

# ***Can labour standards in transnational private governance help to reduce inequality?***

Paper for the 9<sup>th</sup> Global Labour University Conference, 15-17 May 2014, Berlin

*WORK IN PROGRESS; COMMENTS WELCOME*

*Conor Cradden & Jean-Christophe Graz*

*Institut des études politiques et internationales – Centre de recherche interdisciplinaire sur l'international, Université de Lausanne*

## **Introduction<sup>1</sup>**

That unionization and collective bargaining make a significant contribution to raising wage floors and reducing income inequality is well established. Nevertheless, there seems to be little possibility that the active encouragement of independent worker organization will ever regain the public policy prominence it enjoyed in the post-war period. Positive steps to reform labour regulation and industrial relations institutions to support and promote the development of collective industrial relations are vanishingly rare, whether at the national or international levels.

Changes to industrial relations practices likely to support greater equality in the workplace do not necessarily demand changes in public policy, however. Recent research in international political economy points to the increasing significance of private or non-state governance as a means of regulating economic activity. Large parts of the development and enforcement of technical, social and environmental standards applying to products and production processes are now in the hands of private actors. In the social and environmental arena, some kind of commitment by enterprises to respect corporate codes of conduct, corporate social responsibility policies or multistakeholder 'sustainability standards' is now the rule rather than the exception.

Existing scholarship differs on the question of where to situate such voluntary standards on a spectrum of regulatory effectiveness running from 'meaningless corporate public relations exercise' at one end to 'significant support for workers' rights' at the other. While there is some limited evidence that transnational private regulation (TPR) may have an effect on substantive *outcome standards* relating, for example, to occupational health and safety or hours of work (Anner 2012; Barrientos & Smith 2007; Egels-Zandén 2007; Oka 2009), the literature gives little reason to believe that TPR has significantly

---

<sup>1</sup> The authors thank the Swiss Network for International Studies for the funding of the 'Governance by Contract' project of which this paper presents preliminary results. For further information, please see: [http://www.snis.ch/call-projects-2012\\_3296\\_governance-contract-impact-international-finance-corporations-social-conditi](http://www.snis.ch/call-projects-2012_3296_governance-contract-impact-international-finance-corporations-social-conditi).

reinforced industrial relations *process rights* relating to collective worker voice and participation in the day-to-day regulation of employment relationships. The social relations that give rise to poor working conditions at the bottom end of global supply chains appear to be unchanged by TPR.

It is tempting to analyse these findings in terms of regulatory capture. Since participation in TPR schemes is by definition voluntary, their impact relies on corporations choosing to participate. This in turn gives corporations significant control over the content of TPR. One possible – and popular – interpretation of the existing evidence is that this control extends to ensuring that within TPR schemes, those collective process rights that could give workers the ability to challenge unilateral corporate control over supply chain costs and organization are weak. At the same time, however, this interpretation depends on the supposition that the only relevant factor in the development of worker voice and participation is TPR and the formal compliance monitoring and enforcement procedures that accompany it. It ignores the interaction of TPR with factors that are much less susceptible to capture: national institutional contexts and the existing capacity of workers organizations to pursue their members' interests via legal, political and other means.

We use examples of trade union action in Africa to illustrate how the potential of TPR to enhance worker voice and participation in developing countries cannot be evaluated without understanding how local actors mobilise the social and political resources that TPR potentially provides and the conditions under which such mobilisation represents an effective tool to pursue workers' interests. We argue that Hancher and Moran's concept of 'regulatory space' (Hancher & Moran 1998) provides a useful conceptual structure for this exercise. Hancher and Moran introduce the concept to challenge the dichotomy of regulatory processes properly focused on the pursuit of the public interest, and processes that have been captured by private interests. They argue instead that regulation is always the outcome of competition and exchange between a range of different organizational players, directing our attention (a) towards routine understandings of who should participate in regulatory processes and (b) towards what they call the 'play of power', which is to say the resources and capacities that participants are able to, and may legitimately, mobilise within the regulatory space. This paper thus contributes to recent studies examining standards as part of a process of 're-articulation of regulatory authority' (Utting 2008), or more broadly a 're-articulation of governance' (Ponte et al. 2011) in which the voluntary specifications projected by standards on a transnational scale intermingle with domestic institutions of various states and social forces whose movement is locally situated.

The case studies we present in the paper show that the International Finance Corporation's 'performance standards' system, the certification requirements of the Forestry Stewardship Council, the China International Contractors Association 'Guide to Social Responsibility for Chinese International Contractors' and the Construction Sector Transparency Initiative have all been used by trade unions in Africa as means to pursue the interests of union members. Our cases show that TPR potentially has three transformative effects on the regulatory space surrounding the employment relationship. First of all, it may grant workers' organizations *access* to regulatory space, establishing their legitimacy as actors within it and, by extension, the legitimacy of their use of economic and social power. Second, it may allow workers organizations to insist on the *inclusion* of transnational corporations in existing local regulatory spaces they already occupy and within which they have the capacity and resources to act. Third, it

may provide workers' organizations with political *leverage* to use within regulatory space by establishing externally-validated normative reference points with respect to substantive labour standards.

Nevertheless, we also found that the scale of the impact of TPR in all of the contexts we studied was limited and, more importantly, it depended almost entirely on the existing capacities and resources of the unions involved. TPR led to the creation of collective industrial relations processes, or helped unions to ensure that certain enterprises participated in existing IR processes, but did virtually nothing to enhance the political and organizational capacity of the unions to influence the outcomes of those processes in terms of wages and conditions of employment. This suggests that if TPR is to have any significant and consistent impact on inequality even within the businesses where it is applied, it needs to be tailored to its context of application and to include not just negative rights to freedom of association but also positive collective rights to take action together with appropriately resourced trade union capacity-building measures.

### **Collective industrial relations as a policy solution for economic inequality**

Two developments at the international level suggest that collective industrial relations may be re-emerging as a mainstream policy choice after thirty years of marginalization. First of all, there is now a widespread recognition that economic inequality is not simply an unfortunate side effect of market economics that has to be tolerated for the sake of the greater good, but is in fact a brake on growth and development. While the International Labour Organization (ILO), the UN Development Programme (UNDP) and certain NGOs have been making this argument for many years (ILO 2008; Oxfam 2014; UNDP 2013), what has changed is the degree to which this view has moved into the mainstream, with organizations like the World Bank and the World Economic Forum conceding that significant economic inequality is incompatible with sustained prosperity (WEF 2013; World Bank 2013). Even the IMF has accepted that the economic consequences of inequality are damaging (IMF 2014). The second development concerns basic state-level economic policy. The UN Conference on Trade and Development (UNCTAD) and the ILO have been increasingly vocal about the need to move away from economic development strategies that focus exclusively on export-led growth and towards strategies based on the expansion of domestic demand by increasing the share of wealth that goes to workers' incomes relative to that which goes into the profits accruing to capital (UNCTAD 2013; ILO 2012b). The ILO calls this 'wage-led growth'.

Although inequality as a diagnosis of economic ills is now widely accepted, there is no consensus on the question of treatment. A major division remains between those who count collective industrial relations as a major part of the solution to inequality and those, like the IMF and the World Bank, who remain attached to solutions like fiscal redistribution or the development of micro-entrepreneurship that leave unchallenged the underlying inequality of economic *power* that gives rise to inequality of economic *outcomes*. In this respect what is most interesting about the arguments made by the ILO and UNCTAD among others is the spin put on increased collective agency for workers. Rather than a means of addressing injustice and increasing democracy and participation in the economy, collective wage bargaining is presented as part of the pragmatic 'anti-inequality' policy toolbox alongside minimum wages and basic social security systems. It is simply a means of ensuring that wage growth follows productivity growth.

While a degree of political caution is only to be expected, concentrating on the virtues of collective bargaining as a technical tool to promote certain macroeconomic outcomes obscures the fact that wage bargaining will have these outcomes only if workers have a real capacity to resist sustained transfers of wealth away from wages and towards profits. In the overwhelming majority of the world's economies, the logical consequence of any decision to adopt collective industrial relations as a means to help to align wage and productivity growth would be a serious effort to increase the capacity of workers to form and join unions and to insist that employers participate in good faith collective bargaining. This in turn would demand not only appropriate reforms of individual and collective labour regulation and industrial relations institutions, but also, as Howe argues (2012), a policy atmosphere in which the *use* of workers' collective power resources is in most circumstances seen as legitimate and responsible rather than the contrary. As yet, however, there is little evidence that this kind of reform is taking place anywhere in the world.

Neither is there any immediate possibility that pro-collective industrial relations policy reform will receive any concrete impetus from the international organizations that have been emphasising its potential utility. While the ILO in particular is the only global agency with the legitimacy and expertise to design the framework policies and technical cooperation programmes that would support and promote the development of independent worker organization and collective wage bargaining, it has yet to devote the financial, human and political resources that would be required to move a renewal of collective industrial relations out of the realms of abstract policy discussion and into practice. Given the ILO's governance structure this apparent incoherence is less surprising than it might at first appear. The peculiarity of the ILO as an international organization is that it includes institutionalized representation from bodies other than states: workers' and employers' organizations together account for half of the voting rights at the International Labour Conference, the other half belonging to member states. This and other institutionalized participation rights make it almost impossible for the ILO to adopt policies that do not have at least tacit support from *both* trade unions and employers associations, the corollary being that blocking particular policies is relatively easy for either group. As Standing observes, the attitude of the ILO's employers' representatives to collective bargaining has for some years been "equivocal at best" (2008, p.379). If this is the case, their participation in the organization may in fact be undertaken with a view to ensuring that collective industrial relations is *not* encouraged and promoted. This goes some way to explaining why the strong emphasis on freedom of association, collective bargaining and tripartism that characterized ILO policy in the 30 years after the second world war seems to have lifted at the beginning of the 1980s (Hepple 2005, pp.37-8). No conventions specifically promoting collective bargaining, for example, have been adopted since 1981. More recently, employers' representatives have moved from equivocal commitment to collective industrial relations to what is in effect a direct challenge to it, arguing that existing ILO conventions do not and should not establish what many would argue is the cornerstone of workers' capacity to organize and take action, the right to strike. This directly contradicts the longstanding opinion of the ILO's independent legal advisory body, the Committee of Experts on the Application of Conventions and Recommendations, that the right to strike is implied in the core conventions on freedom of association and collective bargaining (see ILO 2012a, paragraphs 117-122).

**Can *private* transnational labour regulation fill the gap?**

The apparent inability of the ILO to take action needs to be seen against the backdrop of a more general decline in faith in the capacity of the established system of public international governance to address major global policy issues. This has prompted scholars to explore the complex ways in which the world responds to this governance deficit (Avant et al. 2010; Mattli & Buthe 2011; Guzzini & Neumann 2012; Moschella & Weaver 2013; Graz 2013; Payne & Phillips 2014). A key question is the significance of an emerging range of new forms of transnational civil, non-state or simply private regulation (Bexell & Mörth 2010; Graz & Nölke 2008; Mayer & Gereffi 2010; Vogel 2009). What we call 'transnational private regulation' (TPR) refers to any voluntary system of rules and/or standards promulgated principally by non-state actors, whether those belonging to the commercial private sector or to civil society. Regardless of their sectoral focus – anything from fish farming to mining – and their principal regulatory emphasis – which can include social objectives like the elimination of child labour, environmental objectives like the prevention of pollution or some combination of both – most TPR schemes include work and labour rights conditions.<sup>2</sup> A great deal of research and analysis now exists on this topic and there is a correspondingly wide range of opinions as to the effectiveness and scalability of these privatised and semi-privatised alternatives to the more established forms of public transnational labour standards regulation

We can identify two cross-cutting dimensions of variation in the literature on the impact of TPR, one which distinguishes scholarship in the global political economy (GPE) tradition from that in the comparative political economy (CPE) and other institutionalist traditions, and another that distinguishes work focused on the characteristics of regulation systems from work that considers the significance of the national and local contexts in which transnational private labour regulation is applied.

### **Global vs. comparative political economy**

Recent work by critical international relations scholars has tried to develop a more integrated, sociologically informed approach to understanding the creation and transformation of the world order. While a number of different streams of research in this vein have emerged over the last three decades or so, perhaps the most prominent of these is that inspired by the work of scholars such as Cox (1987) and Harrod (1997) who have aimed to bring production and social relations back into international relations. As Harrod argues, "If world orders start with production, which produces social forces, then globally dominant social forces would come from globally dominant production patterns. Thus the study of social forces requires the study of those fragmented areas which address the details of production relations" (1997, p.109). This is what Harrod calls 'joining the two IRs', which is to say industrial relations and international relations, thereby creating "an international political economy which would be more than just a perception of some economists who had discovered power, or some Marxists automatically extending domestically derived concepts to the global plane" (1997, p.110).

---

<sup>2</sup> Systematic information on TPR is difficult to find, particularly information about supply chain codes of conduct, but of the 124 voluntary standards systems listed on the International Trade Centre's 'Standards Map' database, 77 list 'Work and Labour rights' as a main social sustainability theme.

Graz and Nölke (2008) have contrasted this 'global political economy' (GPE) approach with the more established aims and methods of *comparative* political economy (CPE). They argue that while CPE approaches focus on "institutional arrangements and coordinating logics of economic actors across nations", GPE approaches attempt to "identify constitutive patterns of authority mediating between the political and economic spheres of a transnational space" (p.2). They argue that the point of departure for CPE approaches is the perception that the state cannot solve all the problems of transnational economic regulation that have emerged along with globalization. Within the CPE tradition, TPR is seen first and foremost as a potential solution to the global governance deficit and research has been focused on identifying the circumstances under which enterprises do or might potentially obey norms set by non-state bodies (see for example work by Diller 1999; Locke & Romis 2010; Locke et al. 2007; Mayer & Gereffi 2010; Oka 2010). Although among those working in the CPE and other institutionalist traditions there are many who are pessimistic about the prospects for significant improvements in social and environmental outcomes as a consequence of TPR (for example Vogel 2010; Knudsen 2013; Robinson 2010; Yu 2008) their criticisms nevertheless do not extend to the implied goal of bringing private regulation up to an idealized standard of effectiveness based on paradigmatic perceptions of public authority in developed economies. Those who adopt the GPE approach, on the other hand, are less interested in what they see as 'problem-solving' attempts to make the existing capitalist system work more smoothly (Graz & Nölke 2008, p.6) than in locating TPR in the broader historical context of economic and social development, considering it from the perspective of its potential to change the manifold exploitative features of capitalism by changing the social relations that give rise to production regimes. Although the role of organized labour in the application of TPR is not the sole concern of authors in the GPE tradition, it is obviously a major focus of attention. Research has focused in particular on the degree to which transnational codes and standards affect not concrete employee welfare outcomes but the capacity of workers on the ground to organize and take action in pursuit of improvements in working conditions (see for example Riisgaard 2009; Taylor 2012; Wells 2009; Nelson et al. 2005; Selwyn 2013).

### **Characteristics of labour regulation vs. national contexts of application**

Comparative research on TPR is underdeveloped, but within the work that does exist we can identify two distinct streams: that focusing on the characteristics of regulation, and that which looks for the roots of divergent regulatory impacts in national contexts of application. In both of these categories we find research influenced by both the CPE and GPE traditions.

Within the first stream there is in fact remarkably little work that looks in any detail at the characteristics of different regulation schemes – precisely what rules are in place and how compliance is monitored and enforced – and still less that looks specifically at rules applying to labour (notable exceptions include O'Rourke 2003; Brudney 2012; Mundlak & Rosen-Zvi 2011; Brudney 2012). Despite this rather surprising lack of systematic comparative analysis, there is nevertheless an emerging consensus in the literature that a distinction must be drawn between freedom of association and collective bargaining rights and other, more substantive labour standards. Either these two types of regulatory topics are treated as meriting separate evaluation (Caraway 2006; Chan 2013; Anner 2012; Brudney 2012) or the argument is made that a properly nuanced evaluation of the effectiveness of private labour standards regulation demands that a distinction be drawn between substantive 'outcome standards' and procedural or

'process rights' (Anner 2012; Barrientos & Smith 2007; Egels-Zandén & Hyllman 2007; Neumayer & DeSoysa 2006). While the category of outcome standards includes rules that specify pay, holiday entitlement, benefits in kind, the provision of safety equipment and so on, the category of process rights encompasses rules that provide workers with rights to voice and participation in the organizational and supra-organizational processes by which outcome standards are set and compliance with them is reviewed. The literature therefore suggests that there are two different possibilities for the causal origin of improvements in employee welfare outcomes subsequent to the application of TPR: either improvements are the result of direct, unilateral employer action intended to bring terms and conditions of work into line with outcome standards set in TPR schemes; or they are the result of collective worker action that *becomes possible as a result* of the process rights that TPR schemes establish.

To the extent that it has been possible to relate the application of different types of rules to effects on employee welfare outcomes, it seems that some positive effects can be associated with the direct enforcement of outcome standards. Where employers *decide* to take action to increase pay or reduce hours of work in order to come into compliance with the substantive standards that TPR schemes require, it is hardly surprising that it does indeed lead to modestly improved outcomes for workers. However, it is notable that what leads many authors to conclude that measurable improvements are the result of the direct enforcement of outcome standards in response to regulatory incentives is that the process rights included with TPR schemes are both weak and weakly enforced (Anner 2012; Fransen 2013; Egels-Zandén & Merk 2013; Barrientos & Smith 2007). Two principal conclusions have been drawn on this basis. First of all, market incentives such as access to premium price markets or improved corporate reputation are an inherently limited means to improve employee welfare because welfare will only be improved to the extent that employers believe that it will bring a measurable market advantage that is greater than the cost of implementation (Anner 2012; Egels-Zandén & Merk 2013). Second, estimates of the potential labour impact of TPR have to take into account the indirect impact on welfare outcomes of process rights that increase the capacity of *workers* to take action to pursue improvements to employment conditions (Wells 2009; Brudney 2012).

A more recent development in comparative TPR research has been a focus on the context of its application. Researchers are taking the national context increasingly seriously, implicitly recognizing Bartley's argument that it is mistaken to assume that "making transnational standards effective is merely a matter of getting the rules and incentives right ... [and that] ... implementation in one place is essentially the same as in another" (2011, p.522). Up to now, the most common type of work in this stream has involved the comparison of the impact of the labour impact of TPR within a single industry across two or three countries (see for example Bulut & Lane 2011; Korovkin & Sanmiguel-Valderrama 2007; Riisgaard 2009; Nadvi et al 2011). Less frequent are studies that compare the implementation of one particular TPR scheme in two or more different national contexts (Davies et al. 2011; Locke et al. 2013). Nevertheless, the consistent finding across all of these studies is that national institutional contexts condition the impact of private regulation to such a significant extent that it is difficult to see how it makes sense to talk about the impact of any one TPR scheme in isolation, let alone TPR in general. For example, Locke and his colleagues (2013) show how one particular electronics industry regulation scheme *complemented* the national institutional framework in one state, but *substituted* it in another. Riisgaard (2009)

shows how the different histories and institutional structures of the trade unions in Kenya and Tanzania has led to the adoption of very different labour movement strategies of engagement with TPR in the cut flowers industry. Nadvi et al. (2011) argue that the impact of transnational standards in the sports goods industry has been influenced by the specificities of global production network configurations and by local institutional arrangements.

### **Collective worker action in regulatory space**

What is most striking about our review of the principal streams of international relations and global and comparative political economy research on TPR is the tendency that can be observed towards a rough convergence on an approach in which a comparative institutionalism sensitive to the potential complementarities between TPR and formal national institutions is modified both by what Bartley calls “a sense of the deeply political character of the standards being discussed or the locally situated and socially constructed character of compliance” (Bartley 2011, p.522) and by an appreciation of “the significance of the roles that Southern workers and their local allies play in promoting labour standards improvements at the point of production” (Wells 2009, p.568). This more broadly echoes accounts on how standards govern production regimes, “with outcomes that are shaped by conjunctural events and the agency of actors in specific regions” (Klooster 2011, p.266).

We aim to take up these emerging themes by proposing an analytic scheme that focuses not on the technical features of TPR itself, but on the degree to which it changes local industrial relations contexts. Having already distinguished industrial relations process rights and substantive outcome standards relating to employment conditions, a further distinction needs to be drawn between TPR rules that establish rights and duties with respect to the *participation* of different groups in the setting of outcome standards and rules that establish legitimate means of *influence and persuasion* in that regulatory process or that provide resources that contribute to the capacity of participants to influence and persuade. In this respect we follow Hancher and Moran (1998[1989]), who introduce the concept of ‘regulatory space’ in order to highlight the importance of the presence, absence and interaction of different groups within a particular regulatory domain. For Hancher and Moran, the critical task is “to understand the nature of this shared space: the rules of admission, the relations between occupants, and the variations introduced by differences in markets and issue arenas” (p.153). For our purposes, this points to a need to distinguish the different means by which transnational private regulation affects the local or national space surrounding the regulation of the individual and collective aspects of the employment relationship.

Hancher and Moran draw our attention to two implications of the concept of regulatory space. First of all, it demands that we examine the ‘play of power’: the outcomes of struggles between players competing for advantage within the regulatory arena, the resources used in those struggles and the distribution of resources between different players. Second, the metaphor of a bounded space within which regulation is made “encourages us not only to examine relations between those who enjoy inclusion, but also to examine the characteristics of the excluded” (p154), together with the circumstances under which they might be able to enter the regulatory space and defend a position within it.

With respect to labour standards, the relevant regulatory space encompasses the processes by which the terms and conditions of the employment relationship are



defined. The outputs of this space add up to employee welfare: the actual material rewards of work and the concrete, measurable aspects of the physical and relational context in which it takes place. TPR outcome standards are those rules that define specific minimum employee welfare outcomes. By contrast, process rights define a series of collective competences: who is permitted but also who is required to participate in regulatory space, together with the 'rules of the game' applying to participants. They define, first of all, union **access** to regulatory space: the conditions under which workers are permitted to act collectively to pursue their common interests and are entitled to be recognised by employers as representing the interests of workers in the process of setting outcome standards. Second, process rights may define conditions of compulsory employer **inclusion** in regulatory space: the circumstances under which workers are entitled to demand that employers participate in existing institutional processes involving the establishment and review of outcome standards and in which workers are already recognised as legitimate participants. Third, process rights also define acceptable types of **leverage**: the kinds of industrial and political pressure that can legitimately be mobilised by different types of organization, whether in order to press a claim for access to regulatory space, to insist upon the inclusion and participation of other organizations in regulatory space, or in pursuit of the establishment of specific outcome standards.

### **A model of the impact of TPR on collective competences in regulatory space**

TPR may have an impact on local action contexts either by setting outcome standards or by introducing new process rights or reinforcing those that already exist by adding a market incentive for compliance. For our purposes, the direct effect on outcome standards of corporate commitments to respect TPR is of less interest. It may well be the case that TPR schemes specify particular outcome standards that must be respected, but even where this leads directly to improvements in the material conditions of work, it has no necessary impact on the underlying social relations. On the other hand, our research suggests that outcome standards in TPR may have a small and indirect effect on the available leverage in the sense that they establish externally-validated benchmarks that provide workers' organizations with a claim over those employers that fail to respect them. What we did not uncover in our cases studies is any effect of process rights on *leverage*, although such an effect is clearly possible in principle, for example via the establishment or reinforcement of rights to take industrial action.

Figure 1 illustrates our theoretical scheme, showing the relationship between process and outcome standards in TPR and transformations of regulatory space. The arrow from 'process rights' to 'leverage' is cross-hatched rather than full to indicate that we are illustrating a theoretical possibility rather than something for which we have already found empirical evidence.

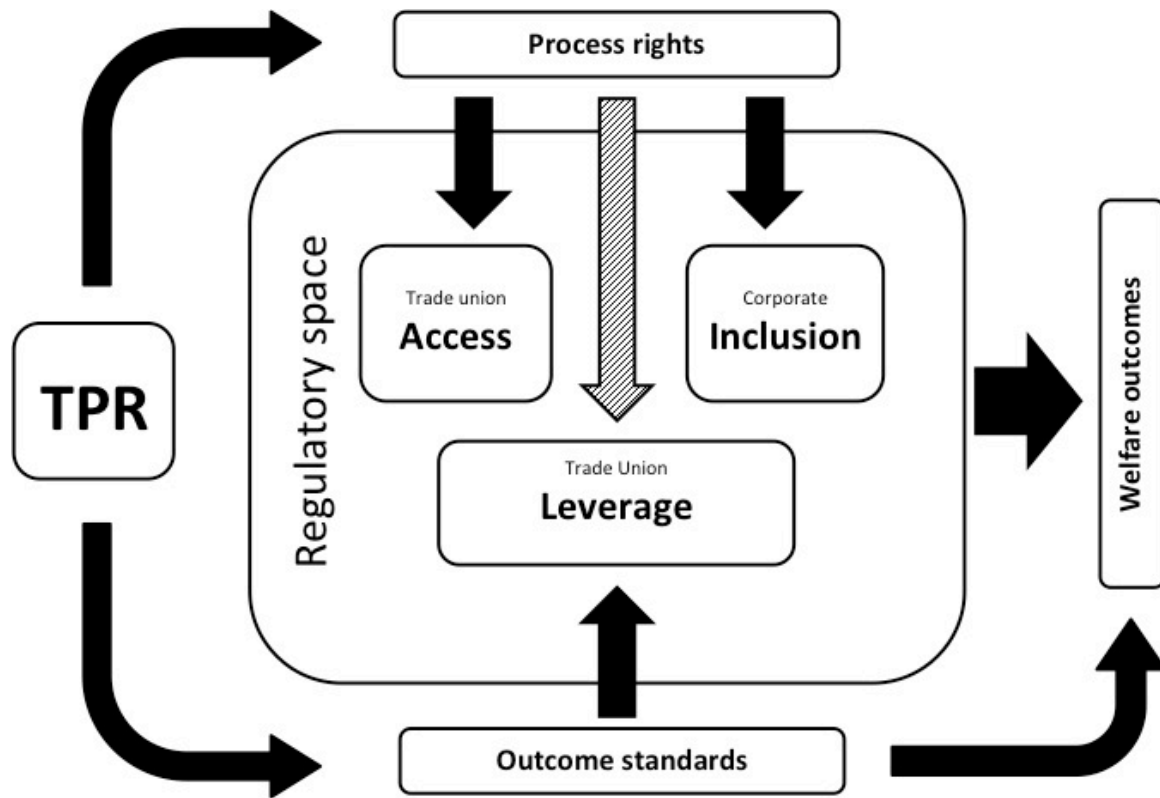


Figure 1: a model of the impact of TPR on workers' collective competences within regulatory space

### Case studies of access, inclusion and leverage

In the next part of the paper we give some examples of how trade unions have been able to use TPR to pursue their members' interests. The case study on the Bujagali Hydropower project and the shorter research notes that follow are based on accounts given by national and international trade union officers and workplace representatives. Interviews were carried out in Switzerland, Ethiopia and Uganda between July and November 2013.

#### ***The Bujagali Hydropower Project: trade unions claiming access to regulatory space***

The Building and Woodworkers International Union (BWI) is the global federation of trade unions organizing workers in the construction and wood and forestry sectors. Since the late 1990s, BWI has been working for the inclusion of labour standards clauses in public contracts, including contracts issued by international financial institutions like the multilateral and regional development banks. BWI officers were closely involved in wider international union efforts to persuade the World Bank in particular that its unwillingness to accept that collective industrial relations is compatible with economic success was both technically mistaken and normatively unacceptable. After the Bank publicly withdrew its objections to collective IR in the early 2000s, a BWI officer working on secondment within the Bank developed and presented detailed recommendations for the inclusion of labour standards clauses in World Bank construction contracts and advised the International Finance Corporation (IFC) on the development of the labour aspects of its performance standards system (Murie 2009).

The IFC is the World Bank's private sector lending and investment arm. It is a major player in development finance, accounting for approximately one third of all finance provided to private enterprises in the developing world by development finance institutions, with a total of US\$148 billion invested in 4372 enterprises (International Finance Corporation 2011). Although as part of the World Bank Group the IFC is a public intergovernmental organization, it operates on a commercial basis, competing for investment and loan business with other national and international financial institutions. Since 2006, the IFC has required its clients to comply with a series of 8 'performance standards' (commonly known as PS1 to PS8) designed to ensure that IFC clients operate in a socially and environmentally sustainable way. Compliance with the performance standards is a contractual obligation which is written into loan and investment agreements.

Performance standard 1 or PS1 is a 'process' standard and deals with the management of social and environmental risks. The substantive performance standards (numbers 2 to 8) against which social and environmental risks must be assessed cover: labour and working conditions; pollution prevention and abatement; community health; safety and security; land acquisition and involuntary resettlement; biodiversity conservation and sustainable natural resource management; indigenous peoples and cultural heritage.

When the performance standards system was introduced in 2006, the BWI looked for a 'test' case, searching the IFC's public information database for a major investment project in the construction sector where there was the potential to organize a significant number of workers. The Bujagali hydropower project, involving the construction of a major hydroelectric power station on the Victoria Nile river about 80 kilometres east of Kampala in Uganda, seemed to be a good fit. BWI had a good relationship with its local affiliate, the Uganda Building Workers Union (UBWU), which although small (2500 members) was nevertheless effective, with experienced professional officers and good contacts in government (Murie 2009). It had also successfully organised a road construction project undertaken by the European construction contractor that would be leading the construction work on the power plant. A decision was taken to take an active interest in the project and a work plan was drawn up in collaboration with UBWU. A period of intense activity over about 8 months starting in the spring of 2007 ended with the signing of a collective bargaining agreement between UBWU and the principal contractor on the 7<sup>th</sup> January 2008. This agreement marked the formal beginning of a successful bargaining relationship between the principal contractor and the UBWU that lasted for the duration of the project, which was largely complete by late 2012. The terms and conditions set out in the CBA were exemplary for the region and sector and were improved in 2 further agreements. Membership density was very high with around 3000 members among the 4000 workers employed on the project at its peak. Worker representatives interviewed on the site reported that there had been no strike action or sabotage taken against the main contractor over the whole course of the project, and that although problems had arisen these were dealt with by discussion and negotiation (I12; I13). The representatives also reported that the accident rate had been consistently low, with only two fatalities during the project and these in a car accident rather than directly related to construction work. They emphasised that an important early factor in the development of the relationship between management and the union was the agreement of non-discriminatory recruitment practices. The project managers

were largely expatriates and “were not really aware of the sensitivities” (I3, 18:56)<sup>3</sup> in terms of the regional and ethnic origin of workers. On the other hand, they were “very happy to have the union giving them a steer” (I3, 19:00). The result, in the words of one union representative, was that when it came to recruitment “there was no favour... what they [the contractor] were considering is the skills” (I12, 6:15).

The question that interests us here is to what extent the existence of the IFC’s performance standards system and the associated surveillance procedures were influential in the establishment and subsequent conduct of the relationship between UBWU and the Bujagali construction contractor. The answer is that there seems to have been some effect at the beginning of the relationship, but that once the relationship was established the PS had no further impact.

There are a number of observations we can make. First of all, BWI and UBWU kept in close touch with the Labour ministry, which made it clear from the outset that it was in favour of the union’s participation in the project. As Murie reports (2009, p.9), the Ugandan Ministry of Labour, although lacking resources, has a generally positive attitude to the implementation of internationally compliant labour standards and the legislative environment is favourable to collective industrial relations. BWI also seems to have had some influence on how the labour ministry saw and understood the potential of the IFC PS. According to a BWI officer involved in meetings with the ministry about the project, the labour minister came to accept that “Yes you’ve got the legislation, but having these contractual obligations on top regarding social aspects, this was mutually reinforcing, it was a mechanism to actually implement laws.” (I3, 25.30).

A second point to bear in mind is that the IFC investment officer responsible for the Bujagali project was a strong believer in the performance standards approach and recognised the value that collective bargaining relationships could have for the client and the contractors. UBWU officers reported that they believed his putting pressure on the contractor was instrumental in their getting initial access to the site and opportunities to talk to the workers (I1). However, there was no further contact with this IFC official after July 2007. It is not clear why he ceased to respond to communications.

Third, both the client (the private company granted the concession to develop the project and the direct beneficiary of the IFC’s financing) and its principal construction contractor were initially reluctant to meet the union. The client in particular seemed to view its commitments with respect to workers organizations under the terms of the PS as falling under the general heading of stakeholder relations rather than constituting a specific and separate type of relationship. However, it seems that pressure from the IFC investment officer responsible for the project eventually led to the client agreeing to meet the union. Despite the client being ultimately responsible for the implementation of the performance standards, it remained reluctant to facilitate contact with the contractor.

Fourth, the agreement of the contractor to meet with UBWU and the subsequent decision to recognise the union and negotiate a collective agreement seems to have been the result of two factors. First of all, the UBWU and BWI, the Labour Ministry and the responsible IFC investment officer carried out what amounted to a coordinated

---

<sup>3</sup> Where the comments of interviewees are cited verbatim, the figure in brackets indicates the point in the recording at which the statement was made.

campaign to pressure the contractor into recognising the union. The second factor seems to have been a gradual realization on the part of the contractor – encouraged by contact between project managers and colleagues in the same business who had worked with UBWU on the road construction project – that there were significant bottom-line advantages to working with the union. A critical event in this learning process came at a point at which project managers found that there were two to three hundred people camped outside the gates of the project site looking for work. At this point they turned to the UBWU for help communicating with the job-seekers. This seems to have been an important turning point in the relationship between union and management. After this, the key development was the agreement of the contractor to allow the union onto the site and to hold an open mass meeting with workers in the autumn of 2007. This meeting was highly successful, and the overwhelming majority of the 300 or so workers employed at that point joined the union.

The success of the bargaining relationship in terms of the content of the collective agreements seems to have been a combination of support and training from BWI and the contractor's willingness to accept the existing CBA from the road construction project as a point of departure.

Beyond what actually did happen and the relationships that did develop, it is interesting to note what did *not* happen. Over the course of the project, the IFC's formal supervision process ignored the union entirely. While the responsible investment officer had been very present at the beginning of the project, before the union won recognition from the principal contractor, the officers of the UBWU told us that they never met or heard from the member of IFC's social and environmental compliance department who was responsible for monitoring the project. Neither did they ever meet or hear from either of the two members of the panel of social and environmental experts appointed by IFC to report on compliance. Of the ten reports produced by the panel, none mention the union or the collective bargaining relationship. One of the two members of the panel confirmed in an interview that he and his colleague indeed had not had any contact with union representatives in the course of their work (I4).

In sum, then, the influence of the PS system was fairly limited. It would be very difficult to argue that the collective bargaining relationship between the contractor and the UBWU would not have existed without it. On the other hand, it did seem to add some weight to the claims of the union to a right to be heard and to be given access to the project site. Nevertheless, without the work of the BWI and UBWU, it seems unlikely that any collective employment relationship would have existed. As a BWI officer put it to us, "Really, it's just a door-opener, the standards... all those standards do is allow the union to get in. After that it's down to collective bargaining. Yes, you have some basic [substantive] standards there [in PS2] but that's not really what you're looking at. You're looking at what's the going rate for that kind of work, you're looking at working hours, you're looking at time off and what you can negotiate in the way of benefits" (I3, 37.45)

It is clear that the project's exemplary industrial relations record was nothing at all to do with IFC. Indeed, IFC as an institution seemed to go out of its way to avoid even recognising that the collective bargaining relationship existed. The CBA was negotiated using the well-established practice of taking another current agreement in the same sector as an initial basis for negotiations. The principal regulatory reference point was not the performance standards system but Ugandan labour law, and on the rare occasions when issues arose that proved difficult to resolve around the table, the union's

high levels of membership and effective organization meant that industrial pressure could be applied in search of an agreement. No complaint was ever made to the IFC about the behaviour of the contractor.

### ***Other standards systems in East Africa: Inclusion and Leverage***

Interviews with a small number of union officers working elsewhere Africa suggests that other types of private standards system have allowed trade unions to insist on the inclusion of transnational corporations in existing industrial relations machinery and have given unions some additional leverage in bargaining.

#### *China International Contractors' Association 'Guide on Social Responsibility' in southern Africa*

The construction workers' union in one southern African country has used a private code of conduct as part of a strategy to bring Chinese construction contractors into the existing industrial relations system. These contractors did not join the existing industry association and were the subject of many complaints about labour law violations. The construction union developed a strategy to address the problem, using political networks to lobby the office of the President, but also conducting public campaigns on the issue. This campaign seems to have brought some results in the shape of action against certain companies by the Ministry of Labour and a public instruction from the Chinese ambassador to Chinese businesses to respect national law.

However, the most concrete results came after the discovery, via contacts with other construction unions also affiliated to BWI, that the China International Contractors Association had produced a code of conduct for its members that included an obligation to engage with workers' organizations to the extent that local law demanded it (see annexe). Knowing that many of the Chinese construction companies operating in the country were state owned, the construction union went to three companies known also to be members of the industry association and said, as a union official put it to us, "why are you not complying [with your own code]? Your government is telling you to comply" (I7, 11:20). The same official told us that not only did this result in more or less immediate improvements in labour law compliance, it also led to certain companies approaching the union seeking to open discussions about recognition. The official was clear that being able to refer to the code was useful: "Of course now we know the information [about the code]. We did not know before. We were fighting in the air." (I7, 11:45). At the same time as she recognised the value of the code of conduct however, she insisted that political action and lobbying, participation in national tripartite institutions and – most importantly – industrial action remained the core elements of union effectiveness. "At the end of the day if you are fighting and you are toothless nobody's listening to you" (I7, 16:30).

#### *Political pressure in west Africa*

The experience of one construction industry union in west Africa is somewhat different in that it has not up to now used private regulation to pursue its objectives. However, its situation and strategy is very similar to that of our southern African union in that its aim is to bring major Chinese enterprises into the ambit of the existing industrial relations system by persuading them either to join an existing construction employers' association or to form one of their own. Union officers had met with the Chinese embassy in an effort to increase the pressure on the major enterprises to do this, one result being that the embassy publicly stated its intention to take action against Chinese

enterprises that did not respect national labour law. The construction union officer we interviewed was very optimistic about the possibility of using the Guide to Social Responsibility as a means of further increasing the pressure on Chinese contractors to participate in the national industrial relations system.

#### *Forestry Stewardship Council in east Africa*

An east African construction and forestry workers union has used private standards in a different way again but, as with the unions we spoke to in Uganda and southern Africa, the standard is used as a normative point of reference within existing processes of deliberation and political exchange and not as a means of making claims against non-compliant enterprises. In the forestry sector the union engages in industry-level bargaining that includes both large and small enterprises. While many of the larger enterprises have won certification from the Forestry Stewardship Council, one of the major sustainability labelling systems for wood and paper products, the smaller enterprises are much less likely to be FSC certified. Rather than trying to persuade enterprises to seek certification or seeking to report violations by those enterprises that are certified, the union uses the principles and standards in the FSC system as a means to ground the reasonableness of bargaining claims. As one union officer we spoke to put it, “we have borrowed from [the FSC standard] on many occasions to advance our case when we are negotiating... I use that agreement as an eye-opener” (I11, 6:05). Like his southern African colleague, however, this officer made it clear that while the FSC standard was useful, pursuing the interests of his members turned principally on organization and a willingness to take industrial action.

#### *Construction Sector Transparency Initiative in east Africa*

A third type of union utilisation of private regulation emerged in another east African national context, where the main construction industry union reported some success in using a scheme known as the Construction Sector Transparency Initiative (CoST). This scheme, developed and sponsored by the UK government’s Department for International Development and the World Bank, is a multistakeholder initiative intended “to enhance the transparency and accountability of publicly financed construction projects” (CoST Rules article 2). Unlike FSC and the China International Contractors’ Association Guide, this scheme involves no labour standards, being focused instead on the disclosure of information about major construction projects with a view to improving accountability. However, the participation of the construction union as a member of the supervisory multistakeholder group means that it has early access to information about upcoming construction projects and can target its organizing efforts accordingly. The officer representing the union in this group also told us that the union has gained a certain legitimacy as a player in the construction industry via its participation alongside the major construction industry associations and the government.

### **Discussion and Conclusion**

The pattern that we see emerging via our case studies is one in which the industrial relations process rights included within TPR open certain doors, enabling unions either to break into regulatory space from which they were previously excluded, or to draw enterprises into regulatory space that the unions already occupy and within which they already have a certain degree of political and industrial leverage. What we do not see is any evidence that these process rights have *increased* unions’ political and industrial leverage as participants in regulatory space. The legitimacy that TPR gives to the principle of collective worker action is certainly significant. But the collective

competences of access and inclusion are qualitatively different from the leverage that arises as a consequence of being able to use power resources to limit the options available to enterprises. The close correlation between declining trade union influence and declining labour share of income in the developing world (refs) is a strong indicator that only the use of collective power can maintain or increase the labour share of national income. Given that this is the case, it seems unlikely that existing types of TPR will have a significant effect on wage levels even in those companies where they are applied, let alone beyond.

This in turn suggests that if transnational private labour regulation is to have any impact on economic inequality, there is a need to move away from what Caraway calls the 'liberal conceptualization of freedom of association' (2006), which promotes the formation of free as opposed to powerful trade unions. Existing TPR schemes most usually draw their industrial relations process rights from the ILO's core conventions on freedom of association (Convention 87) and collective bargaining (Convention 98), but do so without any reference to the jurisprudence of the CEACR which establishes that these are not merely negative individual rights to freedom from active interference in one's choice of associates, but must be interpreted as also giving rise to positive collective rights *to take action* against employers in pursuit of improvements in employment conditions. Even the strictest TPR industrial relations process rights, like the latest version of Fairtrade International's 'Hired Labour' Standard (FLO 2014), are silent on the question of industrial action. In terms of the analytic model we have proposed here they improve access and inclusion but do nothing to increase leverage. As long as this lacuna remains, there is no reason to believe that TPR will have any significant impact on economic inequality.



## Bibliography

- Anner, M., 2012. Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains. *Politics & Society*, 40(4), pp.609–644.
- Barrientos, S. & Smith, S., 2007. Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems. *Third World Quarterly*, 28(4), pp.713–729.
- Brudney, J., 2012. Envisioning Enforcement of Freedom of Association Standards in Corporate Codes: A Journey for Sinbad or Sisyphus?
- Caraway, T., 2006. Freedom of association: Battering ram or Trojan horse? *Review of International Political Economy*, 13(2), pp.210–232.
- Chan, C.K.-C., 2013. Promoting Freedom of Association in China? Putting Transnational Corporate Social Responsibility into a National Context. *The Journal of Comparative Asian Development*, 12(1), pp.6–34.
- Cox, R.W., 1987. *Production, Power and World Order. Social Forces in the Making of History.*, New York, NY: Columbia University Press.
- Diller, J., 1999. A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives. *International Labour Review*, 138(2), pp.99–129.
- Egels-Zandén, N., 2007. Suppliers' Compliance with MNCs' Codes of Conduct: Behind the Scenes at Chinese Toy Suppliers. *Journal of Business Ethics*, 75(1), pp.45–62.
- FLO, 2014. Fairtrade Standard for Hired Labour. Available at: [http://www.fairtrade.net/fileadmin/user\\_upload/content/2009/standards/documents/generic-standards/2014-03-14\\_HL\\_EN.pdf](http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/generic-standards/2014-03-14_HL_EN.pdf).
- Graz, J.-C. & Nölke, A. eds., 2008. *Transnational Private Governance and its Limits* 1st ed., Routledge.
- Hancher, L. & Moran, M., 1998. Organizing regulatory space. In *A Reader on Regulation*. Oxford University Press.
- Harrod, J., 1997. Social forces and international political economy: joining the two IRs. In S. Gill & J. H. Mittelman, eds. *Innovation and Transformation in International Studies*. Cambridge, UK: Cambridge University Press.
- Hepple, B.A., 2005. *Labour laws and global trade*, Oxford: Hart.
- Howe, J.B., 2012. Government as Industrial Relations Role Model: The Promotion of Collective Bargaining and Workplace Cooperation by Non-Legislative Mechanisms. *REDISCOVERING COLLECTIVE BARGAINING: AUSTRALIA'S FAIR*

*WORK ACT IN INTERNATIONAL PERSPECTIVE*, W.B. Creighton & A. Forsyth, eds.,  
Routledge, New York, 2012.

ILO, 2012a. General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_174846.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf).

ILO, 2012b. Global Wage Report 2012/13: Wages and Equitable Growth. Available at: [http://www.ilo.org/global/research/global-reports/global-wage-report/2012/WCMS\\_194843/lang--de/index.htm](http://www.ilo.org/global/research/global-reports/global-wage-report/2012/WCMS_194843/lang--de/index.htm) [Accessed March 28, 2014].

ILO, 2008. *World of Work Report 2008 - Income inequalities in the age of financial globalization*, International Labour Organization. Available at: [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_100354/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_100354/lang--en/index.htm) [Accessed March 28, 2014].

IMF, 2014. Fiscal Policy and Income Inequality. Available at: <http://www.imf.org/external/np/pp/eng/2014/012314.pdf>.

International Finance Corporation, 2011. IFC Annual Report 2011.

Klooster, D., 2011. The Local Instrumentality of Global Standards: How Mexican Indigenous Communities use FSC Certification to Foster a Furniture Production Network. In S. Ponte, P. Gibbon, & J. Vestergaard, eds. *Governing Through Standards: Origins, Drivers and Limitations*. Palgrave Macmillan.

Knudsen, J., 2013. The Growth of Private Regulation of Labor Standards in Global Supply Chains: Mission Impossible for Western Small- and Medium-Sized Firms? *Journal of Business Ethics*, 117(2), pp.387–398.

Locke, R. et al., 2007. Beyond corporate codes of conduct: Work organization and labour standards at Nike's suppliers. *International Labour Review*, 146(1-2), pp.21–40.

Locke, R.M. & Romis, M., 2010. The promise and perils of private voluntary regulation: Labor standards and work organization in two Mexican garment factories. *Review of International Political Economy*, 17(1), pp.45–74.

Mayer, F. & Gereffi, G., 2010. Regulation and Economic Globalization: Prospects and Limits of Private Governance. *Business and Politics*, 12(3).

Mundlak, G. & Rosen-Zvi, I., 2011. Signaling Virtue? A Comparison of Corporate Codes in the Fields of Labor and Environment. *Theoretical Inquiries in Law*, 12(2).

Murie, F., 2009. BWI Strategies to promote decent work through procurement: the example of the Bujagali Dam project in Uganda.

Nelson, V., Martin, A. & Ewert, J., 2005. What difference can they make? Assessing the social impact of corporate codes of practice. *Development in Practice*, 15(3-4), pp.539–545.

- O'Rourke, D., 2003. Outsourcing regulation: Analyzing non-governmental systems of labor standards and monitoring. *Policy Studies Journal*, 31.
- Oka, C., 2010. Accounting for the Gaps in Labour Standard Compliance: The Role of Reputation-Conscious Buyers in the Cambodian Garment Industry. *European Journal of Development Research*, 22(1), pp.59–78.
- Oka, C., 2009. CAN REPUTATION CONSCIOUS BUYERS IMPROVE WORKING CONDITIONS? THE CASE OF CAMBODIA'S GARMENT SECTOR. *Academy of Management Annual Meeting Proceedings*, pp.1–6.
- Oxfam, 2014. Working for the Few: Political Capture and Economic Inequality.
- Ponte, S., Gibbon, P. & Vestergaard, J., 2011. *Governing Through Standards: Origins, Drivers and Limitations*, Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan.
- Riisgaard, L., 2009. Global value chains, labor organization and private social standards: lessons from East African cut flower industries. *World Development*, 37(2), pp.326–340.
- Robinson, P.K., 2010. Do Voluntary Labour Initiatives Make a Difference for the Conditions of Workers in Global Supply Chains? *Journal of Industrial Relations*, 52(5), pp.561–573.
- Selwyn, B., 2013. Social Upgrading and Labour in Global Production Networks: A Critique and an Alternative Conception. *Competition & Change*, 17(1), pp.75–90.
- Standing, G., 2008. The ILO: An agency for globalization? *Development and Change*, 39(3), pp.355–384.
- Taylor, B., 2012. Supply chains and labour standards in China. *Personnel Review*, 41(5), pp.552–571.
- UNCTAD, 2013. Trade and Development Report 2013.
- UNDP, 2013. Humanity Divided: Confronting Inequality in Developing Countries.
- Utting, P., 2008. Rearticulating regulatory approaches: Private-public authority and corporate social responsibility. In *Authority in the Global Political Economy*. Palgrave Macmillan.
- Vogel, D., 2010. The Private Regulation of Global Corporate Conduct: Achievements and Limitations. *Business & Society*, 49(1), pp.68–87.
- WEF, 2013. Outlook on the Global Agenda 2014. Available at: <http://www.weforum.org/reports/outlook-global-agenda-2014> [Accessed March 28, 2014].

- Wells, D., 2009. Local Worker Struggles in the Global South: reconsidering Northern impacts on international labour standards. *Third World Quarterly*, 30(3), pp.567–579.
- World Bank, 2013. The World Bank Group Goals: End Extreme Poverty and Promote Shared Prosperity. Available at:  
<http://www.worldbank.org/content/dam/Worldbank/document/WB-goals2013.pdf>.
- Yu, X., 2008. Impacts of Corporate Code of Conduct on Labor Standards: A Case Study of Reebok's Athletic Footwear Supplier Factory in China. *Journal of Business Ethics*, 81(3), pp.513–529.