

# Addressing the Global Sustainability Challenge: The Potential and Pitfalls of Private Governance from the Perspective of Human Capabilities

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**Abstract** Contemporary global politics is characterized by an increasing trend toward experimental forms of governance, with an emphasis on private governance. A plurality of private standards, codes of conduct and quality assurance schemes currently developed particularly, though not exclusively, by TNCs replace traditional inter-governmental regimes in addressing profound global environmental and socio-economic challenges ranging from forest deforestation, fisheries depletion, climate change, to labor and human rights concerns. While this trend has produced a heated debate in science and politics, surprisingly little attention has been paid on the effects of private governance on questions of distribution and justice. This is highly problematic. At the beginning of the twenty-first century global inequalities are greater than ever before, while rapid economic, social, political, and environmental changes threaten to further derail sustainable development and humanitarian objectives. If private governance creates or intensifies some of the pressing global inequalities (e.g., food security), and alleviates others (e.g., environmental degradation), from a business ethics perspective, we need to know which aspects need to be strengthened and where appropriate interventions are necessary and desirable. This paper proposes a framework to examine and classify the distributive outcomes of private governance institutions through the lenses of one particular approach to distributive justice, the capability approach. Empirically, it focuses on agrifood one area where the

controversy regarding the distributive concerns of private governance are particularly pronounced.

**Keywords** Agrifood · Capabilities approach · Governance · Private standards · Sustainability

## Introduction

Contemporary global politics is characterized by an increasing trend toward experimental forms of governance. States that used to provide the laws and regulations at the global level are often seen today as slow and ineffective in negotiating far-reaching agreements in an increasingly global and complex political system and state-led regulation is perceived as costly and inefficient (Bäckstrand 2008). Instead, the institutional arrangements developed by private actors (e.g., business and civil society) to govern, i.e., to guide and prescribe behavior in an issue-specific area (Falkner 2003), began to gain ground. Such private governance institutions include quality assurance schemes, certification and labeling programs, product and process standards, as well as codes of conduct (Auld et al. 2008; Graz and Nölke 2008). Today these institutions address profound global environmental and socio-economic (i.e., sustainability) challenges ranging from forest deforestation, fisheries depletion, climate change, to labor and human rights concerns. Importantly, in the context of corporate social responsibility, transnational corporations (TNCs) are pivotal actors in the design and implementation of institutions for sustainability and the engine behind their global expansion through their supply chains.

A voluminous literature in business studies currently examines the role and relevance of private governance institutions in global politics. Assessments tend to focus on

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questions of democratic legitimacy and accountability (Bernstein and Cashore 2007; Porter and Ronit 2010; Fuchs and Kalfagianni 2010), their contribution to problem-solving effectiveness, rule-implementation and compliance (Kollman and Prakash 2001; Mattli and Büthe 2003), and institutional complementarities between national and international settings of governance (Gulbrandsen 2010; Kalfagianni and Fuchs 2012; Kolk 2011). While this trend has produced a heated debate in science and politics, surprisingly little attention has been paid on the effects of private governance on questions of distribution and justice. This is highly problematic. At the beginning of the 21st century global inequalities are greater than ever before, while rapid economic, social, political, and environmental changes threaten to further derail sustainable development and humanitarian objectives. Experts contend that distributive justice concerns demand more explicit attention and centrality in global governance as they are likely to play a crucial role in determining the effectiveness and long-term legitimacy of governance arrangements (Adger et al. 2005; Biermann 2007). If private governance creates or intensifies some of the pressing global inequalities (e.g., food security), and alleviates others (e.g., environmental degradation), we need to know which aspects need to be strengthened and where appropriate interventions are necessary and desirable.

In an effort to contribute to this debate this paper elaborates a framework to examine and classify the distributive outcomes of private governance institutions, developed and/or endorsed by TNCs, to address sustainability challenges, in a global context. The paper explores and classifies the distributive outcomes of private governance institutions through the lenses of one particular approach to distributive justice, the capability approach (CA). The central argument of the CA is that institutional arrangements need to be evaluated not simply on the distribution of various goods or resources but on how these goods or resources are transformed into the capacity of individuals to function in lives of their own choosing (Schlosberg and Carruthers 2010). Recent articles appearing in this journal emphasized the need to re-examine business practices in the light of an ethical and anthropological approach, specifically the CA, that allows for the evaluation of business role in service to society (Berland 2008; Giovanola 2009). Private governance is the basis on which business actors assume such a role. The question addressed in this paper, then, is to what extent private governance creates spaces and for whom to freely develop their capabilities in a global context. The paper develops and applies the capabilities perspective to a particular form of private governance which has proliferated in recent years, namely, private standards. To give more nuance to the analysis, the paper focuses its discussion on private

standards specifically developed to address sustainability concerns in agrifood governance, one area where the controversy regarding the implications of private governance for distributive justice is extremely relevant. Not surprisingly, agrifood governance is also an area, in which private standards have emerged as a dominant form of governance in recent years (see also Clapp and Fuchs 2009).

The next section argues that two characteristics of private standards make them a unique form of private governance that's worth particular attention from a distributive justice perspective: their quasi-compulsory and exclusionary nature. In contrast to codes of conduct and reporting initiatives, standards represent enduring and prescriptive requirements in the private sector relying on various sorts of certification and sanction mechanisms (Auld et al. 2008). Accordingly, private standards resemble public intergovernmental processes but are also distinct from them in that they use as core distributive mechanism the (global) market. The paper argues that this paradoxical nature of private standards may intensify global inequalities both spatially (in a North–South context) and among different socio-economic groups. The “[Private \(Agrifood\) Standards and the Fostering of Human Capabilities](#)” section further elaborates this point. Developing a list of capabilities in the context of agrifood governance, the section discusses the role of private standards in fostering or limiting these capabilities for three main groups of global actors, namely rule-setters, rule-takers, and rule-users. The last section concludes this paper deliberating the potential of private standards to promote more humane and equitable forms of (agrifood) governance worldwide.

### Private Standards as Governance

The case for private governance has often been made on the ground that it makes “good business sense”. As firms know best where efficiencies can be made within their own business structures they can strive for improvements on their own terms, a tactic widely seen as a more efficient way of achieving environmental sustainability (Clapp and Thistlethwaite 2012). The emergence of private governance has also been attributed to the demand for some form of regulation, particularly where technical complexity, rapidity of changes or political reasons prevents the development of (inter)governmental regulation (Vogel 2005). Furthermore, external pressure by activists and civil society organizations as well as increased public awareness and the rise of ethical consumerism have contributed to the flourishing of private regulatory activities (Kalfagianni and Fuchs 2013).

Today, a variety of private governance institutions can be identified at the global level. Some are developed exclusively by corporate actors, while others include the involvement of civil society organizations and governmental or intergovernmental actors (Vogel 2008). Some require simply the reporting of environmental and social practices by firms while others include concrete performance indicators and establish monitoring and control mechanisms. Furthermore, some target sinking activities at the end of the production process while others cover the whole supply chain.

The most prominent form of private governance in recent years and the most concrete is private standard-setting (Fuchs et al. 2011; Blowfield 2005). Standards are “agreed criteria by which a product or a service’s performance, its technical and physical characteristics, and/or the process, and conditions, under which it has been produced or delivered, can be assessed” (Nadvi and Wältring 2002, p. 6). They can extend to customers and end users as a basis for attaching credence, or value, to particular claims made about a product’s characteristics and specification or the ways in which it has been produced (Nadvi 2008).

A key focus of private standard-setting activities is agrifood governance (Busch 2011; Clapp 2012; Fuchs and Kalfagianni 2010). Indeed, today’s global agrifood system is characterized by enormous social and environmental challenges, ranging from the threats to food security and food safety, to horrendous working conditions, climate change, biodiversity loss, water pollution, or deforestation (Kalfagianni and Fuchs 2013). Prominent examples of private standards in the agrifood domain include GlobalGAP a retail standard promoting good agricultural practices worldwide, the Marine Stewardship Council (MSC) a multistakeholder organization seeking to promote sustainable fisheries, the Common Code for the Coffee Community (4C) aiming to improve the economic, social, and environmental conditions of coffee production and processing, and the various roundtables for sustainable palm oil, cotton, soy, and biofuels, to name a few. Likewise, the fair trade movement and its umbrella organization Fair-trade Labeling Organizations (FLO) aims to improve the position of the poor and marginalized producers in the developing world, by creating a framework that enables trade to take place at conditions respecting their interest, particularly though not exclusively in agrifood.

Importantly, such standards are developed and/or endorsed to a larger or smaller extent by TNCs. GlobalGAP, for instance, was initiated by European retailers but evolved into an equal partnership between global retailers and suppliers. The top-10 retail corporations, including retail giant Wal-Mart, Carrefour, and Tesco and some of the biggest global suppliers, such as Cargill and ConAgra, participate in GlobalGAP. Likewise, private standards

developed by multistakeholder organizations are also endorsed by TNCs. Wal-Mart, for instance, has announced that by 2012, all of its seafood suppliers for capture fish must move toward certification under the Marine Stewardship Council system. Nestlé, Unilever, McDonalds and others have stated that by 2015, they will only use palm oil if it has been certified by the Roundtable on Sustainable Palm Oil (Bartley 2010). Some corporate mass roasters (Starbucks, Procter and Gamble, Nestle), large restaurant chains (Dunkin Donuts, MacDonald’s) and retail chains (Costco, Walmart) endorse fair-trade (Jaffee and Howard 2010). Considering the position of such big corporations in the global market the adoption of private standards puts them in a unique position to foster transformations in global supply chains toward more sustainable practices.

Although differences among private agrifood standards can be identified, e.g., both in terms of their governance structures and in terms of stringency and scope, they share two key characteristics. First, unlike other private governance mechanisms such as corporate reporting, standards represent enduring and prescriptive requirements in the private sector relying on various sorts of certification and sanction mechanisms (Auld et al. 2008). In this context, private standards resemble public hard law in that they create obligations for the contracting parties instead of simply setting abstract guidelines to which firms and other actors are encouraged to comply. Obligations are verified usually on the basis of third-party auditing taking place yearly and sanctions for cases of non-compliance apply ranging from issuing of warnings to revocation of licence. Standards, then, act as filters designed to “eliminate” those parties who do not or cannot demonstrate adherence to their requirements (see Busch 2012). While filtering levels may differ, with some standards eliminating worst practices only and others having a more elitist perspective, standards are exclusionary by design (see also Guthman 2007).

Second, in contrast to the traditional governmental command-and-control paradigm, private standards rely on market forces and public scrutiny to exert pressure on their target group and generate sustainability benefits (Kalfagianni and Pattberg 2013a, b). Indeed, a central feature of private standards is an expanded role for the market. In line with free market environmentalism, private standards establish markets as a response to environmental and social externalities instead of requiring the intervention of state regulation as in the typical market failure approach (see Adler 2009; Guthman 2007). For example, the Marine Stewardship Council (MSC) created a market for sustainable fish where none previous existed. Standards also differentiate existing markets as, for example, the whole range of organic, bird friendly, shade grown, fair-trade etc. distinctions of the sustainable coffee market. Accordingly the

market rather than the state becomes the core mechanism of fostering environmental quality and socio-economic sustainability on a global scale.

The combination of these two features, i.e., the creation of alternative markets to promote the “public good” on the basis of obligatory requirements for the parties that enter these markets, unavoidably creates winners and losers in the global governance for sustainability. Previous studies have shown that barriers affect primarily small-scale capital actors in the Global South (e.g., Jaffee and Howard 2010; Ponte 2007). The approach developed here differs from previous studies in two main aspects. First, it proposes an integrative evaluation of the impact of private standards on the material, social, political, and environmental dimensions of human life (capabilities) rather than addressing a single dimension only. Second, it considers the role of private standards in affecting the capabilities of different types of actors in a comparative manner instead of focusing on a single-type only. In sum, the question pursued below is which capabilities and for whom, are facilitated or constrained by private standards as an emerging form of governance in the global agrifood system.

### Private (Agrifood) Standards and the Fostering of Human Capabilities

The CA is a normative framework that evaluates institutions according to their impact on people’s effective opportunities to lead a valuable and dignified life, i.e., their capabilities. It differs from utilitarianism in that it rejects the idea that the goal of politics lies in some glorious total or average of individual preferences (Nussbaum 2000). It is also distinct from liberal egalitarianism where justice relies on the distribution of equal opportunities or means. Rather, the CA is concerned with how means can be effectively used by people to be able to do or to be, on the quality of their life, and on removing the obstacles in their lives so that they have more freedom to live the kind of life that they have reason to live (Robeyns 2005). On the basis of this approach, private standards need not only simply be judged by whether they distribute equally opportunities for sustainable resource use, e.g., in a North–South context, but also by whether these opportunities can be utilized effectively by the most vulnerable members of societies (Okereke and Dooley 2010). Importantly, the CA attributes high importance to the diversity and richness of human life (Giovanola 2009). Moving beyond the notion of homo economicus, the CA would evaluate private standards on the basis of their contribution to different dimensions of human life and flourishing. The CA was pioneered by Amartya Sen and Martha Nussbaum and can be traced back to Aristotle, Adam Smith, and Karl Marx (Robeyns 2005).

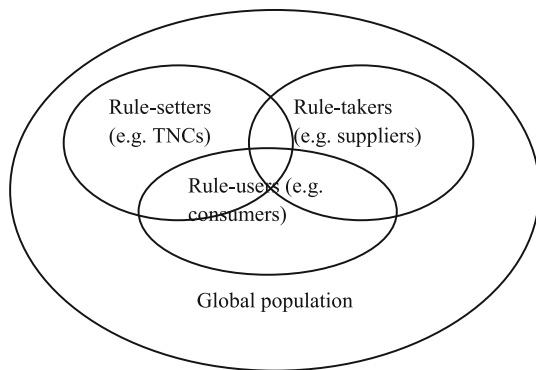
### Whose Capabilities?

The CA as a libertarian approach to justice is concerned with the individual. It asks “how each and every individual is doing” and denies that any society can do well when even one of its members is doing badly (Nussbaum 2000). Individuals, however, are social beings and as scholars and philosophers have noted the distinction between individuals and societies is not only difficult to make but also false (see Castoriadis 1986). Accordingly, the atomistic anthropology of the CA is ontological rather than methodological (Robeyns 2005) making the approach compatible with research investigating the capabilities of groups or communities (Schlosberg and Carruthers 2010).

This observation is crucial from the perspective developed here. Specifically, the argument put forward is that in the context of global governance, the distributive role of private standards needs to be understood on the basis of the types of actors sharing a similar function in relation to these standards, rather than in a North–South context only. Specifically, the instruments of global governance, including private standards, shape different global categories of actors depending on the latter’s roles and obligations with respect to the relevant private governance institution (see also Busch 2000), e.g., whether actors contribute to standard development or participate in standard implementation.

Three types of actors directly affected by private standards, can be identified globally: rule-setters, i.e., those who create or endorse the standards, such as corporations; rule-takers, i.e., those who have to comply with the relevant rules, such as suppliers and formal labor; and rule-users, i.e., those who use the private governance institution in their consumption and other forms of decision-making, such as consumers (see also Büthe 2010). Although these types of actors do not necessarily represent entirely homogenous groups, they do share some common traits with respect to their relationship to private standards. Private governance, however, also impacts on actors not directly “governed” by the particular private governance institution yet affected by its mechanisms. Informal labor, external suppliers and local communities are examples of a fourth actor group, representing the global population in Fig. 1. To account for the spatial dimension of distributive justice next to the type of actors, attention also needs to be paid with respect to their region of origin (North and South).<sup>1</sup>

<sup>1</sup> These three generic categories may further be distinguished according to other attributes, such as market size for business actors, income, gender, and geographic localities (urban–rural), etc.



**Fig. 1** Actors affected by private standards globally (Büthe (2010) identifies similar groups of actors to explain the supply and demand of private governance.)

### What Type of Capabilities?

Capabilities are sets of combinations of functionings and express the real possibilities of choices that people have (Renouard 2011). The concept of “functioning” reflects the various things a person may value doing or being (Sen 1999, p. 75). Functionings represent “various components or aspects of how a person lives” (Gasper 2002, p. 4). A person’s ability to realize their desired and valued functionings very much depends on their capabilities as well as entitlements or assets. A “capability” therefore refers to the alternative combinations of functionings that are feasible for a party to achieve. Capability, then, is understood as a kind of freedom; specifically, the substantive freedom to achieve alternative functioning combinations (Sen 1999).

According to Sen, people must have the opportunity and freedom to determine the capabilities necessary for their functioning. He argues that these capabilities have to be decided in a democratic deliberative process rather than by experts and philosophers. In contrast, Nussbaum proposes a concrete list of capabilities she considers vital for a decent human life. She argues that these capabilities can inform universal basic political principles for constitutional guarantees which the deliberative processes may ignore as they offer no assurance that the voices of the weak will be heard. Nussbaum’s list includes the following capabilities: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one’s environment. The list is open to changes and adjustments and has been revised by Nussbaum herself over the years.<sup>2</sup>

<sup>2</sup> In this context, scholars have suggested access to healthcare, skills and education; access to credit; environmental and social protection to be part of the capabilities list (Sandbrook 2005). Still others, have stressed mental well-being; empowerment; political freedom; social relations; community well-being; work conditions; leisure conditions; political security; economic security and environmental conditions (Ranis et al. 2006).

Following Nussbaum, this paper develops a list of capabilities of relevance in the context of global agrifood governance. These capabilities are sufficiently broad to apply in cases beyond agrifood and refer in a comprehensive and integrative manner to four different dimensions of life: the material, social/cultural, political, and environmental (see also Robeyns 2005).

### *Material Capabilities: Access to Food*

The material dimension of life relates to the ability to access and transact key material resources (see also Fuchs and Kalfagianni 2010). One of the key material resources of interest here is, of course, food itself, a resource necessary for human survival. Access to nutritional and safe food is a basic human right but is not guaranteed in today’s world. In 2010 a total of 925 million people were estimated to be undernourished<sup>3</sup> representing 16 % of the population in developing countries (Food and Agriculture Organisation of the United Nations Food and Agriculture Organisation of the United Nations (FAO) (2010). In some countries, characterized by long-lasting natural and human-made challenges and limited capacity to respond, more than 166 million people are undernourished representing nearly 40 % of the population in these countries and 20 % of the total undernourished population (ibid). Sub-Saharan Africa and Asia Pacific currently have the largest proportion of global undernourishment.

Private standards influence access to food in different ways. Looking at rule-takers the literature identifies, in general, a positive influence of private agrifood standards, as a result of higher incomes being available through premiums or increased productivity or quality (International Trade Center [ITC] 2011). Indeed, studies show that private standards may foster access to better quality and quantity of food, improve health and reduce vulnerability (FAO 2009). Further, standards may improve food access for rule-takers, indirectly, via knowledge, and technology transfer that provide the basis for competitive repositioning and enhanced export performance.

These benefits, however, tend to accrue to a subset of global suppliers able to afford the costly investments and the lengthy and expensive auditing and certification processes associated with private standards (Auld et al. 2008; Klooster 2005). Actors who lack the economic ability to demonstrate commitment with private standards, fail to take advantage of the opportunities they offer (Amekawa 2009; Guthman 2007). It is estimated, for instance, that a total of over 2.2 million UK£ has been invested to meet the initial costs of GlobalGAP compliance in Kenya alone,

<sup>3</sup> Undernourishment exists when caloric intake is below the minimum dietary energy requirement (MDER).

representing, on average, 220,000 UK£ per participating company (Graffham et al. 2007). Although costs differ for small and medium sized companies, in the absence of donors' willingness to subsidize certification small sized companies do not benefit accordingly by private standards (ibd.). In addition, private standards may constrain rule-takers' access to food when active in oligopolistic market structures (Mayer and Gereffi 2010). In this context, where suppliers have no other choice than to comply, private standards can push out of the market the most vulnerable and financially weak actors (Fuchs and Kalfagianni 2010). Small suppliers in some of the most food insecure countries have lost their livelihoods as a result of private standards (ActionAid International 2005).

Food access is also determined by the ability to make informed choices regarding food (McEntee 2011). In this context, rule-users have benefited substantially by private standards. After all, standards are largely adopted to support claims to consumers that products have certain extrinsic characteristics that reflect the way in which they have been produced (Henson and Humphrey 2009). Accordingly, they provide the opportunity to access better quality, healthier, and safer, food.<sup>4</sup> With the adoption of private agrifood standards by global and local retail chains, consumers in the North as well in the South can benefit (Fuchs and Kalfagianni 2010). As certified products are typically more expensive than conventional ones, however, such opportunity can be utilized by a subset of, primarily affluent, consumers. Indicatively, these constitute 28 % of the adult population in the US (61 million out of 222 million adults)<sup>5</sup> and 0.2 % of the adult population in China (2.5 million out of 1.34 billion adults).<sup>6</sup> In contrast, middle-income consumers can capitalize on such opportunities rather less and the poor next to none (Lang and Heasman 2004).

Simultaneously, we should not forget that a significant segment of the global population does not belong to the consumer segment and, therefore, does not benefit from private standards. Subsistence farmers, for instance, grow their own food instead of buying it in the market. There are approximately 525 million farms worldwide and about 85 % of these currently belong to smallholders or

subsistence farmers who operate plots of land of <2 hectares (Nagayets 2005). The overwhelming majority of these farms are located in Asia (87 %), while Africa is home to another 8 % and Europe to ~4 %. In Latin America where many of the private agrifood standards apply, out of 14 million family farms in twelve Latin American countries, 60 % are subsistence smallholders (10 million), 28 % are small farmers in transition (4 million), and 12 % are consolidated family farms (1 million).<sup>7</sup> Moreover, subsistence farmers constitute over half of the world's rural poor, but they produce about four-fifths of food supplies in developing countries.<sup>8</sup>

Regarding rule-setters, private standards provide the ability to exercise gatekeeping control over supply chains and determine who gains access and in what terms (Fuchs and Kalfagianni 2010). This ability becomes particularly pronounced in determining access to food for some groups when rule-setters are TNCs. Considering that two-thirds of world trade in goods and services is now controlled by TNCs (United Nations Conference on Trade and Development 2009), and that in agrifood, more specifically, TNCs have become central actors (Clapp 2012), engagement in private governance on the basis of own rules and standards creates the opportunity for TNCs to exercise not only economic but also quality leverage over suppliers (Mayer and Gereffi 2010). In this context, standards may act as an oligopoly-enhancing strategy, by allowing TNCs to accumulate further control over what is being produced and how. An example in this respect concerns attempts to promote "no-till" agriculture<sup>9</sup> as a standard conservation practice, which, however, depends mostly on using Monsanto's glyphosate and Round Up Ready genetically modified seeds (e.g., see Jackson 2011). As TNCs become the owners of the technologies and processes underpinning standards, suppliers, in turn, become increasingly dependent on a few powerful conglomerates for their practices.

Importantly, the ambiguity that currently exists regarding the jurisdiction of intergovernmental trade regimes over private standards allows TNCs to exercise control over global suppliers with limited grounds for legal challenge (Botterill and Daugbjerg 2011). Scholars highlight, for instance, that when private standards become the de facto standards for exports to particular markets (e.g., when all retailers in a market choose to apply the Global-GAP standards), TNCs can restrict access to suppliers who do not produce under these standards even if the latter

<sup>4</sup> Note, however, that the multitude of standards and accompanied labels often disorient rather than inform consumers and may become a burden rather than an opportunity for access (Busch 2011).

<sup>5</sup> Affluent consumers are defined as either single-person households with an income of at least \$75,000, or multiple person households with an income of \$100,000 or more. <http://www.marketresearch.com/Packaged-Facts-v768/Affluent-Consumers-Economy-Food-Food-service-2291282/> (16.07.2012).

<sup>6</sup> In China, affluent levels differ and affluent is considered someone with more than \$25,000 a year. [http://www.masterintelligence.com/upload/176/110/Affluent\\_Consumers\\_China-S.pdf](http://www.masterintelligence.com/upload/176/110/Affluent_Consumers_China-S.pdf) (16.07.2012).

<sup>7</sup> <http://www.ifad.org/events/agriculture/sessions/3/berdegue.htm> (16.07.2012).

<sup>8</sup> <http://www.fao.org/docrep/u8480e/U8480E08.htm> (16.07.2012).

<sup>9</sup> "No-till" agriculture is a farming method that avoids disturbing the soil through tillage, i.e., digging, stirring, and overturning the soil through mechanical use.

comply with the rules of the World Trade Organization (WTO) (*ibid.*). Observed from a North–South perspective, such processes affect primarily developing country suppliers as agrifood TNCs, particularly in the trade and processing, and retail sectors are mostly situated in developed countries (United Nations Conference on Trade and Development 2009). In food processing, for instance, 39 of the top 50 firms are headquartered in developed countries. Likewise, the majority of the 25 largest TNCs in the retail industry (22) are again from developed countries (see also Kalfagianni and Fuchs 2013).

#### *Social/Cultural Capabilities: Labor Rights, Gender, and Cultural Identity*

The effects of private standards on the social and cultural dimension of life cover different issues ranging from labor rights to gender, and cultural identity (see also Barrientos and Smith 2007; Fuchs and Kalfagianni 2010).

Concerning labor, more specifically, labor-intensive activities increasingly take place in regions of the world characterized by relatively low wage levels and non-skilled labor supply (Fransen 2011). Indeed, as a result of the unequal form of global economic integration workers are often put in a particularly vulnerable position. At the same time, a focus on governmental policy in many Southern countries on export results either in lax implementation and enforcement of existing legal frameworks or legal adjustments reducing labor rights and in any case, a neglect of labor issues (*ibid.*).

Labor as rule-takers, then, may benefit from private standards. Indeed, scholars report that in several cases the presence of these standards can improve working conditions, raise wages, and increase workers' security (Schaller 2007; Pearson 2007). Some studies also report a strong link between successful participation in private governance institutions and positive development outcomes (Linton 2008). Referring specifically to fairtrade, research shows that 77 % of all certified producer groups that sell at least some of their produce under fair trade terms direct some or all of their premiums toward projects that benefit their entire communities, especially in the areas of education, women's initiatives, environmental initiatives, and infrastructure (Linton and Murphy 2007).

As scholars have noted, however, the scope of private governance may be limited as private standards typically apply to regular employment force when much of the labor force particularly in developing countries is "flexible," working only seasonally or "informally" (Fuchs and Kalfagianni 2010; Valkila 2009). Moreover, gender issues are inadequately addressed by the standards. This is a serious shortcoming as private standards have a much larger effect on the possibilities available to women in

relation to those available to the male labor force, due to the former's special role as home makers and their perceived inferiority in communities where men dominate decision-making at the farm (Taylor 2005; Gibbon et al. 2008). Studies show, for instance, that female participation in farm activities was less prominent in farms associated with private standards and that their participation in household income was reduced as a result of private standards (ITC 2009).

Standards may have a positive impact on the capability of individuals and communities to preserve cultural identity and traditional knowledge. In organic coffee certification, for instance, cultural identity often forms the basis for certification and, is therefore, protected under private standards. For example, the Mayan Tz'utujil identify is considered crucial for Guatemalan organic coffee production by large coffee chains, creating an incentive for its preservation (Lyon 2009). Moreover, this coupling of successful participation in the global economy with indigenous culture can successfully challenge the cultural disdain toward indigenous peoples prevalent in many societies. In the previous example, Guatemalan society tends to discriminate less against Mayan culture as a result of their market success owed to private standards. In most cases, however, as standards depend on "objective" scientific methodologies for their legitimacy (Busch 2011), traditional knowledge and practices may be displaced or patented for the benefit of corporate use (see Schroeder and Pogge 2009).

For rule-users standards provide an opportunity to express cultural values and beliefs. Organic standards, for instance, allow consumers to express their concern about environmental problems emanating from the industrial agricultural model, and take action to tackle these problems (Schösler et al. 2012). Likewise, standards may unite consumers sharing similar values generating a positive force for change toward environmental and social goals (*ibid.*). As noted earlier, however, these capabilities are more likely to accrue to affluent consumer groups who are already conscious about the ethical ramifications of their daily food. Simultaneously, standards may also shape cultural values and beliefs as they "standardize" behaviors, attitudes and lifestyle choices (see Busch 2012). In this context, educational and marketing campaigns of the standard-setting organizations provide knowledge to consumers on the positive difference they can make and encourage them to act on this knowledge (Linton et al. 2004). While the aim is to reach as many consumers as possible, the primary target is well-educated, young, and middle to high income individuals in the global North, however (*ibid.*).

For rule-setters, private standards can be an important source of legitimacy and authority. In line with libertarian

objectives the adoption of private standards by corporations, for instance, can be interpreted as a sign of acknowledging their responsibility to society (see Vogel 2005). Indeed, standards provide an ethical framework for corporate practices beyond narrow profit-seeking. On the basis of private standards corporations can act as valuable agents performing fundamental roles for society (Fuchs and Kalfagianni 2010). Accordingly, they become authoritative because they are viewed as effective, knowledgeable actors with health and safety, as well as environmental and social concerns, and charismatic personality (ibid.). Private standard-setting, then, provides the opportunity for corporations to demonstrate that they are not constructs isolated from society and that economic, social and environmental issues are not at odds with one another (Linton et al. 2004; Solomon 2004). Moreover, as often responsibilities are allocated by firms to their suppliers, the ability of leading corporations to exhibit a high level of ethical orientation enables them to act as role-models, which is fundamental to influence similar behavior by suppliers effectively (Amaeshi et al. 2007).

#### *Political Capabilities: Freedom to Make and Appeal Decisions*

From a political perspective, the principle of political autonomy, understood as the ability of individuals and societies to make their own decisions meets the principle of equality (Castoriadis 1986). To the extent that rule-takers and rule-users are attributed regulatory rights, e.g., in processes of co-decision with business actors and civil society organizations, they can be empowered by private standards. In GlobalGAP, for instance, suppliers (as rule-takers) and retailers have equal voting power in the Board and technical standard committees. In most cases of private standards, however, corporations have the dominant role, while civil society and Southern interests are underrepresented (Fuchs et al. 2011). Rule-takers can also be empowered by the presence of redress processes on the basis of which they can issue complaints against any type of discrimination and injustice. Problematically, in the South the use of such practices has been found limited as workers tend to be unaware of their rights and mechanisms they can use to promote their rights (Schaller 2007).

What about the majority of people not governed by private standards yet influenced by them? For them empowerment may take place in the form of cognition, of greater awareness in society about rights and responsibilities and growing sensitivity toward conditions that can foster human dignity. However, the majority of global population lacks the means of contestation against private standards when these affect them in a negative way. As private standards are voluntary and not subject to national

and international accountability mechanisms, wrongdoing by these standards to those that are not subjects of their governance regime is largely regarded as an “anomaly,” an unintended yet unavoidable externality.

Last but not least, it is the rule-setters themselves who are mostly empowered by private standards. Scholars observe specifically the regulatory empowerment of corporations in relation to the state and broader civil society as a result of private standard-setting (Utting and Marques 2010). In a process defined as regulatory capture parties with a strong interest in the outcome of regulatory decisions attempt to influence the bodies making such decisions to serve the commercial or special interests rather than the public interest (Jaffee and Howard 2010). In agrifood governance, for instance, regulatory capture occurs primarily via the exclusion of specific interests, such as those of smallholders and civil society organizations, from decision-making structures and procedures (Fuchs and Kalfagianni 2010).

One of the most typical examples in this respect is the reorganization of the fair trade movement as a result of its endorsement by big corporations. While the early fair trade organizations were “self-regulated” establishing their own norms and criteria and “self-certified” having control over the processes of inspection, the growth in size and volume, the consequent complexity and multiplication of products needing standards and certification led to the need to institutionalize the movement. As a result, in 1997 the Fairtrade Labeling Organizations (FLO) was created as an umbrella organization for preexisting national initiatives. The immediate consequences were the professionalization of inspections and certifications and the establishment of specialized bureaucratic institutions, the unification of standards under one label and the spatial centralization of decision-making with headquarters in Bonn (Renard and Perezgrovas 2007). It is not surprising in this regard that a consequence of the mainstreaming success of many environmental and social standards in agrifood has been the related erosion of their small farmer base in the Global South.

#### *Environmental Capabilities: Access to Sustainably Managed Resources and Ecosystems*

Environmental justice perspectives examine the effects of environmental policies on access to resources and sustainable resource use (Gupta and Lebel 2010), levels of pollution (Clapp 2001; Pearce and Kingham 2008) and environmental degradation (Rice 2009) that may differ for individuals and communities according to gender, race, socio-economic class, and state of development. Researchers argue that the poor and marginalised are the principle victims of environmental deterioration which also



affects their livelihoods and chances for survival (Paehlke 2001; Clapp and Dauvergne 2005; Barker et al. 2008; Comim 2008; Okereke 2008). As a result, environmental institutions that further detriment these groups need to be replaced by those designed with both ecological and social justice concerns in place (Shiva 1997; Sen 2004; Hoerner and Robinson 2008).

Private standards with the extension of markets and property rights may foster equal capabilities for access to sustainably managed resources in the North as well as in the South by creating uniform conditions for environmental protection at a global level. As a result, rule-takers, depending on healthy ecosystems for their livelihoods especially benefit and so do rule-users demanding some form of environmental quality. Indeed, a number of “success stories” hosted in the websites of businesses and standard-setting organizations illustrate benefits for these groups. However, scholars warn, that these benefits tend to accrue to the North where the institutional and societal conditions allow for better functioning of private standards (see Mayer and Gereffi 2010). Numerous examples from fisheries, coffee and other commodities suggest that environmental benefits from private standards are disproportionately distributed in a global context (Gulbrandsen 2010; Gullison 2003; Neilson and Pritchard 2007; Pattberg 2006).

It is exactly these observations that lead to the alternative scenario, namely that private standards may legitimise and even intensify environmental inequalities. As noted earlier when the level of environmental sustainability becomes a matter of market affordability, particularly due to the costs involved in the auditing and implementation of

standards, those who cannot afford it, either as rule-takers or rule-users, have to live without it (see also Busch 2011). The situation worsens when one considers that the introduction of environmental standards and labels has coincided with an influx of low quality cheap products that often ends on the side of the poor (Lang and Heasman 2004). Furthermore, leakage effects as a result of private standards can also be observed. In fisheries, for instance, scholars contend that generating access rights limitations from high-value markets particularly in a North–South context may result in higher depletion rates in non-certified areas where the price of fish is cheaper (Kalfagianni and Pattberg 2013a, b). Similar observations apply for other private standards as well. In forestry, research on the environmental impact associated with forestry certification schemes, for instance, reveals that contrary to the schemes’ objectives, deforestation is in fact increasing in some places due to higher pressure in non-certified lands (Gullison 2003).

Table 1 summarizes the effects of private standards on the material, social, political and environmental capabilities of the three global groups of actors identified as directly influenced by private standards, namely rule-setters, rule-takers, and rule-users.

## Concluding Remarks

This paper examined and classified the distributive outcomes of private governance institutions, in particular

**Table 1** A classification of consequences of private standards on human capabilities

	Environmental	Material	Social/cultural	Political
Rule-setters	Control over resources managed sustainably	Control over supply chains/ determining access to food	Legitimacy and authority	Greater autonomy from the state and broader civil society
Rule-takers	Access to resources managed sustainably (depending on compliance and implementation costs)	Improved access to food on the basis of price premiums, access to export markets, and modernization of production BUT Constrained access to food because of high compliance and implementation costs	Protection of labor rights, improved working conditions, preservation of cultural identity/ traditional knowledge BUT Only for formal labor Limited attention to gender concerns	Access to standard-setting processes (in some cases) Access to redress procedures (but with limitations due to lack of awareness)
Rule-users	Access to products with demonstrated environmental quality (depending on affordability)	Improved access to food on the basis of informed choices BUT Constrained access to food on the basis of budget limitations and plurality of labels and messages	Expression of values and beliefs about food (depending on affordability) BUT Shape of cultural values and beliefs in a ‘standardized’ manner	Lack of access to standard-setting processes Voice expressed only on the basis of political consumerism

private agrifood standards developed or endorsed by TNCs on the basis of the capabilities approach. It argued that two characteristics of private standards make them a unique form of private governance that is worth particular attention from a distributive justice perspective: their quasi-compulsory and exclusionary nature. Developing a list of capabilities particularly relevant in the context of agrifood governance, the paper discussed the role of private standards in fostering or limiting these capabilities for three main groups of actors, namely rule-setters, rule-takers, and rule-users. While the results are mixed one group of actors that clearly benefit from private standards are the rule-setters themselves. Specifically private standards open up new spaces for material control, social legitimation, political empowerment, and environmental management for rule-setters, particularly TNCs. Regarding the other two actor groups, the impact of private standards is ambiguous. A subset of primarily affluent rule-users may expand their capabilities as a result of private standards. When it comes to rule-takers those with large economies of scale can capitalize on the opportunities provided by private standards, but not necessarily small capital actors in the most vulnerable countries, unless such a focus is clearly provided by the standards (e.g. fairtrade). In other words, private standards may distribute opportunities for the development of a diverse set of capabilities globally but these opportunities can only be utilized effectively and freely by a limited set of actors.

The development of standards is perhaps unavoidable. However, instead of being used as instruments of expansion and control over resources, markets and social and political relationships, the question is if private standards can be used by business actors to produce more equitable forms of governance. At the very least, private standards need to pursue their goals in ways that do not conflict with equity and social justice concerns.

There are some qualities inherent to private standards that may prevent them from acting as instruments of equity and justice. First, they are products and extensions of broader political and socio-economic structures, such as the neoliberalization of policies worldwide, designed to provide market alternatives rather than address structural inequalities. In this context, standards act as instruments of concentration and ownership over environmental and material resources, that create rather than alleviate dependencies worldwide, affecting particularly the most vulnerable and marginalized. Second and related, private standards are voluntary and market-based. Rather than command and control regulation that nominally forces all producers to abide by a set of constraints, the constraints imposed by private standards are voluntary and compensable (Guthman 2007, p. 468). As a result, environmental

and social sustainability becomes subject to the highest bidder (Busch 2011; McAfee 1999) with highly uneven effects, as noted earlier.

However, the design of standards may play a role in fostering more equitable outcomes. In this context, stringent standards could lower the level of stringency to allow a broader set of actors to participate. However, while this remedy may be justified on the basis of material and social grounds it becomes problematic when the environmental dimension is considered. Indeed, without strict prescriptions behavioral changes by the targeted actors tend to be weak (on average) and, accordingly, the overall impact of the private governance institution is lower than desired (Kalfagianni and Fuchs 2013). Likewise, standards could introduce different levels of sustainability allowing actors with different resource constraints to participate. Several standards, including fairtrade, have two or more sets of criteria required for certification: minimum (required) and progress criteria (to be met over time). Alternatively, costs of certification may lower or become more equally shared between rule-takers, rule-setters and rule-users. In this context, several standards already offer the option of group certification where a number of (typically smallholder) suppliers pay for a collective audit.

Likewise, standards may attribute regulatory rights to a broader set of interests. Rule-talkers, particularly from the South, do not always participate in the standard-setting activities and rule-users are typically excluded. Instead the latter's voice is primarily expressed on the basis of political consumerism which as discussed earlier is not necessarily a form of political empowerment. Ensuring a level playing field in this context, however, would require support for those facing resource or collective action constraints in participation (Fuchs and Kalfagianni 2010). This support could come by the rule-setters themselves. GlobalGAP, for instance, has initiated the Smallholder Ambassador and Observer for Africa program aiming to improve representation of smallholders in its standard-setting processes. While this may improve the smallholder political capabilities in the long-term their involvement remains strictly consultative at the moment (see Hachez and Wouters 2011).

Standards could also accommodate the principle of affected interests (Shapiro 2003a, b) and to provide the support individuals and communities need for their implementation (Jones 2005). In this context, rule-setters could invest more on educational and awareness raising activities particularly in developing countries and provide much needed technical support. However, one must also be aware of the trade-offs that may be involved. Starbucks, for instance, provides technical extension to producers, working with professionals from the producing region to introduce them to coffee organic production, processing and

commercialization via its certification program C.A.F.E.<sup>10</sup> However, while coffee producers receive a good price for coffee and can capitalize on the technical support provided, in exchange they lose control over their internal organizational resources. Indeed, coffee producers come under the corporate control of Starbucks' certifying organization, Conservation International, and affiliated corporate importers losing their ability to make own decisions (Renard 2010). Few cooperatives have broken off from Starbucks, as a result, denouncing practices of misusing the registry of certified-organic producers for corporate benefit.

The creation of synergies with public policy needs also be examined when it comes to private standards. First, co-regulation opportunities where government agencies provide fundamental principles of public policy and can rely on private implementation that is responsive to the technical and business peculiarities of different sectors and the special circumstances and interests of vulnerable actors, is desirable. In South Africa, for instance, the government's black economic empowerment policies aiming to improve the situation of groups that were disadvantaged during the apartheid regime, relied significantly on agrifood companies integrating emerging small farmers in their supply chains (Hamann et al. 2011). Second, a closer technical coordination of public and private standards and related control systems will likely generate material gains for rule-setters and rule-takers and quality gains for rule-users (Smith 2009). An example of such coordination is the European Union's (EU) Rapid Alert System established by public food inspection authorities in cooperation with private industry food retailers and distributors in order to identify and remove defective products from retail shelves, thus preventing food safety crises (ibid.).

Third and related, private standards need to rely on strong public accountability mechanisms, where not only rule-takers but also rule-setters are responsive to the interests of their constituencies, including those of the general public. There is agreement in the literature that the norms of inclusiveness and transparency, the presence of independent and stringent monitoring mechanisms, and the imposition of sanctions, are preconditions for the accountability of private standards (Bäckstrand et al. 2012; Bäckstrand 2008; Bernstein and Cashore 2007; Courville 2006). Accountability processes, however, need to be extended to protect those actors who do not benefit from private standards and lack the means to contest them, particularly the poorest and most vulnerable (the fourth

actor group as defined in this paper). It is here where the responsibility of public actors becomes more pronounced. In this context, the aforementioned slow progress in addressing the status of private standards within the WTO, which could provide national governments with some dispute power, is particularly problematic.

Fourth, while currently legally not possible to contest "unfair" private standards, public actors can endorse those standards that are more aligned with principles of fairness and justice, thus granting them greater legitimacy. An example is the adoption of a Communication by the European Commission on Fairtrade and 'non-governmental trade related assurance schemes' recognizing the contribution of such standards on sustainable development (European Commission 2009, in ITC (International Trade Center) 2011). Likewise, public procurement policies can also be used as instruments of legitimation and support of private standards by setting baseline criteria that filter out standards with dubious societal effects.

As private standards continue to proliferate, their potential to contribute to more equitable forms of governance worldwide, gains increasing significance. While the evidence presented here is far from exhaustive, a clear message from this analysis is that an evaluation of private standards needs to be performed in a comprehensive manner examining their impact on different dimensions of life and affecting the capabilities of a diverse set of actors worldwide. The framework elaborated in this paper may provide interesting avenues for a closer scrutiny and deeper understanding of the role of private standards in global sustainability governance as they become fundamental instruments for businesses' moral responsibility in society.

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<sup>10</sup> C.A.F.E. (Coffee and Farmer Equity) is a green coffee sourcing guideline developed in collaboration with Scientific Certification Systems (SCS), a third-party evaluation and certification firm) to evaluate, recognize, and reward producers of high-quality sustainably grown coffee. [http://www.scsertified.com/retail/rss\\_starbucks.php](http://www.scsertified.com/retail/rss_starbucks.php) (17.07.2012).

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