

Does it matter if beneficiaries participate in transnational non-state regulation?

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point to significant impacts of participation

Transnational non-state regulatory initiatives are increasingly common in areas such as labour standards and environmental sustainability, often presenting themselves as innovative means through which the lives of marginalized communities in developing countries can be improved. Our focus here is on a number of prominent non-state regulatory schemes that have been established to regulate the labour standards and living conditions of marginalized workers and their families, particularly those located in poorer countries. We refer to the actors whose interests on regulatory standards and policies are ostensibly meant to protect as 'beneficiaries', although the question of whether they actually benefit or not requires separate and careful analysis.

Some form of participation or representation of beneficiaries in regulatory decision making is often considered to be intrinsically desirable, for instance, because its absence would undermine core values of democracy. It is often further observed that the effectiveness and wider distributional consequences of transnational regulatory processes can depend importantly on who participates in these processes, and what form such participation takes. Yet there has been little empirical study of how different modes of beneficiary engagement in transnational non-state regulation affect regulatory processes and outcomes. Does participation or representation of beneficiaries actually make a difference for the rules adopted and their application?

In what ways do beneficiaries participate in regulatory decision making?

First, it is instructive to briefly review how, and to what extent, beneficiaries are typically included in these kinds of regulatory decision making processes – either through their direct participation, or more indirect forms of representation.

Scanning the landscape of transnational labour regulation, we find that mechanisms to ensure the direct participation of beneficiaries are often absent. One example of a regulatory initiative that offers little opportunity for beneficiaries to participate is Rugmark. This scheme was one of the earliest private initiatives to regulate working conditions in exporting sectors of developing countries, with a focus on the elimination of child labour from the production of carpets in India, Pakistan and Nepal. This initiative has established no clear process to enable children or their parents to participate in determining which kind of programme would be in their best interest. Studies of the initiative have noted how disconnected it is from members of local communities, who were not involved in determining the rules of the programme and do not play an active role in its implementation.

The absence of beneficiary participation also characterizes many other non-state regulatory systems, albeit often less starkly. The intended beneficiaries of the Fair Labor Association (FLA) – a prominent non-state labour regulation initiative—have very few formal opportunities to shape managerial decisions. Their ability to influence those decisions informally are greatly constrained by the limited knowledge possessed by many regarding the substance of FLA decisions, the procedures through which these decisions are made, and in many cases the very existence and purpose of the Association. Beneficiary input is limited also in the implementation stage, since the FLA, like other schemes, arranges for monitoring to be carried out both by professional compliance staff contracted by member companies, and by 'independent' audits arranged in a selection of facilities by the FLA Secretariat.

The exclusion of beneficiaries from regulation and implementation is certainly not inevitable. A number of prominent regulatory initiatives

have established mechanisms to enable *representatives* of beneficiaries to participate. One clear example of beneficiary engagement through representative structures is offered by the case of Fairtrade International (FLO). Although the majority of positions on the FLO Board are held by stakeholders from consuming rather than producing countries, delegates of Fairtrade certified producer organizations hold four out of 13 positions on the FLO Board.

While most instances of beneficiary involvement in transnational regulation involve reliance on representatives, there are a few examples of direct beneficiary participation in rule making, whereby ordinary workers or smallholder producers are given opportunities to input directly into standard setting processes, at least on an informal and ad hoc basis. In the case of FLO, for example, beneficiaries can participate directly in FLO governance through events such as a biennial stakeholder Forum, and Regional Producer Assemblies held regularly between Forums. Direct involvement of beneficiaries can occur also at the implementation stage. An example is the Urgent Appeals system operated by the Clean Clothes Campaign (CCC) – a trade union and NGO alliance dedicated to promoting international labour standards – which was created in the mid 1990s. Workers themselves, in conjunction with local trade unions and NGOs, trigger the procedure by requesting help from the CCC and providing information on alleged labour rights violations.

Does it matter if beneficiaries participate?

As the above examples demonstrate, a range of institutional approaches are available through which participation of beneficiaries in regulatory decision making can be facilitated. Yet in many cases of transnational non-state labour regulation, such institutional mechanisms are weak, indirect, or even

non-existent. Does this matter? As we noted above, a lack of participation opportunities may be considered intrinsically problematic from the perspective of democratic principles. But does it also make a difference for what regulatory schemes *do*?

Let's consider the example of Rugmark again. If the families in India's carpet belt had been given more voice, would the content of Rugmark's rules have been different? And would such differences have brought about significant changes in the welfare of beneficiaries? The answer is probably yes to both questions. On top of parents' wish list are schools with no teacher absenteeism and no discrimination on grounds of poverty and caste, and the provision of food, clothes, shoes, and books to children attending schools, without the need to pay fees. By contrast, parents often express scepticism or opposition to measures such as prohibition of child labour and inspections. Rugmark India spent about half of its licence fee income on monitoring and administration and the other half on social programmes, such as primary schools for children in carpet weaving areas. If the intended beneficiaries had been in charge, it is likely that a much greater proportion of the income would have been spent on schooling and income replacement. Conversely, it is very likely that the content of Fair Trade rules would have been significantly different if producer organizations had not had formal representation on the FLO Board. For instance, this formal representation of beneficiaries proved to be crucial in enabling producer representatives to secure the increase of the minimum price for coffee and the social premium paid to producer groups against the initial opposition of some

managers of fair trade organizations in consuming countries.

What about beneficiaries' involvement in implementing regulations? There is a long-standing controversy over the relative merits of monitoring rule compliance through professional auditing companies as opposed to worker-based mechanisms, such as the CCC's Urgent Appeal system



described above or the similarly worker-oriented complaint and investigation procedures used by the Worker Rights Consortium (WCR). On the basis of an analysis of all 805 factory audits conducted by the FLA between 2002 and 2010, one major study found that violations in areas such as minimum wages, hours of work, health and safety are much more frequently detected than violations of freedom of association. This study makes two interesting comparisons. One compares the FLA audits with a different procedure available in the FLA system: the third party complaint mechanism. A third of complaints were about freedom of association violations, while only 5 percent of violations detected by FLA audits concerned freedom of association. This shows that when worker representatives take the initi-

ative, they are more likely to highlight violations of freedom of association rights. The other notable comparison was between the findings of FLA auditors and those of inspections by the WCR, whose strategy is to encourage workers to present complaints and then investigate them. This study found that the WRC is six times more likely to find freedom of association violations in factories than the FLA (Anner, 2012).

While more research needs to be done, we know enough to conclude that the way beneficiaries are involved or represented has significant consequences for both processes and outcomes of transnational regulation, with regard to the content of rules, the application of rules, and associated patterns of welfare and regulatory effectiveness (Koenig-Archibugi and Macdonald, 2013). Such causal relationships have important implications for both theorists and practitioners of transnational regulation, and are worthy of greater attention than they have received in the regulatory literature to date.

References

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