WHAT IS PUBLIC REGULATION?

Public regulation includes the laws and legislation created by governments, local, provincial and national.

It also includes binding legal agreements made between governments of different countries (like the EU-South Africa trade agreement) and amongst governments for instance at the UN and its subsidiaries (like ILO conventions). Public regulation therefore applies to all people (public) who are subject to the rules of the legislating government/s.

WHAT IS PRIVATE REGULATION?

In contrast private regulation includes rules and standards created by corporations or associations who are not governments. It is private because it applies to a limited group of people.

EXAMPLE:

A canning company may prohibit its suppliers from using certain pesticides on their crops.

NOTE: It is important to note that whether this rule is part of the public health and safety regulations in that country or not, it still remains a form of private regulation.

Most private regulations of **labour practices** incorporate international public regulations (e.g. ILO "core labour standards" contained in the international conventions). In South Africa most private regulations on labour practices are already contained in our national labour legislation. Thus the same rules or standards might be in the national labour legislation and a private company's code of good practice.

This may seem like unnecessary duplication but consider the following example:

EXAMPLE:

The Labour Relations Act of 1995 outlawed sexual harassment at the workplace as a form of discrimination. Subsequently the Employment Equity Act of 1998 put a positive duty on employers to eliminate and prevent sexual harassment at the workplace. A Code of Good Practice was issued by the Department of Labour pointing out best practice for workplace sexual harassment policies. All of this is public regulation. The EEA however requires companies to adopt a form of private regulation by insisting on fair internal policies and procedures to be adopted at the workplace. A workplace code of practice or policy dealing with sexual harassment will be a form of private regulation which is used to implement the requirements of public regulation in that particular company.

POTENTIAL BENEFITS OF PRIVATE REGULATION

Private regulation has the potential therefore to facilitate the implementation of labour standards and rules already contained in public regulation. It also has the potential to go a step further and encourage employees and employers to exceed the baseline standards of legislation and set higher standards in a particular workplace.

WHAT IS THE ROLE OF TRADE UNIONS IN PRIVATE CODES OF GOOD PRACTICE?

One must always bear in mind that private codes of good practice are company policies. It is not possible to generalise about all codes.

- They may be adopted through close co-operation and negotiation with workers, or they may be unilaterally imposed by management.
- They may secure certain valuable benefits for workers or employers, or be beneficial to workers and employers alike.
- They may strengthen unions in the collective bargaining process, or seek to substitute for collective bargaining.
- They may serve to empower workers and their representatives to insist on better conditions for workers, or they may simply act as "window dressing" for employers to look good on the open market but provide little benefit to workers on the ground.

The extent to which private codes of good practice (private regulation) achieve the potential benefits for workers who are represented by a trade union depends largely on the following factors:

1.Content of the code

Codes should always recognise freedom of association and the right to collective bargaining. They should not deal with matters that are better left for collective bargaining agreements.

In some cases the content of codes is not negotiable. This is particularly true where trans-national companies (TNCs) adopt codes which apply to their international suppliers. These codes may or may not have been negotiated with trade unions overseas but often leave little room for trade unions in supplier countries to provide input on content.

EXAMPLE: An American chain (e.g. Macdonalds) will be supplied with tomatoes from South America, Africa and Europe. Suppliers from these countries will simply have to comply with the content of a code of good practice or risk losing their agreement with the supermarket chain.

SOME POINTERS

- Where this is the case the code should contain minimum standards, such as ILO "core labour standards", that are recognised as such. (See appendix.)
- Local trade unions should negotiate checklists or guidelines with the supplier which allow for the needs of South African workers to be met and their benefits to exceed the minimum standards.
- A code of this nature should never contain standards, which fall short of national legislation.
- If the standards do fall short, there should be a provision requiring all suppliers to comply with national legislation where this exceeds the minimum standards of the code.

2.Implementation and monitoring

Monitoring in this context refers to the obligation on a company to continually check that their code is being implemented.

Implementation is anything done by the company to make what is written in the code a practical reality. Monitoring is therefore an important element of implementing the content of a code, and not something separate to implementation.

As codes of good practice are company policy it is important that trade unions do not take the responsibility for their implementation. Trade unions may assist with monitoring by setting up meetings with workers, providing interviewers etc. but must not take responsibility for the process. They should for instance be consulted when the company develops procedures for implementation, but not be responsible for making those processes happen.

SOME POINTERS

- Where a company is adopting a code for more than "window dressing" reasons it will take responsibility for code implementation at a top management level.
- Code compliance should be treated with as much seriousness as quality control.
- The code should apply to all of the companies sub-contractors, out-sourced work and suppliers equally.
- Workers should be informed comprehensively about the code and its procedures of implementation.
- Company personnel should be trained to effect these procedures.

3.Verification and Enforcement

Verification is a term used to describe a process whereby the company's compliance with the code, and monitoring and implementation procedures, are checked on a regular basis. This is a controversial area, which has spawned a new profession of "social auditors" from various ideological backgrounds and with varying skills and understanding of the workplace issues. Trade unions should ensure that, no matter whom companies assign to do "independent monitoring" or verification, the procedures, standards and rules applied in verification are carefully developed and encourage transparency. It has been suggested that the ILO is best placed as an institution to train and accredit verification bodies rather than leaving this to disparate local groups and companies to agree on "good enough" verification.

Enforcement the mechanism by which compliance with the code is ensured, and failure to comply

corrected. Trade unions should not have to enforce company policy either. However a code that is not enforced amounts to the "window dressing" that trade unions wish to avoid. It is therefore important to avoid highly bureaucratic systems of complaints procedures, and committees which make compliance a shared responsibility. It is also important to insist on clearly agreed and executed consequences of non-compliance.

CAUTIONS AND OPPORTUNITIES

1. Trade unions should avoid the use of social labeling when it comes to verifying good labour practices. Unlike health and safety standards like the use of pesticides, a product cannot be independently tested for the labour practices involved in its production.
2. Co-operation with international trade unions and NGOs is a great opportunity but care should be taken that these bodies do not assume to represent workers who already have trade union representation.
3. Codes should not be confused with Framework Agreements entered into between TNCs and international trade union movements, although a code may form part of these.
4. International codes of good practice provide an avenue for international solidarity and co-operation in the trade union movement. These alliances open the way for skills sharing and improving capacity of unions in South Africa.
5. Where enforcement of public regulation is lacking, codes can serve to increase compliance with national law where benefits to employers, such as access to international markets, become more evident.
6. Codes can contribute to good industrial relations between employers and workers by bringing to the negotiating table a joint goal of improved conditions for workers.
7. Where codes are recognised as minimum standards, they can strengthen collective bargaining positions on conditions for workers.

APPENDIX

ILO core labour standards are:

1. Freedom of association and protection of the right to organise (No. 87/1948)
2. Right to organise and collective bargaining (No. 98/1949)
3. No forced labour (No. 29/1930)
4. Minimum age (No. 138/1973)
5. Prevention of discrimination in employment (No. 100/1951 and No. 111/1958)

This briefing paper draws many of its ideas from a publication of the Frederich Ebert Stiftung and SÜDWIND Institut für Ökonomie und Ökumene *Worker's tool or PR ploy, A guide to codes of international practice* by Ingeborg Wick. Used with the permission of the author.

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