POLICY BRIEF

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KEY RESULTS

- Recommendations stemming from different meeting spaces have different potentials for being transformed into inclusive decisions.

- The involvement practices vary across the different spaces, which in turn affect the interaction between governments and non-state actors.

- The creation of institutional mechanisms and programs that promote non-state actors' attendance were effective for increasing participation.

- Non-state actors must be strategic in identifying spaces and developing skills to be more included.

Vulnerable Non-State Actors in Transnational Regulation Decision-Making

The inclusion of relevant non-state actors (NSA) in the transnational regulation decision-making process can foster a more equitable and ethical business conduct. Focusing on the different types of meetings and interlinked spaces where governments create transnational regulation allows showing how differentiated engagement spaces and practices influence the inclusion of vulnerable NSAs.

WHAT'S AT STAKE?

Governments increasingly interact with businesses and other non-state actors (NSA) such as NGOs, indigenous peoples' organizations, and the scientific community in the process of negotiating and implementing transnational regulation (Djelic and Shalin-Andersson, 2006; Steffek, 2013). Besides, NSAs participation in the transnational decision-making process is increasingly studied by scholars in international government regulation studies (Niezen, 2003 ; Levy and Newell, 2005 ; Betsill and Corell, 2008 ; Jonsson and Tallberg, 2010; Dahl, 2012). However, to fully understand how NSAs influence the transnational decision-making process, not only their participation but also their inclusion in the process must be examined. Indeed, the concepts of "participation" and "inclusion" involve different forms of engagement in government policymaking.

On the one hand, participation broadly refers to the consideration of stakeholders' inputs in governmental decisions. On the other hand, inclusion involves the co-production of decisions by these stakeholders and governments (Quick and Feldman, 2011). It thus implies a greater potential for NSAs to influence the decision-making process. Existing work recognizes that a lack of inclusion may limit the legitimacy, transparency, efficiency, and accountability of the intergovernmental process (Djelic, 2011 ; Rasche and Gilbert, 2012). However, it overlooks the dynamics of inclusion of NSAs in the transnational regulation decision-making process.

In addition, it has been recognized that different spaces offer different opportunities for participation and inclusion for vulnerable NSAs (Hardy and Maguire, 2010). Spaces are bounded social settings within which actors meet to interact and negotiate (Bucher and Langley, 2016). More specifically, they refer to the different groups of actors that meet to negotiate and make decisions during the transnational regulation making process. There is still a lack of knowledge on how these different spaces become available for participation and on how the specific practices within them affect the prospects of inclusion for different actors. The participation and inclusion of NSAs in transnational governance is a way to directly affect business practices in favor of a more inclusive global economy. Therefore, more research is needed to understand how to foster participatory and inclusive practices of NSAs in the transnational regulation decision-making process, in general and within each spaces created along the process.

Researchers Natalia Aguilar Delgado and Paola Perez-Aleman address these issues by examining how the inclusion of vulnerable NSAs occurred in the negotiation and implementation of the Nagoya Protocol, a transnational regulation that promotes fair procedures for accessing biodiversity resources and equitable sharing of benefits, created under the UN Convention on Biological Diversity (CBD). Decision-making in the UN setting is a long process that evolves through a chain of meetings and interconnected negotiation spaces. When there is no contention around the agenda items, the decisions are discussed in plenary, which is considered as the most formal space. When governments cannot achieve a consensus in the plenary, other spaces with different rules of practice are created to conduct further discussions. Different stakeholders including vulnerable NSAs can be invited to take part in these discussions. The researchers examined the interaction between governments and vulnerable NSAs in five different types of meeting spaces convened in the process of enacting the Nagoya Protocol including the plenary, the contact group, the virtual group, the expert group, and the informal advisory committee.

Findings highlight the role of spaces in defining inclusive practices and thus provide insights on how governments could increase vulnerable NSAs inclusion in the process of transnational regulation decision-making.

According to the authors, the results can be generalized to offer potential lessons in the context of other transnational policy issues such as climate change, and social and environmental standards that involve diverse stakeholders. The results of this study are also useful for other settings and initiatives related to the Sustainable Development Goals.

RESEARCH APPROACH

During the course of a four-year research immersion in the negotiations of the Nagoya Protocol, the researchers studied the interaction between governments and vulnerable NSAs in the different spaces convened in the process of enacting this transnational regulation. They examined 10 meetings of the Nagoya Protocol that took place between 2011 and 2014, and drew on three different sources of data: participant observation, interviews and documents. Indeed, from June 2011 to October 2014, researcher Aguilar Delgado observed 205 hours of meetings in different spaces, conducted an internship at the CBD Secretariat, and acted as a consultant, which gave her privileged access to otherwise exclusive spaces. This allowed following the same group of vulnerable NSAs as they interacted in different spaces. Then, between 2011 and 2015, the researchers conducted 51 formal interviews with NSA representatives, government delegates, and the Secretariat staff. Finally, they examined reports of previous meetings archived on the CBD website.

The data analysis had four stages. First, all the material available was reviewed in order to understand the sequence of events that constitute the negotiation and decision-making process. Second, visual mapping was used to conduct a longitudinal investigation of how the different issues discussed during the Nagoya Protocol negotiations evolved over time. Third, in order to examine how spaces affect the participatory and inclusive practices, the researchers provided a thick description of the different spaces created during the negotiations. They used the concepts of participatory and inclusive practices from the literature on public participation to guide the analytical induction and categorization of the different spaces. Fourth, they mapped the whole process of negotiation and decision-making that led to a final decision in two illustrative examples of issues: the first related to the creation of an online platform for sharing relevant information for the implementation of the Protocol and the second related to the creation of mechanisms to promote compliance with the Protocol.

KEY FINDINGS

In this study, the researchers disentangled the concepts of participation and inclusion to better understand how the rules and practices in different spaces created in the process of the Nagoya Protocol negotiation influence the inclusion of vulnerable NSAs in the decision-making process. They find that:

It is important to make a distinction between the concepts of participation and inclusion in a transnational regulation making process.

Indeed, while increased participation is a necessary condition for greater inclusion of NSAs in the governmental regulation and decision-making process, it does not automatically lead to it. Inclusion augments continued involvement of different perspectives in the process and content of decision-making. Therefore, both participatory and inclusive practices must be assessed to evaluate the potential influence of NSAs in the co-production of decisions.

Recommendations stemming from different spaces have different potentials for being transformed into decisions.

For instance, suggestions formulated in closed spaces, such as Expert Meetings and Informal Advisory Committees, have high potential for influencing final decisions while discussions conducted in a virtual group are less likely to be considered. Therefore, the capacity of NSAs to influence the decision-making process depends on their capacity to access the most influential spaces.

The involvement practices vary across different spaces, which in turn affect the interactions between governments and NSAs.

The capacity of NSAs to influence decisions varies across spaces. When discussions are outside the plenary, governments tend to be more willing to include NSAs in the discussions. While the final decision remains with governments, it is common practice for the input of relevant NSAs to be considered when expressed in deliberative spaces.

The creation of institutional mechanisms and programs that promote NSAs' attendance were effective for increasing participation.

For instance, the Convention on Biological Diversity in which the Nagoya Protocol is included provides a fund to guarantee a minimal representation of indigenous peoples at its meeting. This allowed indigenous peoples to have representatives in all intergovernmental meetings and to frequently attend expert group meetings.

NSAs must be strategic in identifying spaces and developing skills to be more included.

Rules of involvement in plenary sessions are very formal, not favoring the inclusion of NSAs in the discussions. Greater inclusion came through more deliberative practices in other spaces such as expert meetings and contact group meetings. Therefore, vulnerable NSAs must develop skills and generate resources to increase the value of their knowledge and expertise in order to take part in discussions in these deliberative and influential spaces. For example, improving English skills and knowledge of legal jargon and meeting procedures would facilitate their participation and inclusion.
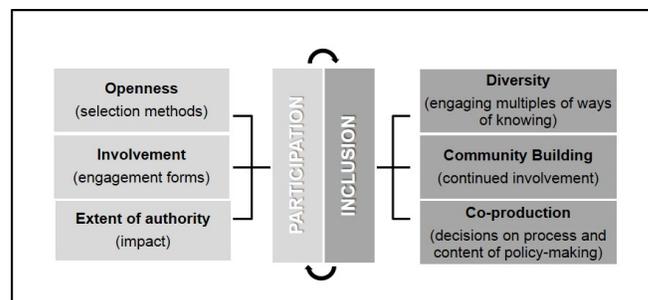

Figure 1: Conceptualizing Participation and Inclusion
Source: : Own elaboration with adaptations from Fung (2006) and Quick and Feldman (2011)

POLICY INSIGHTS

The participation and inclusion of NSAs in transnational governance is a way to directly affect business practices in favor of a more inclusive global economy. However, intergovernmental processes present many challenges to the inclusion of NSAs. In order to foster the inclusion of NSAs, governments should:

Develop a more inclusive approach for NSAs in the plenary session.

In the plenary, NSAs have the right to express their views after the country representatives, but only if time permits. Usually, Parties reach an agreement before NSAs have the opportunity to speak. Additionally, for an NSA to have his or her statement taken into account, at least one government must provide support. Therefore, these rules need to be more inclusive to foster the involvement of NSAs in the decision-making process.

Make influential or decisive spaces more accessible for NSAs.

Results show that greater inclusion of NSAs in the decision-making process came through practices in effect in spaces other than the plenary (e.g. contact groups, expert meetings, and informal advisory committees) where participants produce proposals that feed final decisions. However, these spaces are less accessible for NSAs as participants must be invited by governments. Nevertheless, when invited, NSAs had the opportunity to demonstrate the value of their views, experience, expertise, and recommendations and were more likely to influence and co-produce final decisions. Governments should thus encourage inclusion in these spaces for NSAs.

Provide more translation facilities in spaces other than the plenary.

In most spaces other than the plenary, meetings and documents are not translated, with makes it difficult for potential participants without a good command of English to participate in discussions. This barrier is important to acknowledge because it excludes many otherwise capable and relevant NSA representatives. Governments could facilitate more inclusive spaces by providing translation facilities when needed.

Maintain constant sources of funding to the most vulnerable to attend meetings and improve their expertise.

The CBD is the only UN convention that offers a fund to guarantee a minimal representation of indigenous people at its meetings. Findings show that this was effective to increase their participation. It is vital that policy-makers continue to support funding for these actors while also providing better conditions for the development of other capacities necessary for effective inclusion.

This brief was authored by N. Aguilar Delgado and P. Perez-Aleman, and designed by M-E Yergeau. It draws on key findings of their working paper, "Inclusive Governance: Varieties of Spaces and Practices in Intergovernmental Regulation for Business Conduct".

References:

Betsill, M.M. and E. Corell. (2008). NGO diplomacy: the influence of nongovernmental organizations in international environmental negotiations. Cambridge, Massachussets: MIT Press.

Bucher, S. and A. Langley. (2016). The interplay of reflective and experimental spaces in interrupting and reorienting routine dynamics. Organization Science, 27(3): 594-613.

Dahl, J. (2012). The indigenous space and marginalized peoples in the United Nations: Palgrave Macmillan.

Djelic, M.-L. (2011). From the rule of law to the law of rules: The dynamics of transnational governance and their local impact. International Studies of Management & Organization, 41(1): 35-61.

Djelic, M.-L. and K. Sahlin-Andersson .(2006). Transnational governance: Institutional dynamics of regulation: Cambridge University Press.

Fung, A. (2006). Varieties of participation in complex governance. Public administration reviews, 66(s1): 66-75.

Hardy, C. and S. Maguire. (2010). Discourse, field-configuring events, and change in organizations and institutional fields: Narratives of DDT and the Stockholm Convention. Academy of Management Journal, 53(6): 1365-1392.

Jonsson, C. and J. Tallberg. (2010). Transnational Actors in Global Governance. Palgrave Macmillan UK.

Levy, D.L. and P.J. Newell. (2005). The business of global environmental governance: MIT press.

Niezen, R. (2003). The origins of indigenism: Human rights and the politics of identity: Univ of California Press.

Quick, K.S. and M.S. Feldman. (2011). Distinguishing participation and inclusion. Journal of Planning Education and Research, 31(3): 272-290.

Rasche, A. and D.U. Gilbert. (2012). Institutionalizing global governance: the role of the United Nations Global Compact. Business Ethics: A European Review, 21(1): 100-114.

Steffek, J. (2013). Explaining cooperation between IGOs and NGOs–push factors, pull factors, and the policy cycle. Review of International Studies, 39(4): 993-1013.

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