CIVIL SOCIETY AND CIVIL SOCIETY ORGANISATIONS' PARTICIPATION IN GLOBAL GOVERNANCE: INTERNATIONAL AND NATIONAL LEGAL SYSTEMS

Valentina Rustichini, University of Siena

Available at: https://works.bepress.com/valentina_rustichini/1/
Abstract

Social societies are closely related to each other, and their systems of governance should include the following principles of good governance: openness, participation, accountability, effectiveness and coherence. It is essential for a democracy to ensure the involvement of civil society in the decision-making procedures concerning the shaping of public policies that affects people’s lives. The lack of transparency and the unequal division of power and participation in these procedures are issues of increasing concern.

This paper examines how a civil law system like Italy’s, a common law system like the United Kingdom’s, and some international organisations such as the International Finance Corporation (IFC) and the World Trade Organisation (WTO), create a democratic and sustainable global governance through their decision-making procedures which allow multiple stakeholders including civil societies and civil organisations to be involved. In particular, I will analyse the regulations established by national public administrations in national legal systems and by international organisations, and will focus on a critical and analytical perspective.

Keywords: Public Administration, Participatory Democracy, International Organisations, National Legal Systems, Stakeholders.
**Introduction: an overview on participation**

Every democratic State ensures its people the right to express their opinions through electoral representation, *i.e.* representative democracy. However, in order to obtain a closer major link between civil society and policy processes, States provide several forms of participatory democracy. This model of democracy assumes that the voting and the election processes are inadequate. Instead, democracy must involve discussion on an equal and inclusive basis and a continued dialogue between the administration and civil society. In addition, this model assumes that interest groups can be instruments in improving the efficiency of policy-making and in assuring the citizens’ participation (Saurugger 2004).

The participation of civil society in the decision-making process leads to several important goals. Firstly, civil society is involved in policy development processes such as those dealing with environmental issues or urban planning. Secondly, the members of society are encouraged to cooperate with the administration (international, national or local) by expressing their comments and criticism regarding the various viewpoints expressed during the consultation process. These rights are applied differently between the international and national levels. (Cassese 2006)

The literature on civil societies’ involvement in decision-making procedures of international organisations and of States is mostly limited to three perspectives: an analysis of the participatory procedures of international organisations (Steffek, Kissling and Nanz 2008), the participatory procedures in every single State (Brondel 2009, Coglianese, Kilmartin, Mendelson 2009), and a general perspective of the participatory regulations implemented by the aforementioned organisations (Della Cananea 2009).

A comparative analysis of the participatory procedures guaranteed by the States and international organisations in their decision-making processes are available (Cassese 2007, Casini 2007). However, these studies are not current, thus a critical evaluation of the procedures in question is lacking.

The theme of public participation in the decision-making process is progressively evolving and there has been an evolution in the laws and practices related to the consultation process. In view of this, a current study on this topic is important for the field of public administration.

I have studied two international organisations and two national legal systems, which are the International Finance Corporation (IFC) (2), the World Trade Organisation (WTO) (3), Italy (4) and the United Kingdom (5). As regards to Italy, because of the limited national rules regarding the involvement of civil society, I have chosen to examine the decision-making procedures of the Region of Emilia Romagna and the Region of Tuscany. The intention is to do a comparative analysis on the instruments for civil society involvement between the international and national levels. Even now, it is clear that there are several significant differences between the various types of civil society participation.

After assuming that the various systems discussed earlier adopt decisions that affect the community through general acts, this paper analyses the consultation methods established by national public administrations in national legal systems and by international organisations for the adoption of these acts by focusing on a critical and analytical perspective.

Firstly the participation of every member of civil society will be ensured if the administrations of international organisations, national States, and Regions allow the participants, representing themselves or other organizations, the right to access public information through a large system of transparency and communication. Secondly, the participants have to be guaranteed the right to have access to the decision-making process in such a way that they can express their opinion. Thirdly, it is essential that the...
opinions and criticism expressed in the policy making process by the participants have a real effect on the final public decision. (Cassese 2007)

In view of this, the following four indicators are the key determinants of democratic quality of every decision-making process:

1) transparency and access to information
2) access to deliberation of policy processes
3) right to be heard to every member of society or their civil society organisations
4) a real impact of results of any consultation on the final public decision

Using the above indicators as guidelines, this paper examines how civil societies and civil society organisations are involved in the proceedings at the international and national levels.

Regarding the sources, I have examined the Performance Standards, Guidance Notes, manuals and statutes of the IFC and the WTO. Regarding Italy and the United Kingdom, I have studied their national laws and Codes. In addition, I have examined the regional laws and statutes of the Region of Emilia Romagna and the Region of Tuscany.

The paper explores how these systems ensure the disclosure of information and transparency in the participation processes, what kinds of public organisations can take part in these procedures, the different types of consultation, whether the procedures allow for oral or written public participation, and whether or not public opinion is effective or not in these decisions.

The following sections discuss the critical assessment of different national legal systems and the international organisations’ approaches to public involvement. This section focuses on the criticism towards the excessive confidentiality and lack of transparency and accountability in these processes.

1. The International Finance Corporation (IFC)

The International Finance Corporation (hereafter IFC or Corporation) is a member of the World Bank Group, and the primary objective of this group is to improve people’s quality of life in its member countries of the developing world.

The IFC is an international organisation that gives loans for finances private projects in the developing world. In order to be financed for their private projects, the IFC clients have to evaluate if their projects are socially and environmentally sustainable. In this evaluation, the Corporation involves several stakeholders.

In order to have transparency and to help its clients, the IFC has published Performance Standards, Guidance Notes and a manual. The first defines client roles and accountabilities for managing projects, and the requirements for IFC financing, while the Guidance Notes provides a guide to clients. The manuals describe the procedure of how to disclose project information and how to involve stakeholders.

In the social and environmental sustainability procedure for the project realisation, every IFC’s client company has to involve stakeholders who may be affected directly or indirectly, either positively or negatively, by the project.

---

2 In every investment, the IFC seeks to reserve the benefits for the communities directly affected by the projects and to maximise its developmental impact, i.e. avoiding or mitigating eventually adverse environmental and social impacts.

3 IFC, Policy and Performance Standards.


5 In addition, the IFC describes the stakeholder engagement in IFC, Internal Standards and Operation.

6 The IFC provides that “Consultation is a two-way process of dialogue between the project company and its stakeholders”, and, through the stakeholder engagement, companies obtain “local license to operate”.

---
Table 1 includes a list of stakeholders identified and categorised by type. The table shows who has access to the deliberation process, and specifically lists several types of stakeholder who may be affected directly or indirectly by the project or may have an influence on the project. For example, the clients may include in the stakeholder engagement NGOs, individuals or organisations and institutions affected by the project, such as farming and fishing cooperatives, women’s groups, labour unions, local government authorities and research institutes.

In addition, clients have to identify and consult with stakeholder representatives, in particular community leaders, who are important in disseminating project information to large numbers of stakeholders, e.g. village headmen or religious leaders. After the stakeholder identification, the client must disclose the information that the stakeholders need in order to participate in an informed way.

The information may require different formats in order to meet the needs of various audiences. Therefore, clients have to consider local languages, and the roles of men and women in the community. The disclosure of information should support the stakeholder consultation. Therefore, this type of consultation process guarantees the input of every member of the local communities.

There is not a precise procedure for a good consultation, and the IFC states that the stakeholder engagement process depends on the specific context. This means that techniques, methods, and approaches depend “on the local situation and the various types of stakeholders being consulted”.

---

7 The stakeholders engagement may include the media, colleges and universities, commercial and industrial enterprises, etc.

8 The IFC formulates that clients need to “Crucially, leave sufficient time between the provision of information about the benefits and disadvantages of the project … and the start of consultation”, in IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Market of 2007, 29.

consultative techniques, the IFC does not recommend in its manuals any specific methodologies because clients do not work in the same context and with the same stakeholders. However, for the case of complex engagement processes or for the involvement of vulnerable groups, the IFC provides some examples of participatory forms, e.g. participatory workshops, focus groups, daily schedules, etc. In addition, it is not clear if the IFC system guarantees the effectiveness of the consultations with the local communities on the final decisions of the IFC. During the consultation, clients receive stakeholder feedback, which they have to take into account. However, the client will encounter commercial and practical limitations in implementing the stakeholder recommendations.

2. The World Trade Organisation (WTO)

The World Trade Organisation (hereafter WTO or Organisation) is a global international organisation created under the Marrakech Agreement of 1995, replacing the General Agreement on Tariffs and Trade (GATT) of 1947. The WTO supervises and liberalises international trade. Its members are States (hereafter Members), and most economic issues derive from previous trade negotiations.

The Organisation and the Members ensure to the civil society organisations and to the Members both transparency and the disclosure of their policies and involvement processes. In order to have transparency and access to information, the WTO General Council adopted two acts to explain the relationship between the organisations and NGOs, in particular the instruments for their participation in WTO policy making. The WTO has established a special NGOs Section on the WTO website with specific information for civil society, e.g. announcements of registration deadlines for WTO meetings.

With regard to NGOs participation, Art. V c. 2 of the Marrakesh Agreement provides that the WTO General Council “may make appropriate arrangements for consultation and cooperation with non-governmental organisations concerned with matters related to those of the WTO”. Therefore, the WTO has a dual relationship with NGOs, consulting and cooperating with them.

Non-Governmental Organisation participation in WTO policy making includes four consultative mechanisms: Ministerial Conferences, Symposia, Day-to-day Contact and New Initiatives. NGOs can participate in Ministerial Conferences only if organisations demonstrate that their activities are “concerned with matters related to those of the WTO”.

In these meetings, “NGOs are provided with office and media facilities in an NGO centre set up at the conference venue”. (Sapra 2009)

---

10 Other examples are local institutional analysis, resource mapping and village maps, poverty and vulnerability mapping, semi-structured interview, etc., in IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Market of 2007, 45-46.

11 Vulnerable groups are formed by the people who have no voice in their community. In the stakeholders engagement, the vulnerable groups have the same position as women, youth and minorities.


14 WTO, Guidelines for arrangements on relations with Non-Governmental Organisations and WTO, Relations with Non-Governmental Organisations/Civil Society.

15 In addition, Members recognise “the role NGOs can play to increase the awareness of the public in respect of WTO activities”, in Paragraph II of Guidelines for arrangements on relations with Non-Governmental Organisations.

16 Article V, c.2 of Marrakesh Agreement.
If we were to observe the presence of NGOs in the WTO Ministerial Conferences from 1986 to 2009, we would see a significant increase in their participation (Tab. 2).

However, a real increase in the participation of NGOs can be seen only from 1996 to 1999 and from 2001 to 2003, and a sharp decline in their participation from 2003 to 2009.

There could be several reasons that underlie the apparent decline of NGOs taking part in the decision-making process of the Ministerial Conferences. Firstly, NGOs are allowed to attend the conferences rather than to observe, and therefore they cannot make any statements during the conferences.

Secondly, NGOs are selected by the WTO to take part in the conferences using the accreditation method. In addition, NGOs do not receive any funding from the WTO in support of their participation.

NGOs can participate through public symposiums, which are meetings arranged by the WTO Secretariat on specific issues of interest to civil society, e.g. on trade or on the environment. In these meetings, NGOs hold discussions with representatives of the Members.

The third consultative mechanism is Day-to-day Contact. The WTO Secretariat receives requests from NGOs to be consulted, then the Secretariat meets the organisations “both individually” and in ad hoc meetings, leading to the exchange of information.

In addition, NGOs are involved in New Initiatives. The WTO Secretariat arranges briefings for NGOs representatives on current WTO issues.

A specific problem concerns the Non-Governmental Organisations’ participation in the WTO Dispute Settlement Understanding (hereafter DSU). The DSU is the WTO’s procedure to resolve trade disputes among Members, such as the violation of agreements or a commitment that is made in the WTO. It is not clear if the NGOs can participate in the DSU system with their “amicus curiae briefs”.

Although there is not a specific reference to NGOs or individuals (e.g. academic experts) involvement in DSU, only Members are parties of DSU disputes.

The WTO Appellate Body affirmed “that it has the authority to accept unsolicited statements by non-governmental organisations or individuals, even if the latter do not have a legal right to make such submission” of amicus curiae briefs “or to be heard by the Appellate Body”. (Steffek & Ehling 2005)

In spite of this approach by the Appeal Body, there is no specific provision for the involvement of NGOs in the DSU.
The result is that the majority of the NGOs’ submissions are rejected by the Appellate Body or WTO Panels without explanation. Finally, only Non-Governmental Organisations and no individuals can participate in the four WTO consultative mechanisms. Instead, NGOs and individuals are both uninvolved in the dispute settlement system, because there is no provision on the matter. Therefore, the WTO does not guarantee the right to be heard to every member of civil society, and in particular, it is unclear what the impact of the NGOs consultation is on the WTO’s final decision.

3. Italy: two examples

Law 7 August 1990 n. 241 is the Italian law on administrative procedure and right to access to the document. Participation is ruled under article 7 to 13 of the 1990 Act. Article 13 provides that provisions on the participation ruled under article 7 to 12 do not apply to rulemaking and planning procedures. “This means in essence that participation rules only apply to adjudication – individual decision making procedures – not to regulation in its different forms”. (Caranta 2010)

This is a relevant problem if we consider that the Constitution of the Italian Republic provides that “The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity”17.

In addition, Italy is a member of the European Union and it has signed the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters18. Compared with other developed countries, Italy is not a leader in the use of public involvement practices and “for many public authorities, participation simply means informing citizens of intentions and decisions”. (Carson and Lewanski 2008)

In Italy, participation is not a general principle and it is not clear what the State’s approach is towards civil society’s participation. However, it is a principle adopted by several Italian regions through their regional statutes and their local law in specific sectors like urban development and environmental protection, increasing the participation and protection of interested parties. (Mattarella 2010)

Through these regional statuses and regional laws, citizens are not only informed and consulted, but also encouraged to contribute their experience to improve the quality of collective decision-making.

Important examples of these local situations are the Tuscan and Emilia Romagna statutes. The Region of Tuscany adopted Law n. 69/200719, and the Region of Emilia Romagna adopted Law n. 3/201020. Both the laws introduced new rules for the participation of civil society and stakeholders in their regional administrative decision-making processes. (Sgueo 2010, Sgueo 2008) Again, both regions encourage and promote new forms and new methods of participation by means of the construction of new participatory institutes.

Regarding access to the deliberation process, article 4 of Law n. 3/2010 provides that every

---

17 Article 118, c.4 of the Constitution of the Italian Republic.

18 The European Union has implemented the Aarhus Convention for provisions about participation by Directive 2003/35/EC. The Aarhus Convention itself was ratified in Italy with L. 16 march 2001, n. 108.

19 Regional Law 27 December 2007, n. 69 is entitled “Rules on the promotion of participation in the formulation of regional and local policies”. (“Norme sulla promozione della partecipazione alla elaborazione delle politiche regionali e locali”).

20 Regional Law 9 February 2010, n. 3 is entitled: “Rules for setting, reorganise and promoting procedures for consultation and participation in local and regional development policy”. (“Norme per la definizione, riordino e promozione delle procedure di consultazione e partecipazione alla elaborazione delle politiche regionali e locali”).
person have access to information used in the decisions on territories or on issues of special social and cultural importance in which they are interested.

To ensure the disclosure of information and transparency, the regional administration uses the best practices regarding public information, such as the website “www.iopartecipo.net”.

Through these practices, stakeholders and citizens can obtain information and can exchange their views and feedback.

Even though all people have the right to transparency and to access to information, they do not have the right to participate in policy procedures. In fact, article 3 provides the right to participate only to people, associations of citizens and businesses that are recipients, individually or collectively, of a regional or local planning act.

The civil society involvement\textsuperscript{21} concerns any future project and any future provisions of competence of Regional Assembly\textsuperscript{22}. There are no particular constraints to the object of the proposed implementation of a participatory process. The object of these proposals may be administrative procedures and local acts, wholly or partly, already in force or not yet in force.

Furthermore, regarding access to the deliberation process, article n. 2 of Law n. 69/2007 provides that not all citizens and organisations be involved in the Regional Public Debate (“Dibattito Pubblico Regionale”), but that only selected citizens can be asked to start a debate. This concerns large public or private projects or issues having a significant environmental or social impact on the whole regional community.

The selected citizens are the proponents of private or public projects and include any person who contributes significantly to the project, local authorities in the area of the project, citizens and residents\textsuperscript{23}.

Each person can submit an application for a participatory process at any time.

Every involvement process is managed and controlled by the Technical Guarantee (“Tecnico di garanzia”), who is a public officer of the Assembly.

The Technical Guarantee is appointed by the President of the Assembly and decides the guidelines for the design of and conduct in participatory projects. His/her role is also relevant to the transparency of the involvement procedures. In fact, the Technical Guarantee has to create a website which shows each stage of his/her activities.

Unfortunately, this website is not yet active.

In addition, the Regional Public Debate is organised and controlled by a “third party”, the Regional Authority for Participation (hereafter the Authority), which is an independent and neutral individual or entity. The Authority is chosen by a political organ, the Tuscan Regional Assembly\textsuperscript{24}. The Authority has several important functions: it is responsible for actively promoting regional participation policy by providing support, especially financial, to those individuals interested in implementing these practices\textsuperscript{25}.

\textsuperscript{21} Article 10 of Law. 3/2001 of the Region of Emilia Romagna.
\textsuperscript{22} Article 3, c.1 provides that “Under this Act, all persons, associations and businesses recipients, individually or collectively, are entitled to participate in the participatory decision-making process dealing with general and sectoral local or regional strategic planning, or project and implementation acts and the in every field of regional expertise...”.

\textsuperscript{23} For article n. 2 of Law. n. 69/2007 provides that “Participatory processes can be partaken by: a) provides resident citizens and foreign or displaced citizens who are legally resident in the territory affected by participatory processes; b) the people who work, study or are occasionally living in the concerned territory; c) when in Tuscany, the Tuscan who reside abroad; d) other persons, also at their request, who have an interest in the concerned territory or in the matter of the participatory process, in so far as their involvement in the participatory process is deemed useful by the person in charge of the proceedings.”

\textsuperscript{24} A candidate for this position must be an expert in political science in public law or have experience in the field. It is not requirement that he/she have Italian citizenship.

\textsuperscript{25} Article 5 of the law 69/2007 of the Region of Tuscany. In addition, the Authority has the function of guaranteeing the impartiality, neutrality and correctness of the processes and protecting the fairness and legitimacy, and thus the credibility, of the participatory
In particular, the Authority is responsible for evaluating and accepting the proposals for public debate and for defining the criteria and means of support (financial, methodological, and informational). Its role is relevant for the transparency of the process, it ensures the timely dissemination of all documentation of every project, which is the objective of the participatory process. The disclosure is achieved through internet instruments, public notices, publications, and public offices for citizen relationship. Again, the Authority has to present an annual report to the Tuscan Regional Assembly concerning its activity.26 The report should demonstrate if and how every debate is improved.

Article 10 of Law n. 3/2010 provides that public participation be oral, and that people be involved in an “organised participation”, in a “path of organised discussion”.27 Law n. 69/2007 provides for participation that is mainly oral, in that people engage in “debates” and public meetings, but it is also partly written, in that all citizens can also prepare and file reports to give information to the community and those involved.

At the end of both processes no more than six months long, a conclusion paper concerning a proposal for participation is drawn up and published. For Emilia Romagna, the regional authorities take into account the contents of this document, which may not be considered for the final public decision.

In Tuscany, the project proponent may abandon the project, accept the contents of the conclusion paper and amend his/her project, or not accept it. Whatever their choice is, the authorities or the project proponents have to give their reasons for a specific action. Therefore, in the Region of Emilia Romagna and in the Region of Tuscany the results from processes that have its support, as well as its own activity.

26 The Regional Authority for participation submits its annual report on his/her activities to the Regional Council, who ensure that it is appropriately published. In addition, the Authority must publish the knowledge and experience gained during the implementation of the presented projects, including the final reports.

27 Article 10, c.3 Law n. 3/2010.
Tab. 3 Requests for support and financed projects

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of presented projects</th>
<th>No. of financed projects</th>
<th>Total cost of presented projects</th>
<th>Total cost of awarded support</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>58</td>
<td>20</td>
<td>3,697,191.71</td>
<td>684,700.00</td>
</tr>
<tr>
<td>2009</td>
<td>36</td>
<td>20</td>
<td>1,907,967.80</td>
<td>642,775.00</td>
</tr>
<tr>
<td>Total</td>
<td>94</td>
<td>40</td>
<td>5,605,159.51</td>
<td>1,372,475.00</td>
</tr>
</tbody>
</table>

Tab. 4 Category of proposers requesting support

<table>
<thead>
<tr>
<th>Category</th>
<th>Total 2008-2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipalities</td>
<td>41</td>
</tr>
<tr>
<td>Associations/citizens</td>
<td>5</td>
</tr>
<tr>
<td>Mountain communities</td>
<td>3</td>
</tr>
<tr>
<td>Businesses</td>
<td>0</td>
</tr>
<tr>
<td>Schools</td>
<td>7</td>
</tr>
<tr>
<td>Parks</td>
<td>1</td>
</tr>
<tr>
<td>Provinces</td>
<td>0</td>
</tr>
<tr>
<td>Hospitals</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
</tr>
</tbody>
</table>

Tab. 5 Number of requests for support submitted to the Region of Tuscany

<table>
<thead>
<tr>
<th>Topic</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>PB</td>
<td>11</td>
</tr>
<tr>
<td>IP</td>
<td>4</td>
</tr>
<tr>
<td>EP</td>
<td>5</td>
</tr>
<tr>
<td>EDP</td>
<td>5</td>
</tr>
<tr>
<td>PR</td>
<td>3</td>
</tr>
<tr>
<td>HS</td>
<td>7</td>
</tr>
<tr>
<td>US</td>
<td>13</td>
</tr>
<tr>
<td>SE</td>
<td>1</td>
</tr>
<tr>
<td>UI</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
</tr>
</tbody>
</table>


28 From the 2009 and 2008 Annual Report written by the Regional Authority for Participation.
29 From the 2009 and 2008 Annual Report written by the Regional Authority for Participation.
30 From the 2009 and 2008 Annual Report written by the Regional Authority for Participation.
As seen from Table 3, in 2009, 36 requests were submitted to the Authority for financial support for local participatory processes, for a total cost of euro 1.9 million. In addition, the Authority has funded 20 of these projects for a total expenditure of euro 642,775, equivalent to one third of the amount requested. In 2008, the same number of projects were funded, thus 20, for a total cost of euro 684,700. Overall, the Authority has funded 40 projects, 20 in 2008 and 20 in 2009.

As seen in Table 4, the vast majority of the entities applying for funding are local authorities and in particular municipalities. During the 2008-2009 Biennium, 61 applications were submitted, 41 by municipalities. In addition, among the municipalities, requests for financial support came mainly from small and medium sized communities that have a population between 5 and 40 thousand inhabitants.

Regarding the requests, in the 2008-2009 Biennium the Authority for Regional Participation gave priority to projects for urban regeneration, urban/territorial planning instruments, and participatory budgets. In 2009, in addition to the above categories, the funding involved the processes relating to health and social policies (Table 5).

The results of the Tuscan participation model has been recognised by Rodolfo Lewanski, the Authority for Participation of the Region of Tuscany, and by Carolyn Lukensmeyer, president of AmericaSpeaks, an independent foundation that aims to increase the democratic process in the United States through greater involvement of its citizens in public decision-making. According to Mrs. Lukensmeyer, the United States, often seen as an example for the establishment of public participation forms, has taken as an example the Tuscan participatory model.

4. The United Kingdom
In the United Kingdom, (hereafter UK) the Government has adopted two important documents, The Freedom of Information Act 2000 and the Code of Practice Consultation of 2008. The first has been in force since January 1, 2005. This Act creates a general right of access to information held by a very large number of public authorities. In practice, people make a request to the public authorities to be informed in writing whether the authority holds the information they requested. If it holds the information, the authority must provide the requested information to the applicant.

The Code of Practice on Consultation of 2008 (Craig 2008) provides that the consultation by the UK department and its agencies be based on seven criteria, e.g. to ensure that every “Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals”31 and every “Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.”32 In addition, the code notes that a written consultation is not the only effective form of consultation, but that there are other instruments, i.e. stakeholder meetings, public meetings, focus groups, regional events and web forums.

However, the Code does not have a legal force and cannot prevail over statutory or mandatory external requirements. The UK ensures some local consultative mechanisms. In the Regional planning process, people are involved through “community involvement” and “examination in public”. In the Local planning process, citizens participate through an “independent examination”. These participatory forms relate to the social, urban, environmental and economic fields in order to increase the number of sustainable communities.

Regional Planning Bodies (hereafter RPBs) are the bodies that have the role of keeping under review and revising the Regional

---

31 Criteria n. 3 of Code of Practice on Consultation.
32 Criteria n. 4 of Code of Practice on Consultation.
Spatial Strategies (RSSs) for their region\textsuperscript{33}. (Thompson 2004)

In order to have transparency and access to information, the RPB must prepare and publish two documents. The first is a statement of its policies as to the involvement of persons appearing to have an interest in the exercise of the RPB’s revision functions\textsuperscript{34}. The second document sets out how the RPB has consulted bodies and persons in the revision process prior to submission of the draft revision.

Regarding the access to deliberation process, the RPB should involve the public in a broad consultation rather than in consultations with particular groups. The community involvement is not “simply a one off consultation exercise, but an ongoing process of proactive involvement of the public”. (Tromans, Edwards, Harwood, Thornton 2005) In this participatory form, the RPB may use several techniques for engagement, for example opinion pools, public conferences or sub-regional events. The RPB consults a range of people, e.g. individuals, bodies that represent the interest of different racial, ethnic or national groups in the RSS region, local authorities, etc.

In addition, the RPB uses “umbrella groups” for reaching the largest possible cross-section of the community e.g. isolated rural communities\textsuperscript{35}. Therefore, community involvement guarantees to every member of civil society the right to be heard.

The Secretary of State may arrange for an “examination in public” (hereafter EIP) to be held during the draft of the RSS\textsuperscript{36}. The main purpose of an EIP is to ensure a discussion on and testing in public selected matters\textsuperscript{37}. The matters are chosen by the Secretary Panel (i.e. a groups of experts) in order to test the soundness of that revision, e.g. issues involving significant controversy, conflicts between the draft revision and national policies.

In order to have transparency and access to information, the Secretary of State publishes on his/her website the decision to hold an EIP, including the start date, venue and name of the person appointed to conduct it\textsuperscript{38}. The Secretary’s staff prepares “Notes for Participants” that comprise important information, e.g. the dates for submission of documents and final statements, and the location of the EIP\textsuperscript{39}.

Regarding access to the deliberation process, the Panel selects the examination participants. The EIP is not a forum for hearing all individuals and representatives\textsuperscript{40}, and the Panel selects the participants after having regarded the significance of their contribution to the discussion, their knowledge and expertise\textsuperscript{41}. This shows that not every member of civil society is heard by the Panel.

\textsuperscript{33} The RSSs are regional level planning frameworks for the regions of England outside London\textsuperscript{35}. Part. 1 Sect. 6 (1) Planning and Compulsory Purchase Act 2004 and Art. 6 Town and Country Planning Regulation (Regional Planning) 2004.

In addition, it is important to remember that on 6 July 2010 the “Policy Statement on Regional Spatial Strategies 2010” was revoked by the Secretary of State. It is assumed that for the Regional planning procedures the “Planning Policy Statement 11: Regional Spatial Strategies 2004” is in force. For Local planning procedures, “Planning and Compulsory Purchase Act 2004” and “Planning Policy Statement 12: Local Development Frameworks 2004” are in force. The Secretary of State’s decision is available at http://www.communites.gov.uk/publications/planning andbuilding/letterregionalstrategies

\textsuperscript{34} When the RPB submits the draft RSS revision to the Secretary of State, the RPB publishes a “pre-submission consultation statement”, Sect. 2.17 Planning Policy Statement 11: Regional Spatial Strategies 2004.


\textsuperscript{36} Part. 1 Sect. 8 Planning and Compulsory Purchase Act 2004 and Sect. 7 Planning Policy Statement 11: Regional Spatial Strategies 2004.


\textsuperscript{39} Sect. 34 Planning Policy Statement 11: Regional Spatial Strategies 2004.

\textsuperscript{40} Sect. 17 and 19 Planning Policy Statement 11: Regional Spatial Strategies 2004.

\textsuperscript{41} Sect. 18 Planning Policy Statement 11: Regional Spatial Strategies 2004. In addition, the Panel ensure that in the EIP there are sufficient participants to hold an effective examination of the strategic matters. The
The EIP is conducted in an informal “round table” manner, and discussions take place on the key areas identified in the list of subjects.

At the end of the examination, the Panel draws a report, which is published by the Secretary of State in his website. In this case, there is no indication of what will be the effect of the consultation on the final public decision.

In the Local planning process, the civil society is involved through an “independent examination”. The local planning authority reviews the issues that may affect the development of their area and draws the “statement of community involvement” (the same of RSS).

For these reasons, the local planning authority prepares the local development schemes that specify the statement of community involvement and local development documents, local development plan documents, etc.

The local planning authority submits every development plan document to the Secretary of State for his/her approval through an independent examination. The examination is carried out by an inspector appointed by the Secretary of State. The purpose of this consultative mechanism is to determine whether every single development plan document is sound and satisfies the requirement relating to their preparation.

All people have a representative who is able to change a development plan document and who may request to “appear before and be heard by the person carrying out the examination”. Therefore, to participate in the examination it is sufficient to produce a comment that is able to change this type of document (i.e. a development plan document).

In order to guarantee transparency and access to information, the inspector normally sets out in advance the matters he/she wishes to discuss, and determines the procedure for the examination. In most cases, he/she holds a meeting before the independent examination to discuss the procedure of the examination, i.e. pre-examination meeting. The meeting identifies the main areas to be examined and a timetable for the discussion or hearing sessions. Regarding access to the deliberation process, everyone involved in the examination is invited to the meeting.

The appointed inspector may choose round table discussions, informal or formal hearings, written representation, and to carry out the whole examination using written representations.

The round-table method allows people to have short informal discussions on several issues. Hearings allow people to have more focused discussions on the issues involved.

At the end of the independent examination, the inspector draws up a binding report for the local planning authority with his/her recommendation and reasons. The authority publishes the inspector’s report. Once again,

---

Panel includes in the EIP business and commercial organ and environmental organisations.

42 Sect. 44 Planning Policy Statement 11: Regional Spatial Strategies 2004. The Panel may start the EIP with preliminary meetings to consider whether there are any issues that the Panels and the public can resolve before the examination, Sect. 35 Planning Policy Statement 11: Regional Spatial Strategies 2004.


47 D 26 Annex D Planning Policy Statement 12: Local Development Framework 2004. The Planning Inspectorate’s Guide to Development Plan Examinations specifies that “The inspector will decide the most suitable examination method.”, however “If you want to speak to the inspector, the inspector will use either the round-table or hearing method.”


49 Hearings are usually informal, although if “there are strongly opposed views on matters within the development plan document”, the inspector may arrange a formal hearing because the relevant people may be supported in their cases by legal representation, in Planning Inspectorate’s Guide to Development Plan Examinations.
there is no indication of what is the impact of the consultation on the final decision. Finally, the civil society is involved in UK public policy through “public inquiries”. The inquiry is a flexible instrument, and it is applied towards several uses and fields, e.g. agriculture, transport, urban planning (Craig 2008, Carbon 1997). In this paper, we studied the inquiries system as a procedure that ensures the right to be heard in a decision-making process.

The legal frameworks in the matter are made of several Acts and Statutory Instruments, but the inquiry procedure is the same. (Casini 2007)

The inspector is responsible for the procedure at the inquiry. The Secretary of State sends to each statutory objector a notice of hearing that includes “a clear statement of the date, time, and place of the hearing”. The people entitled to appear at the hearing are only the appellant (i.e. the objector), the local planning authority and any statutory party.

The inspector determines the procedures at a hearing, which may be a discussion led by the inspector. A hearing shall take the form of a cross-examination only if the inspector considers it necessary “to ensure a thorough examination of the main issues”. Again, the inspector identifies the main issues to be considered at the hearing. He/she may require further information, and the calling of evidence is at the inspector’s discretion.

At the end of the inquiries, the inspector draws a report, which is sent to the Secretary of State. The Secretary may disagree with the inspector’s report, but in this case, he/she has to notify in writing the persons entitled to appear at the hearing. These people may send to the Secretary their written representations and ask for the re-opening of the hearing.

5. Results

The inquiry developed in this paper suggests that some states provide scant national provisions for the involvement of civil society in public decision-making. Specifically, the analysis carried out shows that in Italy, while regional legislation guarantees the participation of the public, national legislation does not. Despite some procedural and formal limitations, the participatory processes in the Regions of Tuscany and Emilia Romagna ensure a real participation of civil society in regional decision-making processes. Since its first article, the Tuscan Regional Law n. 69/2007 has provided for broad participation of civil society, establishing that “The provisions of this law cannot be interpreted as limiting the forms of participation not provided for by this law itself nor as limiting the broader inclusivity of all participatory processes”.

Even the Emilia Romagna law has established from the outset that "it aims to facilitate access to creating public choices for all people and their organisations, recognizing equal rights for all people with a response that is proportionate and appropriate to the citizens who find themselves in different conditions, enhancing the autonomy of local communities." Similar principles that guarantee the participation of civil society are not present in the Italian national law.

---

50 The two most important uses are as a mechanism of appeal in administrative procedures, and “a means for airing objections”, i.e. “one appeal against the refusal of planning permission by a local authority.”, in P. Craig, Administrative Law, London, Sweet& Maxwell, 6 ed. 2008, 283.


57 Article 1 c.4 Law n. 69/2007.
The Region of Tuscany provides a community consultation that has as its objective both the environmental and the zoning laws. Despite these positive aspects, Tuscan law has two handicaps. Participants may only include residents in the territory covered by the project, or those who have requested to speak to the regional authority because they are interested in the territory or the subject of the participatory process.

In addition, a regional political body, such as the Regional Council, appoints the Authority, which organises and controls the public debate, although it must remain independent. The Emilia Romagna law ensures greater public participation than that provided by the Tuscany law. In fact, Law n. 3/2010 aims to promote citizen participation in regional or local public decisions involving different sectors, such as the environment, health, education, public services and the infrastructure.

The recipients of the regional or local planning acts or acts relating to projects have the right to participate individually and collectively in the participatory process. However, even regional Law n. 3/2010 encounters two limitations. The law provides a broad and strong right to information and initiative to citizens, but does not indicate what the possible participatory procedures are. The law merely says that the process of participation is a "path of organised discussion".

Furthermore, the Emilia Romagna law, like the Tuscany law, politically appoints a political body i.e. the Technical Guarantee and the Regional Authority for participation, to supervise and direct the participatory processes. In Italy, the various regional frameworks for the involvement of civil society determine the gaps in the participation guarantee. For example, if a person is not a resident in Tuscany and the Authority for Participation determines he/she has no interests in the plan, he/she does not have the right to participate in regional public debates.

Even the United Kingdom ensures a broad participation of local communities. The participation procedures are different only between the local and regional levels, not from region to region. The consultative processes provide a broad disclosure of information, and society’s involvement seems to extend to the entire public decision-making process. As far as community involvement is concerned, the RPB seeks to involve those that are unlikely represented in the consultations, such as people from the more distant rural communities.

However, it is the Panel who decides who are the participants of the public examination, depending on the contribution of their views or their skills. This allows for a more effective but limited participation. Therefore, community involvement appears to provide a broader consultation in relation to the examination in public.

Moreover, the system of public inquiries guarantees the involvement of civil society in broad sectors. However, the participation is restricted only to the objectors of public decisions and not to others. In addition, the inspector is the only person to control the hearing process and to decide whether it should be done following the cross-examination procedure.

In addition, a current problem in the United Kingdom concerns the complete change of the current regional planning system. This change has led to doubts about the legislative framework in force and consequently on the forms of participation that can be undertaken at the regional level.

International organisations ensure the participation of civil society in their decision-making processes only via the system of "soft law", which does not guarantee public involvement in international order. At the international level, the IFC study shows that the Corporation requires its clients to consult the public to obtain financing for their private projects. The participation process relates to the urban and
environmental sector, and involves a wide variety of audiences, e.g. stakeholders, affected people, NGOs, indigenous people and local authorities.

However, the IFC does not require any particular way of consulting clients, but only provides them with practical advice. In addition, the Corporation suggests but does not require clients to consider the public comments obtained from the stakeholder engagement.

Instead, the WTO sets out the methodologies for public participation, but does not specify in detail the stages of consultation. In addition, the Organisation provides on the one hand the involvement of civil society and on the other hand only the participation of NGOs. Moreover, the study shows that large gaps are found in the provisions relating to the participation of NGOs in the proceedings of the Dispute Settlement Understanding through amicus curiae briefs. The Appellate Body has no defence in the participation of NGOs if there are no written provisions that safeguard them.

This paper shows another important point regarding the financial resources by which international organisations, national States and Regions implement the practises of civil society participation. With regards to Italy, the United Kingdom and the Regions, they provide that the proponents of the plans, programs or projects, which are the subject of the public process, pay for the consultation documentation. In the same way, the IFC provides that its clients pay for the participatory documentation.

6. Conclusions

In this analysis, it has been examined how nation states and some international organisations have tried to create democratic and sustainable global governance through greater involvement of civil society in their decision-making procedures.

The focus on participatory democracy is justified by a continuing loss of their democratic legitimacy in the eyes of the community.

Furthermore, the analysis up to now shows how regional laws (both Italian and English) may have procedural and substantive limitations. However, the involvement of civil society is better protected at the regional level than at the national level.

Therefore, the regions of the world become progressively greater areas of cooperation and integration. If nation states do not provide concrete forms of participation of civil society in their deliberations, the regional laws can be a useful tool for participatory democracy.

This is also true for the statutes of international organisations, enabling societies to express their voice when they cannot do so at the national level. There are obstacles in the regional and international measures examined, but that does not lead to a diminution in their value.

However, for the creation of effective global governance, it seems necessary to insist on some points. It would seem desirable in the procedures for Italian participation to have greater involvement of all members of the national community and a better definition of the stages of participation. It is also good to define in detail the subject of the participation.

International organisations have the disadvantage of soft law procedures. For this reason, the IFC should require clients to take into account the comments from stakeholders, such as those providing for the refusal to sanction the financing. The WTO should instead define in detail the procedures for NGOs involvement and even consider extending the consultation to individuals. In addition, the Organisation should give in writing the right for NGOs and individuals to participate in the DSU through their briefs.

In conclusion, it seems that the secret to effective global governance is to continue in the path of participatory democracy decentralisation, i.e. a more definite and extensive participation of civil society and its

58 There is no indication in this regard for the WTO.
organisations at the international and regional level.

References


G. Sgueo, La partecipazione alle procedure regolatorie generali di competenza regionale, in Giornale di diritto amministrativo, 2008 n. 9, 1-9.


S. Saurugger, Representative Versus Participatory Democracy? France, Europe and Civil