and butter Unions” approach and admitted that many of the state’s choices are well-thought and go to the right direction (interview: Milani, 25 February, Pretoria).

<sup>110</sup> For a recent study on the advantages and downsides of a BIG in South Africa, see, Standing and Samson, 2003.

SANGOCO, like most of the BIG Campaign Coalition members, is also an important partner of COSATU's People's Budget Campaign, advocating for more transparency and participation in budget formulation (interviews: Dithlake, *op.cit.*; Scheepers, *op.cit.*; Steele, *op.cit.*). Finally, SANGOCO actively supports the social movement Jubilee South Africa which advocates the cancellation of the apartheid debt, considered as one of the reasons why South Africa is unable to invest public money on unemployment and poverty.<sup>111</sup> NEDLAC has been reportedly inspired from SANGOCO at least on two occasions, namely, the Presidential Job Summit (1998) and the Civil Society Forum for the World Summit on Sustainable Development (2002), and has closely followed up on initiatives first developed by SANGOCO.<sup>112</sup>

In sum, the absence of a critical voice by the community constituency of NEDLAC seems to have led to arguments that the decision to include organisations like SANCO and the WNC in broadly participatory governance structures responded not only to symbolic and historical reasons but also (and for some mostly) to pragmatic ones such as creating the illusion of "popular unity" necessary for implementing the policy agenda within one of the most unequal societies in the world (Fine and van Wyk, 1996: 24-29; see also Mattes and Thiel, 1998: 109). In practice, it may have had the effect of "capturing" and instrumentalising civil society organisations rather than empowering them. As the instigator of NEDLAC's precursor, i.e., the NEF (*supra*), observed, civil society organisations other than unions might have been included in NEDLAC "to keep them happy and silent" (interview: Keys, *op.cit.*).

<sup>111</sup> This issue is also a crucial one. It was estimated that in 2000, the South African government paid 48 billion Rands to service the government debt. This dramatically reduces the space for employment creation through, for example, public works. In the aftermaths of the 1994 elections, many activists argued that the new government should not re-pay the debts of the old, on the grounds that "those who suffered under the apartheid should not be expected to repay the very loans that were taken to oppress them" (CASE and SANGOCO, s.d.: 54). According to this view, the debt should be shouldered by the foreign banks and corporations that issued the relevant loans.

<sup>112</sup> e.g., the Presidential Job Summit organised by NEDLAC followed nation-wide Hearings under the title "Speak Out on Poverty" which were previously convened by SANGOCO and the Commissions on Gender Equality and Human Rights. In turn, these hearings followed SANGOCO's "War on Poverty Campaign", reportedly the most well-known civil society action in the area of poverty alleviation, in which grassroots communities and ordinary people were asked to make submissions to various fora on the impact of poverty on their lives. Thousands of ordinary people from Townships offered their testimony. The hearings' final report was presented to Parliament and one of their outcomes was that poverty today "looks the same as under apartheid" and that GEAR is one of the key reasons standing in the way of addressing poverty (see, SANGOCO and CGEHR, 1998).

Despite SANGOCO's influence, however, like most civil society organisations, SANGOCO appears to face today an important financial and management crisis and expresses its dissatisfaction with public engagement when it comes to social action. Its management today argues that: "social action at the end of the day exists only for attracting international attention. Then nothing happens. There is no follow up of programmes or promises. And there is no leverage and tool for genuine dialogue" (interview: Shabodien, 10 March 2005, Johannesburg).

It is interesting to note that the only two civil society groups which have so far managed to use NEDLAC effectively in order to articulate their own independent positions and promote their agenda, have been the unions and in particular COSATU, and the Financial Sector Campaign Coalition (FSCC).

Just as 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 why unions and *ad hoc* community participants like the FSCC have been more successful, also seem relatively unambiguous.

As far as unions 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.<sup>113</sup> They also have a strong mobilisation capacity that – contrary to the rest of civil society in this national participatory Forum – have sought to use it as often as possible, in particular during negotiations in NEDLAC concerning labour and social regulations.

Two key moments in the recent history of the post-apartheid labour system may illustrate this strategy well: *a*) the adoption of progressive labour legislation in the aftermath of the first free elections in 1995; and *b*) the reaction of the union movement to a set of (business-supported) amendments to labour legislation proposed by the government in 1999. In the immediate post-apartheid period (1994-1995), unions considerably influenced the content of the new labour legislation negotiated at NEDLAC. The new Labour Relations Act (No. 66 of 1995) (LRA) along with the Basic Conditions of Employment Act (No.75 of 1997) and other pieces of labour legislation became the most salient pieces of social legislation in post-apartheid South Africa.<sup>114</sup>

<sup>113</sup> In the year 2000 South Africa counted 464 registered Unions, with 3,552,113 members or 19.4 per cent 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 the Federation of Unions of South Africa (FEDUSA) with approximately 533,000 in 1998 and the National Council of Trade Unions (NACTU) with approximately 200,000 members. COSATU therefore accounted for 46 per cent of registered union membership, FEDUSA for 14 per cent and NACTU for 8 per cent (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.

<sup>114</sup> The LRA covered all sorts of issues related to the employment relationship. It established the parameters for the collective labour relationship, provided for organisational rights, registration of workers' and employers' organisations and for the formation of bargaining and statutory councils (the former replaced the above-mentioned "sectoral councils"). It also provided for dispute settlement procedures and facilities (i.e., the Commission for Conciliation, Mediation & Arbitration or CCMA) and for the possibility to declare unfair labour practices and for certain disputes to be heard by the Labour Court. Provisions are also made for certain procedures in order to engage in a legal strike or lockout. However, the LRA of 1995 barred the possibility for workers and unions to embark upon a strike over retrenchments (at least until its amendment; *infra*) and in "essential services". Finally, it provided for the formation of workplace

The LRA was one of the first documents to be negotiated at NED-LAC. The negotiations lasted ten weeks and included, among other things, consideration of over 200 submissions from the public. During the negotiations despite the close relationship with its ANC counterparts, COSATU (now part of the Tripartite Alliance) kept a strong negotiating stance. This negotiation was the first confrontation among former allies within an institutionalised setting. The confrontation took place between on the one side, the new administration's staff, a large part of which came from the UDF and other civil society organisations which were previously engaged in the common struggle against apartheid, and on the other side, those that were now seen as having "stayed behind" (e.g., Patel, the chief negotiator of COSATU). In this context, "many friendships were destroyed" (interview: Naidoo, *op.cit.*). Negotiations lasted approximately from May 1995 to July 1995 and ended with an agreement among the social partners and government which was sent to the Cabinet as a draft bill for adoption.

The success of the union movement during these negotiations was the consequence not only of the strong stance taken by COSATU within NEDLAC per se, i.e., in the framework of this participatory structure, but also because COSATU maintained the alternative of "taking to the streets" and indeed did so twice during the period of negotiations (Webster, 1996: 4). Thus, the LRA was negotiated against a background of "a persistently high level of strike activity" (Standing *et al.*, 1996: 175). This "inside/outside" strategy of COSATU appears to have strengthened considerably the unions' negotiating position.

This strategy was a rather conscious choice on behalf of COSATU as already since the transition period, COSATU had realised that the ANC was progressively drifting away from a Keynesian state-driven model

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forums in an attempt to encourage consultation and co-determination on certain issues between employers and employee representatives. These workplace Forums (which raised much controversy as they were seen by trade unions as a hidden effort to splinter their unity) may only be set up by representative trade unions (Bendix, 2001: 88).

In industries where collective bargaining is not established, workers' rights are protected by the Basic Conditions of Employment Act (No. 75 of 1997) (BCEA). The purpose of the Act is to ensure that all employees enjoy certain minimum conditions of employment. The BCEA provides for maximum working hours, payment for overtime and for work on Sunday and public holidays, minimum notice periods for dismissal, minimum annual leave and sick leave, the regulation of overtime and the prohibition of certain deductions. People who are employed in the Army, the National Intelligence Service and the Secret Service, as well as those who work for less than 24 hours per week are excluded from nearly all provisions of the Act.

Besides these two above-mentioned Acts which constitute the country's backbone of labour relations, all employees are further protected by the Occupational Health & Safety Act (Act 85, 1993), which regulates safety issues; the Unemployment Insurance Act (30 of 1996) and the Compensation for Occupational Injuries and Diseases Act (130 of 1993), which mainly provide insurance schemes for workers; the Employment Equity Act (55 of 1998) which prevents discrimination and compels organisations with more than 50 employees to produce an Employment Equity Plan and showing progress in implementing Affirmative Action measures; and the Skills Development Act (9 of 1999) which provides for a compulsory skills levy and the establishment of Sectoral Education and Training Authorities (SETAS). Part of the labour regulatory framework is also the Insolvency Act of 1936, which regulates issues of bankruptcy.

towards a more market-driven one (Nattrass, 1994). Liberal ideas coming from the business intelligentsia and the IFIs, had started to exert increasing pressure on the ANC since the transition, and this, despite COSATU's official participation in the governing alliance. COSATU's demands for involvement in economic policy could thus only be satisfied in part by the passage to parliamentary democracy and social dialogue mechanisms like NEDLAC. Street action, just like during the apartheid period, was to remain an essential ingredient for the promotion of any social demand in order to exercise sufficient pressure on the state and provide a counterweight to the influence of big business and the IFIs.

A second occasion where COSATU demonstrated its willingness to combine the use of both formal negotiating settings with informal protest-oriented methods, and which appears to have strengthened its negotiating position within NEDLAC was related to a set of amendments to labour legislation proposed in 1999 with a view to making industrial relations in the country more flexible and attractive to investments. These amendments concerned mainly the LRA, the BCEA and the Insolvency Act and were officially announced in July 2000 by the Minister of Labour. The proposed set of amendments aimed to allow for greater "flexibility" in working hours, overtime and overtime pay (for more on the flexibility discourse, see, Standing *et al.*, 1996: 5).<sup>115</sup>

With regard to the sensitive issue of the right to strike, some slight changes were envisaged which basically maintained the original provision according to which workers did not have a right to strike over retrenchments and that employers had only an obligation to consult affected workers and their union. While the proposed legislation maintained the illegality of strike against retrenchments, it proposed the intervention of a conciliator for large-scale retrenchments (over 5000 in a year). Other amendments aimed to allow for better enforcement of legislation related to the Commission for Conciliation, Mediation and Arbitration (CCMA), and improve the functioning of the Labour Court (the Labour Court could still not adjudicate on the merits of any dispute arising from strike action). Finally, another important proposal was to allow minority unions and even non-unionised workers to set up workplace forums, something that was felt by unions as an implicit effort to splinter their unity.

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<sup>115</sup> For instance, they would cancel the premium for Sunday work and workers would receive normal pay (this also meant that all "Sunday pay" provisions in the law would be automatically nullified). In addition, some dismissals would mostly become easier and others more difficult (SAS, 2001/2002: 337). These amendments would also permit the dismissal of employees in their first six months of employment (during probation) for poor performance (whereas the original legislation stated that workers in probation had exactly the same rights as another employees); the transfer of workers by employers (and then their possible retrenchment for "operational" reasons) was also to be rendered easier.

Shortly after the release of the proposed amendments, COSATU pointed out that these proposals represented “a worst form of direct attack on workers’ gains” (see, COSATU, 2001). On this occasion too, the use of both formal and informal means of action constituted a major strategy for promoting COSATU’s agenda and – as the outcomes of the process would demonstrate – the reason for its success.

The main terrain of action this time was street mobilisation combined with participation in a newly established Millennium Labour Council (MLC). The latter was an ad hoc bilateral arrangement between unions and a group of big business leaders. The MLC was formally set up to discuss strategies for job creation outside the NEDLAC framework and adopt a “common stance” on related issues. However, informally it was perceived by some as an elegant way to bypass NEDLAC (interview: Dowie, *op.cit.*) and for others, as a way to facilitate the negotiations over the labour law amendments (interview: Dexter, *op.cit.*).<sup>116</sup>

In any case, according to COSATU itself, the decision to embark on a series of general strikes (in each quarter of the year) until the amendments were withdrawn, while at the same time reaching an agreement with big business at the MLC (which was afterwards endorsed by the government) led to “a huge improvement on the original proposals by government” (COSATU, 2001). Among other things, the agreement reached on the right to strike over retrenchments (Section 189 of the amended LRA) established the right of the workers to strike over the retrenchment of 50 or more employees. More specifically (contrary to the government’s initial proposals) the agreement provides 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 per cent of the labour force of the enterprise. The CCMA provides facilitation as originally proposed by the government. However, if a deadlock emerges, workers can follow a normal dispute path and, following a certain procedure, have a right to strike while employers are able to retrench. In case of refusal on behalf of an employer to provide information relevant to retrenchment, the agreement reached at the MLC states that there is an obligation to call for arbitration. Finally, the agreement provides for a right to sympathy strike action in disputes about lay offs.

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<sup>116</sup> A Programme of Action adopted by the 7th National Congress of COSATU held in September 2000, illustrates well COSATU’s negotiating strategy to oppose the government’s pro-business policy choices. These include mostly a parallel use of, on the one hand, inside, formal institutionalised structures and, on the other hand, outside, more informal and mobilization including setting up of ad hoc negotiating tables (such as the MLC), the launch of general strikes in collaboration with “progressive civil society formations and communities” (2), and the use of special legal provisions when available (section 77 notice in NEDLAC) aimed to halt retrenchment of thousands of workers in the public sector (4) (COSATU, 2000)

Besides the issue of strike action, COSATU won important victories in other areas as well. For instance, regarding dismissals of workers on probation, the negotiating parties at the MLC agreed upon a narrower test of compliance with fairness requirements in the case of dismissals for unsatisfactory performance during the probation period compared to that applied to permanent workers. This was done in an effort to mitigate the risk of abuse by employers and the emergence of a category of “permanent probationers” within the workforce. The CCMA was given the mandate to determine and settle disputes. The agreement also gave stronger protection against dismissals when a company is transferred under Section 197 of the LRA. NEDLAC would recommend a list of judges from which the Minister should appoint acting judges for the Labour Court. NEDLAC should also get more involved into the CCMA process considering cases of unfair dismissals. In an effort to simplify and accelerate the CCMA process which was overwhelmed with unresolved cases, NEDLAC was given the possibility to set specific timeframes for CCMA cases. In addition, workers could be represented by a union without having to prove their affiliation to the union in question before their dismissal.

According to business representatives interviewed during the field research the outcomes of the negotiations at NEDLAC – which were generally positive for unions – would have never been achieved had the negotiations between business and labour taken place exclusively in NEDLAC (interview: Dowie, *op.cit.*). While for NEDLAC officials (interviews: Dexter, *op.cit.*; Mbongo, *op.cit.*) the MLC was not contrary to the NEDLAC as it facilitated rather than obstructed the process of adoption of the amendments, Business South Africa (BSA) and many South African business associations were outraged with the way the forum was established (as a “personal initiative” of a few well-known “but naïve” CEOs of big companies who ignored the formal employers’ structures and their positions at NEDLAC – Dowie<sup>117</sup>) as well as its outcomes (which satisfied the workers’ demands way beyond what certain business wanted to concede – SACOB) (interviews: Dowie, *op.cit.*; Darroll, *op.cit.*; O’Brien and Oosthurzin, *op.cit.*). BSA viewed the action as a “personal initiative”. These agreements run against BSA’s formal positions as well as the interests of the majority of small and medium business in South Africa.

COSATU views NEDLAC as a second field of interaction with the government after that of the Tripartite Alliance. COSATU usually adopts in NEDLAC an “independent position” when it comes to social and economic issues. It claims that it “supports the government when it adopts progressive policies and opposes it when it advances policies that are against the interest of workers”. However, it appears that putting pressure on the government within the participatory framework of NEDLAC has

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<sup>117</sup> Secretary General, Business South Africa

always gone hand in hand with protest-oriented action outside this forum.<sup>118</sup>

COSATU sees NEDLAC as an institutionalised “terrain of struggle” that should be “defended, since it constitutes a deepening of democracy and recognition of the central role of organised labour in social and economic transformation”. However, COSATU is also cautious about NEDLAC. It has argued for instance that negotiations taking place in NEDLAC should not be a “substitute for the responsibility of parliament to legislate” and “should not be counter-posed to parliamentary democracy”, obviously, in an effort to cut short ANC’s intention to restrict participation of unions in economic policy making at the government level when it comes to important issues (e.g., macro-economic policy) (see, COSATU, 2000).<sup>119</sup>

In general, COSATU’s strategy of combining protest-oriented activity outside institutionalised participatory fora with participation within these fora seems to be a conscious and necessary one in order to counter-balance the negotiating power of business and state representatives, within a market-driven policy environment which affects decisively the balancing of interests. In short, COSATU believes that NEDLAC’s arrangements and negotiations without outside pressure are not sufficient to advance the unions’ cause:

*“There is all sorts of pressures, and sometimes you get the feeling that certain individuals are battling in the light of these pressures. But that’s where your mass struggles outside parliament come into play because if a person only gets pressure from one side, from the IMF, the World Bank, from John Major and Thatcherite economists – then for a few months with that sort of pressure on an individual, he will then begin to soften up and follow. But, if there is equal pressure which is coming from left sources outside parliament on the same issues that he is getting pressure from the IMF, then he begins to think as an individual instead of thinking on behalf of other forces” (cited in Webster, 1996: 6)*

<sup>118</sup> It should be noted however that the strategy of trade unions to use “outside” avenues and “take to the streets” should also be seen in the light of the fact that these were disputes declared in the context of NEDLAC’s own procedures for conflict and dispute resolution (Section 77 of the LRA). Mobilisation would therefore partly fall within, or at least be facilitated by, the institutional process and procedure.

<sup>119</sup> This is also reflected in the stance vis-à-vis NEDLAC of many of COSATU’s affiliates which seem to increasingly adopt an ambiguous and skeptical attitude towards this institution on both practical and ideological grounds. For instance, the SA Municipal Workers’ Union (SAMWU) has argued that experience in other countries shows that in the presence of corporatism and co-determination, “workers tend to work harder, wage restraints were implemented and in many cases many workers lost their jobs” and that “[t]he new social democrats expect us to give joyous voice to their new song about capital and labour struggling together for the benefit of everyone. We are asked to accept that class struggle no longer exists” (cited in: Standing *et al.*, 1996: 163).

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.<sup>120</sup> 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, SACC, or TAC, 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, as in the case of the union movement, distinguishes it from the rest of NEDLAC's community constituency – has been its twofold strategy which consisted in making use of both institutional and extra-institutional forms of mobilization and policy making, engaging with both the state and business actors to support its demands. In fact, the Coalition started in 2000 as a South African Communist Party-led (SACP) Red October campaign to “Make the Banks Serve the People”. Street demonstrations compelled the NEDLAC constituencies to accept the introduction of the subject-matter in NEDLAC's agenda and the FSCC to join the forum.

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 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.

Because of the absence of financial and insurance services for poor, the micro and survivalist economic sector operated outside the system leaving its entrepreneurs at the mercy of the money lenders which could charge up to 500 per cent interest rate per year provoking over-indebtedness, at a time when the official rate was much lower (roughly at 21 per cent). This systemic exclusion of the poor from the financial services was

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<sup>120</sup> 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 on 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 NEDLAC, (Shezi, 14 March 2005, Johannesburg).

effectively penalising people for trying to develop a micro-economic activity and generate modest income. At the same time, discrimination by insurances against HIV/AIDS victims was increasing the suffering of those experiencing the impact of HIV/AIDS who could not even afford to bury the victims. It should be noted that for the indigenous culture, burial costs are significant (Roth, 2002).

Negotiations within NEDLAC on the issue of the financial sector's transformation started in 2000 after the FSCC successfully applied for participation in the community constituency. While it has formally become part of the community constituency of NEDLAC, the FSCC does not participate in the development chamber (which it considers toothless) but in an *ad hoc* working group, the "task team", created especially for the occasion. Despite the initial resistance of the financial sector to calls for pro-poor transformation during the negotiations (arguing that the government and NGOs should care for those who could have access to banking services), and the deadlock in negotiations in 2002, the FSCC's persistent protest and mobilization strategy (including a march to the Parliament) compelled the financial sector to participate in a Summit aimed at addressing the issue in August 2002. In the Financial Sector Summit, 13 agreements were reached providing for universal access to basic financial services by all South Africans. Among other things, the 2002 Financial Sector Summit's declaration emphasised that the transformation of the financial sector would serve South Africa's growth and development goals and required the agreements to be implemented as a package in an "inclusive, consultative and co-operative manner."

In 2003, however, the financial industry adopted a Financial Sector Transformation Charter unilaterally and outside the NEDLAC. This Charter committed R20 billion to housing; it also promised investments of up to R75 billion, or 3.75 per cent of the assets of the banking sector (the demand of the FSCC was 5 per cent). On the contrary, it failed to address the 2002 Summit's commitment to create a financial sector "which is more diverse in terms of nature, size and ownership of institutions"; it was moreover silent on the issue of micro-lending despite the Summit's concerns with the high cost of credit, and the crisis of over-indebtedness; it also failed to heed the Summit's call for financial institutions to "interact with and support smaller institutions, especially co-operative banks and NGOs that can provide micro-credit to poor households"; finally, the Charter also failed to deal with discrimination by insurance companies against the victims of HIV/AIDS.

Despite the numerous failures of the Charter, and the FSCC's concerns over the slow implementation of the agreements which undermined their impact on the poor, the FSCC marked three additional important success using once again the threat of renewed street mobilisation. First,

in October 2004 the *Mzansi* national bank account was launched by all the major banks and the Post Office. 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). This was perceived to be the first tangible step towards achieving universal access to basic financial services for every South African. Second, in November 2004 an agreement was reached within NEDLAC on the governing body responsible for implementing the restructuring promised in the Charter, i.e., the Financial Sector Charter Council. The Council is set to be a tripartite-plus forum composed of 21 members, 3 from each constituency representing labour, the community, and government and 9 from business, i.e., the Financial Industry Association and the ABSA bank. Finally, an agreement with the banks, within NEDLAC and the newly established participatory Financial Sector Charter Council, was reached to include new features such as minimum requirements for the pro-poor account. These included mechanisms, such as debit orders, to cater for payments for other financial services such as housing and insurance, while ensuring it is not used for payments to the money-lenders (*mashonisas*).

In sum, the main contribution of unions and the FSCC has been the introduction in NEDLAC’s agenda of highly contested and very important items. In both cases examined above, the relative success of civil society seems to be linked above all to the use of both institutional and extra-institutional means of action and the agonistic attitude inspired by techniques used by “old” or “new” social movements. Similar developments seem to take place in the area of HIV/AIDS, due to the techniques of the civil society organisations in this field, which managed to combine formal and informal means of action.

### ***Perceptions on SANAC***

Interviews with NGOs and unions during the field research revealed that while most of the state initiatives in the field of HIV/AIDS are “high profile activities which mobilise important resources” they all seem to have been considered as having a low impact in terms of mitigation of the disease. Many interviewees stated that HIV/AIDS infection figures could have been dramatically lower had the state adopted a clear-cut policy on treatment to at least decrease MTC. As noted above, until recently (i.e., until the adoption of an Operational Plan in 2003) the main focus of the state was on prevention and mitigation of the effects of the epidemic while less importance has been accorded to the treatment of the disease.

The participatory forum aimed at addressing the HIV/AIDS issue, i.e., SANAC, has been criticised by some interviewees for being too con-

ciliatory with the state's views prioritising prevention. SANAC's silence on crucial issues appears to be due to disagreements among the members of the Tripartite Alliance (COSATU, SACP, and ANC), and even within the ANC or COSATU, on the definition, usefulness, content, scope, and feasibility of the National HIV/AIDS Treatment Strategy (interview: Steele, *op.cit.*). SANAC thus has so far failed to generate the efficient responses to address HIV/AIDS as expected by the proponents of the participatory approach in this field. While SANAC like other participatory policy structures and initiatives is certainly not to be blamed for the observed high rates of HIV prevalence, it often constitutes the main (institutional) target of critiques coming from all parts of state and non-state representatives (many wished to remain anonymous) for not being able to mitigate MTC and its dramatic consequences, or dissipate the confusion that prevails about the HIV/AIDS origin and cure of the disease, due to "contradictory official statements" and "popular beliefs".

One of the most ardent critics of SANAC is the Treatment Action Campaign (TAC), generally seen as the most influential and effective civil society organisation in the HIV/AIDS field. In TAC's opinion, SANAC can do little to respond to the AIDS pandemic. TAC has also been critical of civil society representatives in SANAC, because these "have not been able to actively influence the agenda of this body and have remained prisoners to the agenda of the government" (TAC newsletter, 7/10/02). Its recent inclusion in this body does not seem to have modified this reality.

TAC was formed in 1998 as a campaign aimed at lobbying for cheaper anti-retroviral drugs and assisting the state in a 1997 legal case, which opposed the pharmaceutical industry to the South African government, after the former had sued the government for passing an amendment allowing for the purchase of generic antiretroviral drugs (ARVs) at cheaper prices from foreign suppliers rather than from local subsidiaries of the manufacturers themselves.<sup>121</sup> The amendment was viewed as a violation of existing WTO rules on trade-related intellectual property issues (TRIPS). During the court case TAC's intervention was admittedly key: TAC engaged in a series of demonstrations outside the court and the buildings of drug companies and brought patients dying of AIDS as witnesses in the case. TAC also called for worldwide demonstrations against the drug companies - and these took place. To avoid a public relations catastrophe, the drug companies eventually withdrew their litigation.

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<sup>121</sup> The reconstruction of TAC's development is based on field interviews with the campaign coordinator of COSATU (Steele, 4 April 2002, Johannesburg); the national coordinator of TAC (Geffen, 20 March 2002 and 11 May 2004, Muizenberg); the Director of AIDS Law Project and Treasurer of TAC (Heywood, 10 March 2005, Witwatersrand); the Executive Director of Health System Trust (Mametja, 10 April 2002, Durban); the Director of the National Progressive Primary Health Care Network (Mathijs, 19 April 2002, Johannesburg); data available at the UN Office for Co-ordination of Humanitarian Affairs (s.d.); and the Mother-to-Child Transmission Case, 2002. See, also, Chirambo, 2004 and Van der Vliet, 2004.

It should be noted that TAC has close links with the trade union movement. In fact, TAC was initially created by COSATU in order to “assist and lobby the state to adopt a more pro-active stance in the field of HIV/AIDS treatment”, in particular by providing all HIV positive pregnant mothers with Neverapine (interview: Steele, *op.cit.*). Two underlying reasons seemed to explain this decision: *a*) unions feel that their agenda is submerged by people’s demands “which go beyond strictly labour issues” (interview: Scheepers, *op.cit.*); *b*) COSATU –conscious of the urgency of the treatment issue – thought it would be an efficient way to bypass the slowness of both the internal union mechanisms and the very participatory political landscape that prevails at all levels of policy-making in South Africa in general, without damaging the cohesion of COSATU and the Tripartite Alliance.<sup>122</sup>

However, while one of the first actions of TAC was to support government’s policy, the relationship between the two quickly deteriorated due to the adoption by the government of a fundamentally new policy on AIDS treatment, especially after the newly-elected President stated that the amendment Act “was no longer a priority” and appeared to question the link between HIV and AIDS (*supra*). As a response to the implicit rejection of TAC’s demands for a national AIDS treatment plan TAC decided to use legal means this time against the government, in addition to awareness raising activities, smuggling and distribution of cheap generic ARVs (with assistance from *Médecins sans Frontières*) and mass demonstrations. In other words, TAC became one of the most vocal “new” social movements. However, TAC has always sought to use a combination of extra-institutional venues of mobilisation (street mobilisation) and more institutional ones, such as engaging in litigation against the government in support of the interests of its constituency.

In August 2001, TAC launched a famous court case demanding of the government to provide Neverapine to pregnant women so as to limit mother-to-child transmission.<sup>123</sup> A few months later, the Pretoria High

<sup>122</sup> As the COSATU’s chief campaign co-ordinator observed: “We have created a campaign which deals specifically with the treatment issue because [...] so far the government policy has focused only on prevention, care and support and unfortunately we haven’t been able to reach a common understanding at the Alliance level regarding the treatment. [...] To do that takes a lot of time since it has to go through several structures. [...] In the absence of an agreement regarding the distribution of anti-retroviral and because the policy of the government doesn’t include treatment [we decided] to create in 1998 a campaign named Treatment Action Campaign to advocate for these issues”.

The issue of a national treatment policy has constituted a major point of disagreement among the tripartite alliance, namely the ANC, COSATU and SACP. Disagreements were reported to exist even within each alliance constituent (interview: Steele, *op.cit.*).

<sup>123</sup> The case started as an application in the High Court in Pretoria on 21 August 2001. The applicants were a number of associations and members of civil society concerned with the treatment of people with HIV/AIDS and with the prevention of new infections. The principal actor among them was the TAC. The respondents were the national Minister of Health and the respective members of the executive councils (MECs) responsible for health in all provinces (save the Western Cape).

Court upheld TAC's case arguing that the provision of ARVs was part of the government's obligation under the constitutional right to health care. The government appealed the decision in the Constitutional Court. In conformity with the first ruling, the provincial government of Kwazulu Natal initiated a plan for the distribution of Nevirapine to pregnant women. However, the Department of Health blocked a US\$72 million grant destined for the province on the basis that Kwazulu-Natal should not have approached the donor directly. TAC publicly announced the launching its own private treatment plan by importing ARVs from Brazil. The chairperson of the organisation, Zackie Achmat, himself HIV-positive, refused to take ARVs until they became generally available to all South Africans that needed them.

In July 2002, the Constitutional Court upheld the decision of the High Court and confirmed that failure to provide treatment violated the constitutional rights of women and babies.<sup>124</sup> However, the Department of Health delayed the rolling out of the distribution plan due to insufficient infrastructural capacities. TAC responded by launching a civil disobedience campaign, "Dying for AIDS," and pressing manslaughter charges against government in connection with AIDS deaths. Finally, in November 2003, the government issued an "Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment for South Africa" (Department of Health, 2003b). In this plan, the government committed itself to: *a*) roll out antiretroviral treatment that can help people with HIV to live longer, healthier lives; *b*) improve the public health system by hiring 22,000 additional health care workers over five years; *c*) provide nutritional programmes for people with HIV/AIDS; and *d*) improve the accessibility of voluntary counselling and testing, prevention of mother-to-child transmission of HIV and other important health programmes. The government would introduce one service point in every district and aimed to reach 1.4 million people in five years. SANAC was to be responsible for its implementation.

Since the release of the Operational Plan, thousands of people (mainly in the Gauteng and Western Cape Provinces) have benefited from access to treatment. Yet, against a target of 50,000 people by March 2004,

<sup>124</sup> "[80] Government policy was an inflexible one that denied mothers and their newborn children at public hospitals and clinics outside the research and training sites the opportunity of receiving a single dose of Nevirapine at the time of the birth of the child. [...] In the circumstances, we agree with the finding of the High Court that the policy of government in so far as it confines the use of Nevirapine to hospitals and clinics which are research and training sites constitutes a breach of the state's obligations under section 27(2) read with section 27(1)(a) of the Constitution." Mother-to-Child Transmission Case, 2002.

Sections 27 and 28 Bill of Rights mainly provide:

"27(1) Everyone has the right to have access to [...] –(a) health care services, including reproductive health care; (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. 28(1) Every child has the right – (c) to basic nutrition, shelter, basic health care services and social services".

by October 2004 less than 15,000 people were being treated in public hospitals and clinics (TAC newsletter 3/11-2004).<sup>125</sup> SANAC like most institutionalised processes aimed to address HIV/AIDS-related issues was still accused of immobility. In this context, TAC resumed its mobilisation and litigation activity aimed at the effective implementation of the Operational Plan. On November 4, TAC launched a new court case in the Pretoria High Court demanding the government make the implementation timetable publicly available.<sup>126</sup> Alternatively, TAC asked the court, if there was no such timetable, to compel the Minister of Health to develop one (TAC, 2004b). Parallel to this TAC launched a nationwide demonstration campaign to gather public support for this new legal action.

At the same time, TAC continued putting pressure on drug companies and established a long record of successes. For instance, TAC's campaign against the pharmaceutical company Pfizer led to the company providing a life-saving opportunistic infection drug, Fluconazole, at no cost to government. In 2003, TAC forced two large companies, GlaxoSmithKline and Boehringer Ingelheim, into a settlement that resulted in generic versions of AZT, Lamivudine and Nevirapine becoming available at much cheaper prices (which later on benefited the national treatment plan process currently underway). TAC's legal representative, AIDS Law Project, was awarded a prize by the Department of Trade and Industry for this. Today, TAC is putting pressure on another company, MSD, to allow competition on its antiretroviral drug Efavirenz.

TAC's position and strategies is in stark contrast to that of the most important CSO sector participating in SANAC, the National Association of People Living with AIDS (NAPWA), which claims to represent between 200,000 and 300,000 members. While not rejecting the need for distribution of ARVs, NAPWA seems to have embraced the state's hesitant approach to treatment and appears to have adopted the more conciliatory view of the government and certainly a less confrontational approach. NAPWA argues that South Africa "still lack(s) basic infrastructure which is conducive to effective administration of antiretrovirals" (NAPWA, 2001). It focuses "on the provision of care and support for peo-

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<sup>125</sup> According to the Department of Health, by the end of September 2004, only 11,253 patients were put on treatment (see, Progress Report on the Implementation of Comprehensive HIV and AIDS Care, and Management and Treatment Programme, at <http://www.doh.gov.za/docs/reports/2004/hivaids-care/monitorreview.pdf>).

<sup>126</sup> i.e., an Annexure to which the Operational Plan referred but that the government failed to release despite the demands of TAC. More specifically, because the Operational Plan referred to the implementation plan timetable as Annexure A, TAC asked the Minister on 20 February 2004 to release Annexure A. Since then TAC made several formal and informal requests for the Minister to make the implementation plan timetable publicly available. However, in September 2004 the DoH informed TAC that the so-called Annexure A was a draft that had never been adopted by the Cabinet, the MinMEC or the task team that drew up the Operational Plan and that references to Annexure A in the Operational Plan had consequently been made in error (TAC, 2004a).

ple living with AIDS,” on the “facilitation of co-ordination” and the establishment of “support groups for counselling,” and finally on the “enhancement of HIV/AIDS awareness through seminars and workshops throughout South Africa,” but not on massive treatment.<sup>127</sup> NAPWA has accused TAC of promoting a hidden “anti-governmental” (anti-ANC) and “racist” (anti-black people) agenda (TAC newsletter) and has officially distanced itself from TAC.<sup>128</sup> The spokesperson of this organisation (Thanduxolo Doro) said in the past: “The general attitude of civil society is that government is responsible, but we believe we need to help it” (cited in Forest, 2003).

In sum, NAPWA which until the recent restructuring of SANAC dominated the structure, appeared to have embraced the official strategy in this area, that HIV and AIDS can be combated more effectively through prevention<sup>129</sup> although this argument has been turned down, *inter alia*, by the July 2002 Constitutional Court decision.<sup>130</sup>

Until recently, it would seem that this conciliatory stance had applied to most other civil society participants in the SANAC process. This was the case reportedly not because the participants were convinced by the arguments put forward by the state, but because of a number of structural problems associated with the SANAC process that prevented them from expressing their views freely. Despite SANAC’s recent restructuring process which ensured – reportedly – a stronger voice for civil society within this forum, a number of structural problems persist and contribute to a continuous feeling among practically all its participants that the structure is completely ineffective. The main problems highlighted by the interviewed participants as interrelated were:

a) The lack of political and financial independence of the structure. This problem continued to be the most important obstacle to the good functioning of this body. Despite the availability of some funds aimed at rendering SANAC more independent, the body’s secretariat remained located in the Department of Health, just like the agenda setting.

b) The dominance of the government in the process of agenda-setting which may account for the widespread conception that the agenda did

<sup>127</sup> See, [www.napwa.org.za](http://www.napwa.org.za)

<sup>128</sup> “NAPWA hereby takes a position to distance itself from the Treatment Action Campaign and all its activities” (NAPWA, 2001).

<sup>129</sup> “NAPWA became a perfect and convenient restorer of credibility in the government’s continued legitimisation and justification of the Department of Health’s outright refusal to provide anti retroviral treatment to millions of people living with HIV and Aids” (Mazibuko, 2004).

<sup>130</sup> “[82] The issues relating to the alleged failure to implement a comprehensive national programme for the prevention of mother-to-child transmission are intertwined with the refusal to permit nevirapine to be prescribed at public hospitals and clinics outside the research and training sites. Foundational to all aspects of the case was the challenge to the policy concerning the use of nevirapine” (Mother-to-Child Transmission Case, 2002: paragraph 82).

not adequately reflect the specific and widespread demands of most of SANAC's participants, in particular in relation to the issue of swift and effective implementation of the treatment action plan provided for in the Operational Plan. While TAC's mobilization and litigation action managed to introduce the treatment issue in the agenda of SANAC, notably by putting pressure on the government to accept it (e.g., the *Mother-to-Child Transmission* Constitutional Court case) and creating the appropriate conditions for the government to implement it (e.g., TAC successfully filed a case in the competition commission which dramatically lowered the price of life saving drugs), TAC's representation in SANAC could hardly modify SANAC's sloppiness; in fact TAC appeared to have been confronted with the same problems of lack of independence and agenda setting as the rest of the civil society organisations participating in this body. In sum, even TAC, the most vocal and outspoken participant, found it difficult to cope with these structural obstacles.

c) The lack of clear terms of reference and the obligation of many participants to subscribe to what some have described as "implicit terms of reference", namely, "talk in one voice" and "don't criticise the government" (interview: Munro, 1 March 2005, Pretoria), obliged the participants to remain silent even when they disagreed with the agenda and priorities of the government and refrain from openly criticizing the government's opinion with respect to these issues.

d) As a Country-Coordinating Mechanism (CCM) for the Global Fund, SANAC did not demonstrate its effectiveness in designing and approving robust proposals destined to request funds for HIV/AIDS activities. In fact, the participants often viewed themselves as "legitimatising" actors of pre-set funding proposals, which, among other things, excluded treatment-oriented proposals. Some participants complained that they were given the proposals to study and approve at short notice, at times, just a few hours in advance of the meeting (e.g., interviews: Jacobs, *op.cit.*; Le Roux, *op.cit.*).

Because of these drawbacks, most interviewees argued that SANAC could not function effectively neither as a genuine advisory body, nor as a monitoring mechanism of the country's HIV/AIDS initiatives, nor as a CCM. According to the interviewees, the most resounding failures of SANAC have been associated with its poor record in terms of civil society participation and formulation of funding proposals to the Global Fund, and its ineffectiveness in supervising the implementation of the Operational Plan.

On the contrary, TAC's influence in shaping the agenda of the state from outside SANAC has been incontestable. TAC's influence was explained by the sole fact that it confronted successfully the government

in courts and street mobilisation, on human rights grounds (for some replicating the US gay and lesbian groups' tactics; see, Mbali, 2005). The Constitutional Court's decision stated that the government had an obligation to design and implement effective policy in the area of MTC. The government went beyond this obligation and decided to provide a generalised treatment plan. According to the interviewees, this was the result of the "social movement" atmosphere created around the issue of treatment, of which TAC was and still is the linchpin. Street mobilisation, civil disobedience campaigns, marches to Parliament, pickets, demonstrations appear to have constituted a necessary element for pushing the state to more commitment. In other words, as Geoff Bundlender, the legal adviser of TAC during the *Mother-to Child Transmission* court case, argued, had it been an isolated successful litigation on behalf of a few NGO activists, and not a grass-roots social movement using the above described agonistic methods, the MTC legal precedent would have little echo in terms of policy design in government cycles, let alone chances to be generalised to all people living with AIDS (interview: Bundlender, 23 March 2005, Cape Town).

*"The TAC built a strong alliance with key pillars of civil society – trade unions, churches and media. It built a genuine social movement. And it showed how the Constitution, which represents the best ideals and values of our country, can be a powerful tool for holding government to those ideals and values. In some ways, the final judgment of the Constitutional Court was simply the conclusion of a battle which the TAC had already won outside the courts, but with the skilful use of the courts as part of a broader struggle.*

*If the lessons of the TAC case are learnt by other parts of civil society, this marks a turning point. It represents a new depth and maturity in our new democracy. Democracy is not only about voting once every five years. It is also about the ability of ordinary people to influence their government, to ensure that it is responsive to their needs. The TAC case shows how this can be achieved."*<sup>131</sup>

However, TAC's participation in the SANAC does not seem to have improved its influence on the state with regard to the implementation of commitments. Like the rest of the civil society participants, TAC found itself confronted with the same structural obstacles characterising the functioning of SANAC, mostly related to the lack of independence of the body (interview: Heywood, *op.cit.*). In sum, TAC's voice appeared to be far more effective when acting outside participatory bodies such as SANAC, rather than inside them. As one TAC activist stated:

<sup>131</sup> Bundlender, G., 2002.

“South Africa is a great place for participatory democracy; these structures are quite groundbreaking – at least for a developing country like ours. TAC had tried every single structure available – NEDLAC; Human Rights Commission; Gender Commission; the Public Protector – literally every single mechanism. But when they all failed (not completely – some were a little bit more successful than others – but not so far as to accede to our demands for AIDS treatment at the national level) we then turned to civil disobedience methods” (telephone interview: Geffen, 11 May 2004, Muizenberg).

This seems to be explained by the fact that, as many interviewees explained, socio-economic rights may be effectively implemented as long as they are supported by social mobilisation, put differently, when an active social movement plays the role of watchdog over the deliberation taking place inside institutionalised policy structures (e.g. interviews: Heywood, *op.cit.*; Bundlender, *op.cit.*).

There are many counter-examples in South Africa which confirm this observation. One of the most resounding ones has been observed in the area of the right to housing. In the *Grootboom* case, opposing a group of people evicted from their informal settlements to the state, despite the defeat of the defendant (local and national government representatives) and the ruling of the court ordering the latter to care for the evicted people by providing them with appropriate shelter urgently, very little changed in practice. This was arguably due not only to the fact that the state proved slow in implementing the ruling, but also that few, if any, where those that used this legal precedent in order to put pressure on the government so as to put an end to rent evictions and take concrete measures to accelerate its housing programme.<sup>132</sup>

<sup>132</sup> The facts of this case are as follows: in May 1999 a landowner evicted, pursuant to a court order, 900 people who had occupied his land after having moved out of the overcrowded informal settlement known as Wallacedene, destroying their shacks, and most of their possessions. The community subsequently sued the Oostenberg Municipality, the Cape Metropolitan Council, the Western Cape Provincial Government and the national government, seeking an order to provide them with temporary shelter. Their application was largely successful in the Cape High Court, which ruled that Section 28 (1) of the Constitution (the child's right to shelter) placed an immediate obligation on the state to house the community's children and their parents in tents with portable latrines and a regular supply of water. The state appealed against the judgment, chiefly on the grounds that the South African Constitution had wrongly been interpreted as providing people in the Grootboom community with immediate relief. In its judgment on appeal, released in October 2000, the Constitutional Court again ruled in favour of the applicants, but for different reasons. Focussing on the right to housing in Section 26 (1) and (2) of the Constitution, rather than children's right to shelter in Section 28(1), the Constitutional Court held that the state was not under a specific duty to assist the Grootboom applicants in particular. The real question was whether or not the state's housing policy and practice, in its totality, was reasonable. Answering this question, the Court held that the state's policy was not reasonable insofar as it did not cater for people living in situations of crisis or who were otherwise in desperate need – people in the same position as the applicants. The relief granted by the Court was, however, less far-reaching than that granted by the Cape High Court, amounting only to a declaration that the state's housing policy was defective and requiring the state to devise and implement measures aimed at providing relief to people in desperate need. See, *Grootboom*

In fact, the policy of the state in the area of housing seems to have increasingly become more market-driven, and evictions a more frequent phenomenon, obviously due to the general philosophy and impact of GEAR on social delivery.<sup>133</sup>

Bundlender, who argued the *Grootboom* case in the Constitutional Court (on behalf of the Human Rights Commission and the Community Law Center of the University of Western Cape) in addition to the TAC *Mother-to-Child Transmission* case, made the following comment:

*“the case demonstrates that social and economic rights are only as strong as the willingness of civil society to enforce them. There is a sharp and illuminating contrast between the consequences of the TAC case, and the earlier Grootboom case. In Grootboom, the Constitutional Court dealt with the right to housing. It explained the obligation of the Government to people who are in a desperate situation, have no place where they can live securely, and are truly homeless. National government’s compliance with the judgement only started a year later, after the high profile Bredell land invasion. And there are still major cities that continue to act in breach of the Constitution. The major reason for this, is that civil society organisations have failed to take up the opportunity created by Grootboom, to compel government to deal with the needs of the truly homeless”* (Bundlender, 2002).

Case, (2000a-b); the description of the case draws on the Centre on Housing Rights and Evictions, (2005: 26-7).

<sup>133</sup> In that respect it is worth quoting in some length the following official statement: “The most significant goals of GEAR in respect of our capacity to implement the housing programme are those that have to do with availability of funds for housing. GEAR is clear about promising tighter fiscal policy measures, which are being brought about by a cut in government expenditure and a more cost-effective civil service. The overall theme which runs through the GEAR policy is that “large-scale increases in government spending as a macro-economic strategy will create major macro-economic imbalances in the form of high inflation, serious balance of payments difficulties and poor long term growth and employment prospects.” While the GEAR policy does not prohibit increased public expenditure to address certain backlogs, it seeks to minimise the demands placed on the national fiscus. Consequently, it is unlikely that government will have the capacity to expand the scope of subsidies or grants, beyond those already accepted as housing policy. If government believes that additional public investment in a certain process or scheme is necessary, the GEAR response under current unfavourable economic circumstances is likely to require that “new” investments be funded from existing allocations, thereby requiring the re-orientation of the amount available for existing programmes. A consequence of more stringent fiscal policy, therefore, is an increased awareness of the need for alternative, additional resources. Housing policy must promote efficient and cost-effective delivery programmes that achieve maximum gearing of public investment with other resources, be they financial or in terms of sweat equity.” Cited in National Department of Housing “The Housing Code. Part 1. Chapter 2: Overall Approach to Housing in South Africa”, available at [http://www.housing.gov.za/content/housing\\_code/part1/chapter2.htm](http://www.housing.gov.za/content/housing_code/part1/chapter2.htm).

This is in stark contrast with the RDP understanding of the post-apartheid housing policy, which advocated a basic needs-driven approach. The evolution of the housing policy discourses as well as the influence of GEAR and the World Bank on the South African housing policy is traced in Bond (2000).

In sum, the *Grootboom* case clearly confirmed that in the absence of sufficient societal mobilisation, successful litigation might not suffice to push the government towards accelerated action in the area of socio-economic rights. This appears to be also the case in the area of child labour, which as explained below, suffers from an acute lack of societal mobilisation, which, in turn, has a negative impact on the effective implementation of the existing anti-child labour legislation and policy measures.

The overall assessment of the usefulness of civil society's participation inside the SANAC was summed up by the Executive Director of the HIV/AIDS, TB and Malaria Fund who stated that while the "collective voices of civil society, private sector and the church need to be heard, [...] SANAC is certainly not an example of good practice. [...] SANAC has quite a long way to go. My concerns about SANAC are that it is not yet functional. It does not meet often enough or do concrete work" (cited in Deane, 2003). Similarly, most interviewees and a recent study on SANAC (e.g., Chirambo, 2004; interview: Chirambo and Ceasar, 3 March 2005, Pretoria) highlighted the general pessimism regarding the adequacy of the institutionalised participatory policy framework as well as the role of civil society representatives within it. On the contrary, even those that did not entirely share TAC's position on treatment (e.g., the HST)<sup>134</sup> emphasised the importance of TAC's intervention in promoting the interests of people with HIV/AIDS outside the formal policy structures through protest and the use of litigation.<sup>135</sup>

The ineffectiveness of SANAC contrasts sharply with the effectiveness of TAC which managed to put the issue of treatment (mainly in the area of mother-child-transmission) firmly on the public agenda of the state and eventually to alter the government's policy stance in collaboration with a number of organisations, like the AIDS Law Project and the AIDS Consortium, and with the active support of unions and international NGOs (like Oxfam and *Médecins sans Frontières*). It is important to note

<sup>134</sup> The approach of HST, perhaps the most important civil society organisation in the area of HIV/AIDS after TAC, was similar to that of NAPWA. Although the NGO does not participate in SANAC, it performs a crucial function of information provision (especially during the first years of the transition) through its excellent research capacities and its links with "former NGO fellows" now in government (interview: Mametja, op.cit.). HST underscores the risk of overburdening the health care infrastructure and budget through anti-retrovirals provision. It also points out that Neverapine and other anti-AIDS drugs could prove dangerous if distributed and used without appropriate care: "[...] although it is rather a good thing to do push for "policy clarification" it is sometimes simplistic to argue for the free distribution of Neverapine like if it is an aspirin. There is a need to create first the appropriate infrastructure before starting distributing the drug. It should be done but after some adjustments and only in these areas where there are facilities..." (interview: Mametja, *ibid.*).

<sup>135</sup> "[In the field of HIV/AIDS] the state has created confusion. The policies of prevention and voluntary and state counselling do not address the issue of treatment. There is no treatment policy and the issues of anti-retroviral and mother-to-child transmission have brought TAC, which has undertaken legal action, in confrontation with the government. This is where the value of civil society organisations comes into play" (interview: Mametja, *ibid.*).

that its main strategy did not consist in dialogue within participatory processes but mostly litigation and protest. When included in the participatory structure, TAC experienced similar difficulties as the other participants, and was thereby led to continue mobilisation through means other than formal deliberations in SANAC.

### **Perceptions on CLIG**

Most interviewees argued that the participation of civil society in the CLIG and the NPA processes responded mainly to its historical role in raising awareness on the issue of child labour and child rights. It also fit within the broader post-apartheid tradition of participatory democracy.<sup>136</sup> The most important among them, namely, the NCRC and the NACL were the first to initiate efforts towards addressing the issue of child rights and child labour respectively from 1989 and 1994 (interviews: Mamiki, *op.cit.*; Thoko, *op.cit.*; Camay, *op.cit.*; Loffell, *op.cit.*) For example, NACL which is the main umbrella organisation participating in CLIG, has in the past been active both in collective mobilizations and in the drafting of legislation. During the Global March Against Child Labour (sponsored by the ILO's IPEC), NACL coordinated the NGO activities for the South African campaign. It also helped to draft and disseminate portions of the Basic Conditions of Employment Act of 1997 (BCA), which provides the main legislative framework for child labour in South Africa (*supra*).

Both the NACL and the NCRC seem however less effective in their actions in recent years than in the past (interviews: Camay, *op.cit.*; Jackson, *op.cit.*; Solomons, *op.cit.*; Msezane, 26 March 2002, Johannesburg; Bosch, *op.cit.*). Like in the case of the CSOs of NEDLAC, they face a serious financial crisis and their participation in the respective policy fora does not seem to have produced significant changes. The *de facto* replacement of the participatory CLIG process by the CLAP process with its more focused structure (tripartite) and agenda (worst forms of child labour), has rendered essentially symbolic the presence of these organisations in the Provincial branches of the CLIG which were maintained.

This situation was presented by some to be the consequence of a "lack of political will" to consider child labour as a policy priority and move expeditiously in this field, with the exception of the worst forms. In

<sup>136</sup> The need to guarantee transparency and participation in the policy process to "the previously disadvantaged South African people," further than that guaranteed by the holding of regular elections, was described by practically all interviewees as an "absolute necessity" for a smooth transition to democracy, including in the field of human rights in general and child rights in particular. As the chief of the Office of the Rights of the Child in the Presidency stated, "people still need to feel that they participate [in the reconstruction effort]" (interviews: Thoko, 15 April 2002, Pretoria; see also Patel, 18 June 2002, Geneva).

particular, the prevailing view within South African elites, including unions (which do not consider the issue as a priority mainly because it does not concern the formal sector of the economy, e.g., interview: Solomons, *op.cit.*), is that child labour is a problem which stems from underdevelopment and can only be addressed through economic development.

During the 2002 field research the general thrust of this view was presented by the head of the ORC (interview: Thoko, *op.cit.*). According to her, because of the apartheid's legacy of poverty, discrimination and underdevelopment, the problem of child labour in South Africa could not be controlled easily. In fact, child labour may be on the increase and constantly reproducing itself. Two factors may be responsible for this failure: 1) there has been a misunderstanding on what constitutes (good or bad) child work and therefore a lack of appropriate responses; and 2) a fundamental precondition for designing an appropriate CLAP for addressing child labour, is economic development which is only slowly achieved. Thus, in her mind, for South Africa to be able to implement existent anti-child labour legislation, it would need on the one hand a "cultural approach and definition", namely, a definition that takes into consideration "ethnic, racial, cultural and linguistic particularities that characterise South African society as a whole"; and on the other hand, effective "poverty alleviation" policies such as those based on rural development because "poverty leads to child labour". For instance, as she argued, because many families still do not have access to water and electricity, despite considerable improvements in infrastructure, children still fetch water and wood very frequently. This is one recurrent and dire form of child labour.

This view seems to resonate well with a number of policy priorities set by the government in this area which overall express a willingness to focus on either the criminal (worst) forms of child labour (trafficking, commercial sexual exploitation, the use of children by gangs to commit crimes) or the developmental aspects of child labour (ILO/IPEC-supported pilot projects for addressing the problem of fetching water and wood in remote rural areas), thus leaving aside –for the time being – other forms of child labour such as farm work.

The preparation of a national CLAP in the framework of the CLIG proceeded very slowly (interviews: Camay, , 12 March 2002, Johannesburg; Loffell, 14 March 2002, Johannesburg; Jensen, *op.cit.*). Among factors responsible for this lack of progress, interviewees mentioned the excessive inclusiveness of the process ("what needs two months, takes two years") (interviews: Thoko, *op.cit.*; Bower, *op.cit.*), rapid turn-over of public administration personnel ("people come and leave very fast; they are not well informed of the previous process and often negotiations have to start all

over again”; interview: Camay, *ibid.*) and, finally, lack of political will (interviews: Camay, *ibid.*; Loffell, *ibid.*). This is why when the drafting of the CLAP was concluded, only one meeting took place to present the CLAP under the auspices of CLIG in “a momentary renaissance”. However, since then it was decided that the CLAP Implementation Committee (CLAPIC) should be responsible for the implementation of the programme rather than the CLIG. CLAPIC is in reality an inter-governmental structure. As one former DOL official currently working for the ILO, stated:

*“CLIG was different. NGOs were very strong in this body, and government officials participating in this forum were low-level public servants from DOL. In CLAPIC the general feeling is that it is a government body, with high-level officials, and some civil society participation. Unlike Nedlac, which is a consultative forum, the purpose is to become a coordinating body. The first CLIG was strong on civil society involvement, but because junior governmental figures were involved, it was difficult to reach decisions. The CLAPIC structure is much closer to a coordinating structure among governmental departments.”*

In general, most NGO activities in these participatory fora consisted in helping with producing reports some of which are addressed to the UN. As seen above, the reports were formally drafted by the Office of the Rights of the Child (attached to the Presidency) – which provides the secretariat of the NPA – after consultations with the civil society sector and relevant government departments (interviews: Thoko, *op.cit.*; Jackson, *op.cit.*; Timpson, *op.cit.*; Mamiki, *op.cit.*).<sup>137</sup> Contrary to other African countries, South African civil society organisations have never raised any objections related to the accuracy of the facts and/or the data reported and have never drafted a “parallel report.” While this was interpreted by some as a positive consequence of the broadly consultative process and were quite happy with the CLAP outcomes currently under consideration by the Cabinet (interview: Timpson, 11 April 2002, Johannesburg; Loffell, 4 March 2005, Johannesburg), others tended to explain the complete alignment of civil society organisations to the overall approach of the state as a reflection of their close relationship with the government (interviews: Camay, *op.cit.*, 2002; Jackson, *op.cit.*; Msezane, *op.cit.*, 2002) and lack of a real alternative. One of the strongest statements to that effect was made by the director of the Cape Town Child Welfare Society (CTCWS). Referring to the NPA reporting process for the purposes of the UN Convention on the Rights of the child, the interviewee stated:

<sup>137</sup> “National and provincial workshops” are held by the so-called NPA Steering Committee and its Provincial counterparts, i.e., the Provincial Programmes of Action Steering Committees (interview: Thoko, *op.cit.*).

*“Civil society and the NCRC are often used to legitimate the government reports on child issues prepared periodically for instance for the UN. The report states and civil society endorses, however, what the State wants to hear, not what civil society believes” (interview: Jackson, 22 March 2002, Cape Town).*

Similar comments were made even by NACL, the main umbrella NGO participating in CLIG, according to which participation in policy fora ended up “co-opting” rather than empowering child rights NGOs (interview: Camay, 7 March 2005, Johannesburg). It was also reported that some NGOs are leaving the field of child labour and moving towards more “marketable” policy areas, like HIV/AIDS prevention (interview: Camay, *op.cit.*, 2002). Overall, NACL within CLIG was perceived to face problems similar to those faced by NEDLAC’s community constituency, i.e., lack of funds and symbolic presence. For NACL’s head, the experience of the CLIG was clearly one of a “talk shop” which did not contribute to the improvement of the conditions of children. NACL admitted however that it remained engaged in the process because of the need to maintain a link with the DOL to address other issues:

*“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).*

The 2005 field research showed that because of this situation, the leadership of this umbrella NGO has almost completely abandoned its child labour lobbying activities (e.g., interview: Bosch, *op.cit.*), to focus instead on research activities on other issues which attracted the interests of donors (interview: Camay, *op.cit.*, 2002). Today NACL reaffirms that civil society within the participatory structures which included civil society, “co-opted” rather than empowered civil society not only because of the weak finances of the participants but above all because outside these structures, the societal mobilisation in support of the abolition of child labour practices in South Africa has been almost inexistent.

*“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 because in the current South African situation the ANC government is [...] not amenable to criticism – which is a problem across government in various departments.”*

*“[...] 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, well-known organisations like Molo Songololo (Western Cape), the Nelson Mandela Children's Fund (Gauteng) or Sithabile (Gauteng) argued that they preferred to keep a distance from the CLIG, the NPA, or even the CLAP processes, to focus instead on field work and research, lobbying and above all awareness raising activities (interviews: Solomons, *op.cit.*; Biyela 16 April 2002, Johannesburg; Msezane, *op.cit.*). This is not to say that these organisations do not believe in the value of engaging in dialogue with government. Far from it. They believed however that the most crucial activity in the area of child labour is to raise the awareness of labour inspectors and mobilise society as a whole. Many of them preferred to be indirectly represented in these processes through the umbrella organisations, and at times be involved in the broad and decentralised consultations organised in the context of the CLAP process. Yet they stated during the interviews 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.<sup>138</sup>

In sum, the 2005 field research revealed that the priority of those NGOs that managed to survive the acute financial crisis, is focused on awareness raising activities rather than participation in participatory processes. Most interviewees stated that despite the various participatory endeavours to establish the CLAP and better coordinate action in the struggle against child labour, this area suffered from an *acute lack of societal mobilisation*. This was largely attributed to increasing poverty which forced poor families in need of income to sideline moral or legal considerations, simply, "in order to survive". Thus, what appeared to some as lack of political will to enforce policy and legislation proactively in this field, reflected in the eyes of others a grave socio-economic reality. This latter view would also explain why the only areas where some pro-activeness has been observed on behalf of the state and many NGOs are those that target the "worst forms" of child labour (e.g., trafficking and prostitution) and those that can find remedy through development infrastructure.

<sup>138</sup> "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 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).

Interestingly, it could be argued that this pattern of relative disengagement from the fight against child labour in general, so as to concentrate on its worst forms and those linked to acute underdevelopment, is reflected in the corresponding evolution of the participatory approach to policy design and implementation in this area. As noted above, after an initial period marked by a generalised interest of all stakeholders (including the government, which at this time was composed by freshly-elected ex-civil society representatives) in all forms of child labour (CLIG), the most recent participatory endeavour (CLAPIG) seems to concentrate only on the worst forms of child labour and those related to infrastructure development. It should be added however that the worst forms were not the focus of the official survey on South African Young People Activities (SAYP, *supra*), a document which was viewed until a few years ago as very fundamental since it “mapped” the situation of child labour in the country. The document is today described as “flawed”, even by the those child labour NGOs which were among the most committed back in 2002, in that it adopted a definition of child labour which ignored local peculiarities and cultural considerations, overstated some forms of child work while it ignored others, and did not take into account the effect of HIV/AIDS on child labour (e.g., child-headed households). In general, most interviewees would now agree that the survey had made questionable generalisations as to the causes and incidence of child labour in South Africa.<sup>139</sup>

Despite the fact that that the CLAP “participatory” process is de facto mainly composed of state representatives and social partners, very few civil society representatives complained about this situation. And this despite the fact that the CLAP document which is going through a “costing” exercise from the various departments (education, policy, social welfare, DOL, the ORC etc) and the Cabinet, has little chances of being finalised swiftly.<sup>140</sup>

Having said that, the state and many civil society organisations demonstrate a vivid interest in finalising what is known as the Child Rights Bill. This Bill should reportedly bring some coherence to the area of children’s rights, at least from a legal perspective. Here too, it should be noted that the child labour component of the Bill was removed from the latest version of the Bill, on the grounds that other pieces of legislation

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<sup>139</sup> According to NACL for instance, the survey defined child labour in a very broad way; the number with which the survey came up (roughly 3 million) was too big; certainly the number of children engaged in harmful work is probably lower; the questionnaire methodology was flawed since children were often guessing as to how many hours they spent on the various activities and on the harmful impact of working activities. Also, they had problems with the way the sample results were generalised to South Africa as a whole. Right now, with increasing migration to South Africa, the problem is not so much with child labour but with child trafficking (interview: Camay, 7 March 2005, Johannesburg).

<sup>140</sup> Because of the limited finances available to the various state departments, but also because the exercise requires a coordination among departments which is not easily achieved.

had already dealt with this issue (e.g., the Basic Conditions of Employment Act; *supra*).

To sum up, the government and progressively the civil society organisations involved in the CLIG and CLAP processes seem to privilege an economic approach by underlining the complexity of the issue of child labour which prevents a clear-cut definition (“good or bad child work”) and underlines the need for economic development. In the absence of a definition (and generally accepted research mapping the issue) of child labour -due to the lack of consensus on what constitutes child labour – the most generally acceptable anti-child labour policy available today (besides relevant legislation) is the policy of poverty alleviation, e.g., through the distribution of a child support grant (interview: Msezane, *op.cit.*; Camay, *op.cit.*).<sup>141</sup> This leaves little room for more proactive approaches based on law enforcement.

The absence of social mobilisation advocating direct action to end child labour practices in South Africa and improve children’s rights in general appears more than ever to be an obstacle to the promotion and implementation of child labour legislation and policy in this country. The decrease in the vibrancy of child labour NGOs such as the NACL and its affiliate members, which became apparent during the second filed research in 2005, seems to correspond to the continued lack of social mobilisation.

One of the few positive developments in the area of child rights can be observed in the specific field of social security for children with the extension of the existent child support grant to all children below the age of 14 years instead of 6 years which was the threshold until 2004. This seems to have been achieved due to the successful mobilisation not of the

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<sup>141</sup> These refer to policies such as the “School Feeding Programme” (understood from a poverty alleviation perspective; interview: Kloka and du Plessis, 1st March 2002, Pretoria); the Child Support Grant (available to pregnant mothers and kids until the age of 16); compulsory free education; the provision of free health care to pregnant women; the family allowance program which provides cash benefits to low income persons caring for children under the age of 18; and disability and death programs that also provide cash benefits. See also [http://www.dol.gov/ilab/media/reports/iclp/Advancing1/html/south\\_africa.htm](http://www.dol.gov/ilab/media/reports/iclp/Advancing1/html/south_africa.htm) NACL shares this opinion: “any action against child labour has to take poverty into account. Poverty will always lead the children to work: that’s why a child grant is so important. Poverty needs to be addressed through social security” (interview: Camay, *op.cit.*, 2005). According to IDASA (interview: Cassiem, 22 March 2002, Cape Town) the Child Grant, the Primary School Nutrition Program and the free health care programmes, all aimed at alleviating child poverty, are not sufficient measures for addressing the needs of children or holding them back from working to support the family income. In the 2000 budget, the child support grant was R100 per child (\$10). In real terms, the recipients of the grant have 5.5 per cent less spending power. Due to the slow “take up” rate (absorption of the grant), government is unlikely to reach its target of three million beneficiaries. As of January 2000, the grant had only reached 217 000 persons. Finally, it should be noted that expenditure on social services remained unchanged for 2001/2002 and decreased from 6 to 5 per cent for 2002/2003. In real terms, this translates into a 1 per cent increase in social expenditure in 2000/2001 and no increase in 2002/2003.

child labour NGOs participating in CLIG, but the BIG Campaign (and especially ACCES, an NGO active in the area of social security for children), the broad coalition which as seen above, is advocating a universal grant and which, according to the interviewees, tends to adopt increasingly the characteristics of a social movement. As many interviewees stated, the extension of the child grant was decided by the state as a honourable way of refusing to accept the demands of the BIG Campaign Coalition for a universal grant (interviews: Yeni, *op.cit.*; Leshika, *op.cit.*).

Interestingly, as seen above, the same approach seems to have prevailed in the area of HIV/AIDS treatment policy within SANAC. The government has privileged a primarily economic approach due to the lack of consensus on an issue-specific policy in this field. In both cases, due to technical disagreements on the sufficiency or accuracy of available data and lack of technical capacity, the adoption of an issue-specific policy either constitutes a controversial issue or leads to difficulties in implementation. In this context, privileging policies of poverty alleviation over issue-specific ones appears to raise less objections and therefore gather consensus more easily among the parties of participatory decision processes. Thus, just like the issue of child labour, HIV/AIDS is above all seen as evidence of the need to develop economically and alleviate poverty.<sup>142</sup> On the contrary, civil society organisations outside such processes tend to militate for issue-specific approaches and to emphasise the ineffectiveness of the economic approaches pursued so far by the government with the implicit or explicit agreement of the civil society organisations which participate in the decision-making bodies. In this context, with the exception of COSATU which has sought to use various venues (inside/outside these fora) to promote their positions, but also social movements like TAC, and other broad coalition campaigns that increasingly adopt methods of mobilisation that resemble those of social movements, civil society organisations have been generally seen as to offer little input to represent the direct interests of their constituencies, or to effectively influence the agenda and policy making of these bodies.

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<sup>142</sup> Poverty alleviation is seen as the only way of achieving consensus in these participatory policy processes; the same has been observed in policy making structures like CSR where at the end of the day the status quo is favourable to the “need for growth” and “economic development”; once civil society participates in formal policy process, it is obliged to internalise the implicit need for adopting a non-controversial position, to become part of the consensus on “poverty alleviation.”

## **Section VI. Main findings**

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Civil society in the post-apartheid South Africa has become part of an integrated regulatory framework which includes the state, employers' and workers' organisations and other civil society representatives and aims to promote the reconstruction and development effort. The participation of civil society organisations responds not only to ideological, but also technical needs. Indeed, the overall framework of the reconstruction dominated by the RDP goals of social justice and reconstruction through redistribution, suggests the active inclusion in the reconstruction effort of not only the state but also civil society organisations (employers' and workers' as well as other civil society organisations). This approach has been illustrated among other things, in the creation of one of the most progressive and institutionalised participatory policy making structures, the NEDLAC. A similar approach has also prevailed in other policy areas largely neglected during the apartheid regime, such as HIV/AIDS and child labour, where comparable processes open to civil society have been established.

On the eve of the first free elections and shortly thereafter, civil society organisations provided information about peoples' needs, made policy and legislative proposals to influence the state's policy priorities, participated in the drafting of major pieces of legislation, provided human resources and even training to the new state administration in order to fill in lacunae related to shortcomings in experience, resources and managerial capacity of the new administration. However, after having played a significant role in the policy-making process by assisting in the formulation of the state's policy agenda, civil society's role inside the participatory policy processes under examination seems to have gradually declined.

During the period when the state was led by the ANC-COSATU-SACP Alliance, the government progressively developed the capacity to exercise its competence in practically all policy areas where civil society used to be the dominant and sometimes sole actor. A natural outcome of this evolution has been that many civil society organisations were largely deprived of their prior "raison d'être" and started experiencing a "survival crisis" and this, despite the openness of the political system towards them, in particular their umbrella bodies. Surprisingly, in many cases the "survival crisis" was observed to be more acute among the organisations participating in institutionalised processes (with the exception of employers' and workers' organisations). The technical input of non-membership based civil society (NGOs) within these processes was perceived by the interviewees to be weak and its presence rather symbolic. These problems

were reported to be due to shortcomings in the distribution of financial support to NGOs by the state and confusion and/or de facto gradual redirection in certain political and economic orientations of the state. For some, a “lack of political will” to favour civil society’s empowerment was linked to the major macro-economic policy shift reflected in the adoption of GEAR, characterised by some commentators as a “home-grown structural adjustment policy”.

One important observation by the interviewees in this context has been the emphasis placed on “poverty alleviation” in the agenda of participatory processes. Poverty alleviation seems to constitute the main (if not the only) consensus-building platform in these processes. Thus, poverty alleviation policies (e.g., the child support grant, free and compulsory education, universal and free access to health care), tend to become the principle policies which are generally acceptable in order to address the issues under examination. However, these policies may address such issues only indirectly.

Thus, while recognising the usefulness and necessity of formal participatory structures for a smooth transition to democracy and social peace, a majority of interviewees considered that often, participatory policy structures were rather heavy and slow and did not sufficiently contribute to resolving the issues in question, notably by producing issue-specific policies to better promote the objectives of employment generation, HIV/AIDS treatment, and elimination of child labour. Worse still, some felt that they had been confined to preliminary discussions aimed at clarifying from a technical and economic viewpoint the definition of the issues under examination and the feasibility and desirability of ways to address them, sometimes despite the urgency of the issues. Consequently, whereas civil society has been traditionally arguing for a more direct (human rights-based) approach to addressing social issues, it now reportedly tends, as a result of its participation in formal policy structures, to espouse a more indirect (market-driven) approach, which is slower and appears less effective.

As a result of this shift in approach by a section of the South African civil society sector, several interviewees indicated that they felt confined to a secondary role in relation to the past and that their potential for contribution in policy design seemed rather limited; their primarily human rights-oriented approach appeared to be incompatible with the needs of participatory processes which tended to focus on technical issues on which civil society groups did not possess sufficient expertise.

Thus, the primarily advocacy-driven (in terms of human rights and social justice) nature of civil society organisations does not seem to suffice to make them equal partners in debates within these fora. At the end of

the day, many organisations (inside and outside the participatory structures) felt that while the participatory approach is an indispensable element of the transition to democracy and the correction of the distortions of the apartheid era, there is a need for better safeguards within the formal processes so as to ensure that the organisations which participate therein are not perceived as largely captured in a role of legitimacy provision to “orthodox” policy choices, and are seen instead to effectively promote the grassroots demands (*infra*).

However, trade unions and new social movements constitute an important exception to this finding. This seems to be linked with the history and organisational strategies of the independent unions and social movements in South Africa, largely characterised by intense shop-floor organization and an impressive capacity for grass-roots mobilisation (in addition to their independent financial basis). This strategy was in the past able to maintain a strong union movement during the anti-apartheid struggle, despite the regime’s repression and the detention, torture and murder of trade union and other civil society leaders during the apartheid era. It is also one of the reasons why South Africa has as strong a trade union movement as it does today. The adoption of a strategy based on “grass-roots” mobilisation rather than solely on charismatic leadership and interest representation, not only has distinguished trade unions from other civil society organizations, but is also one of the reasons why some of the new social movements have been so successful in mobilizing campaigns.

Indeed, it emerged from the interviews that civil society, especially social movements, could exert effective influence in policy formulation and implementation when their action (usually supported by unions) took place outside formal policy structures (NEDLAC, CLIG, or SANAC) making use of confrontational methods like mobilisation and legal action. The leadership of such mobilisation is increasingly taken by the so-called new social movements, namely, grass-roots movements formed in South Africa after 1994 to put forward demands not directly related to the anti-apartheid liberation movement – demands for social justice in a political environment increasingly dominated by market-driven ideas and policies such as those reflected in GEAR.

It must be noted in this context that the one civil society actor to effectively utilise participatory processes in order to articulate and promote its own, independent positions is the union movement and in particular COSATU. This appears to be not only due to the fact that COSATU is the one organisation with a clear membership base and an independent source of financing, but also because COSATU has not limited itself to participation in the NEDLAC or the other formal processes but has also sought to use multiple tactics and venues so as to push forward its agenda.

Among other things it has sought to exercise, when necessary, parallel action outside these processes. For instance, it has engaged in direct negotiations with top managers of large firms (Millennium Labour Council), and closely worked with “outside” civil society umbrella organisations (like SANGOCO and the SACC). It also extensively used demonstrations and street mobilisation and even contributed to the creation of a new social movement (TAC) to push forward the agenda of HIV/AIDS treatment.

TAC effectively influenced the agenda of the state in the area of HIV/AIDS following a campaign in favour of a National Treatment Policy 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.

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. A High Court decision finally obliged the government to establish an issue-specific HIV/AIDS treatment policy. This issue-specific policy, i.e., the “Operational Plan” is today part of SANAC’s (i.e., the formal participatory body’s) agenda and TAC has been invited to participate therein. 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.

The examples of COSATU and TAC as well as the findings noted above concerning the effectiveness of civil society organisations acting inside formal participatory structures, might indicate that civil society’s effectiveness in promoting social objectives might be optimized when it combines participation in formal structures with mobilization outside these structures. Above all, these examples demonstrate that in the absence of societal mobilization, socio-economic rights cannot be promoted as effectively. As noted above, social and economic rights are only as strong as the willingness of the state to enforce them. In sum, the informal dialogue between civil society and the state should not be underestimated as a complement to formal dialogue within participatory structures.

At the end of the day, most policy actors appear to perceive the role of civil society as one that belongs primarily to the informal sphere of pub-

lic opinion-formation rather than in the institutionalised public administration sphere (despite the importance of participation for the consolidation of democracy and social peace). The underlying assumption among most interviewees was that the action of civil society organisations and in particular the social movements, in promoting equity and social justice should be driven by an effort to perform a function of re-politization of issues which nowadays increasingly tend to be dealt as technical or economic ones. This function could be performed only with difficulty inside formal participatory policy making structures (because civil society, especially NGOs, will most often lack the capacity to engage in technical discussions which go beyond advocacy and value-based arguments) while it could be performed in a more straightforward manner outside these structures (through advocacy and mobilization). In short, the potential of engaging the government in genuine political dialogue outside the participatory processes should not be forgotten by civil society despite the attractiveness of participation in the public administration sphere.

These findings partly confirm the views of experienced students of South African politics and civil society who argued in the early days of the transition process that in order to avoid the risk of bureaucratisation and the adoption of a less social and more market-driven policy, civil society organisations should group together and put pressure on the new state to maintain its social agenda. Dryzek (2000), among other participatory democracy theorists, may be right in suggesting that civil society should opt for participation in formal governance structures only under two conditions: first, that civil society and the state share common agendas and ideological backgrounds; and second, that inclusion of civil society in formal structures of public administration does not “unduly deplete” the critical voice of civil society outside these structures.

In particular, Dryzek pinpoints a clash between two rival global discourses in today’s political arena, namely, market liberalism and sustainable development. According to Dryzek,

*“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)*

An example from the present paper is the way in which the official government discourse seems to perceive of social objectives in all three areas under examination (child labour, employment creation and HIV/AIDS treatment), invariably emphasising their economic dimension

in the form of “poverty alleviation”. As mentioned above, this approach has largely precluded civil society from realising its objectives in these areas (as set in the immediate post-apartheid policies and documents such as the RDP) through its participation in formal structures. Consequently, the research tends to show that as long as market liberalism is the dominant discourse within states, civil society’s action will be more effective in promoting sustainable development objectives when it is “insurgent” and located outside the participatory structures of the state realm, especially when it comes to supporting likeminded actors within them.

We find in other words that in conditions in which the market-driven discourses are dominant within the state, the participation of civil society in formal structures is likely to add very little to the promotion of sustainable development objectives, such as those promoted by the decent work agenda. In the absence of the safeguard of contest and resistance outside participatory processes, market-driven discourses appear to be capable of “absorbing” or “colonising” discourses of sustainable development by emphasising its economic component (thereby divesting it of its character as a principle of “conciliation” or “integration” of the objectives of social justice and economic development). Thus, civil society may end up being silenced within the participatory processes. In this context one rhetorical question may be raised: if inclusion is traditionally an indicator of good governance and a healthy “procedural” democracy, while contestation is the guarantor of a “substantive” democracy, would the inclusion of NGOs and social movements in the institutional sphere diminish the chances of genuine representation (through a largely unintended process of capture), or would it on the contrary contribute to its improvement?

The answer might depend to a large extent on the conditions and guarantees under which participation is carried out. On the basis of the field interviews, one could identify a series of specific conditions, which might contribute to establishing sound participatory processes. These are:

A clear mandate/terms of reference for the members of participatory processes so as to be able to identify their roles and support their views/proposals by reference to their mandate without being intimidated. This might be an important tool to promote freedom of speech and maintain the integrity of civil society organisations within participatory processes, while informing the participants on the specific technical capacity that they will have to develop in the areas under consideration.

Accountability mechanisms involving public accounts of the debates, for instance by releasing the proceedings of the meetings in order to inform the public opinion; and clear links with democratically representative bodies such as Parliament, e.g., by presenting regular reports aimed at assessing progress made.

Internal communication and consistency between the bureaucracy (secretariat) and the deliberative branches of the participatory structures themselves, so as to ensure a healthy interaction between the bodies responsible for the technical and political aspects of the debates and the policies that ensue.

Established representativeness of the participants, on the basis of commonly agreed processes such as elections within constituencies, in order to ensure that all participants are legitimate representatives of their constituencies and avoid any contestation in this regard.

Participation of civil society in the initial stages of agenda-setting and project formulation in order to ensure that its voice might be genuinely expressed from the outset and not only at latter stages. This would prevent accusations of participatory bodies operating as mere legitimacy providers or “rubber stamping” agencies.

The early release of full information and documents for discussion among participants to ensure genuine and informed debates.

Making sure that financing, which should be ideally ensured by civil society participants themselves, does not constitute an impediment to the free expression of opinions in the participatory processes where it is provided by the state.

Dispute resolution procedures which give organizations the ability to pursue other alternatives in the absence of a negotiated agreement, but link these back in some way to the participatory process.

Although these conditions might go a long way towards ensuring genuine participation, the findings of the study tend to indicate that in any case, civil society at the national level is more likely to contribute effectively to the implementation of the decent work objectives, if it maintains a parallel capacity to act outside formal decision-making structures. At the end of the day, it is the existence of societal mobilisation underlying civil society’s participation in participatory structures that constitutes the ultimate guarantee of its capacity to address socio-economic issues in an equitable manner for all.<sup>143</sup>

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<sup>143</sup> This finding is reminiscent of the classic work by Fisher and Ury (1999) on the Best Alternative To a Negotiated Agreement (BATNA), developed in negotiation and conflict resolution theory. The authors support among other things that where there is BATNA, i.e., a credible threat of withdrawal from a negotiating process (such as the ability to protest in the streets, or legal action), negotiating processes are likely to be more substantive in nature and take on board the different interests in a more meaningful way, especially those of the weaker party. Where there is no BATNA, the different interests are not likely to be taken on board, and weak participants are more likely to be co-opted. As Fisher and Ury conclude, “developing your BATNA thus not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum” (1983: 111).

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