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Between the State, Market and Sociology: Labour Codes of Conduct in the Southern African Garment Industry

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Between the State, Market and Society: Labour Codes of Conduct in the Southern African Garment Industry

Abstract

This paper compares how workers experience the interaction between mechanisms to inspect the implementation of labour codes of conduct with government functions and trade unions in garment factories in South Africa, Swaziland and Lesotho. It attempts to explore possible ways in which private sector regulation of labour rights interact with state and civil society formations. Workers in the three countries had different experiences of codes. In South Africa and Swaziland there was little awareness of the potential impact such instruments could have on working conditions. In Lesotho, where there is a high profile campaign, workers are more aware of such codes, but confusion over who various visitors to factories are and corporate whitewash diminish the importance of the instruments. IN all three countries workers perceived the impact of the implementation of codes of conduct on labour rights as negligible. This differed between firms, with workers in firms supplying to the higher end of the South African market being more positive. Given the absence of a coherent global approach to the governance of trade the garment industry, codes of conduct will remain an inadequate response to the structural abuse of workers' rights, also in Southern Africa.

1. Codes of Conduct and Labour Repressive Regimes

In her book *Beyond the Boycott* (2007), Gay Seidman argues that labour codes of conduct tend to detract from attempts to enhance state capacity to enforce labour standards. Labour codes of conduct are voluntary guidelines defining 'the ethical behaviour that a company intends to practice during its operations and through its supply chain' (Jenkins, *et al.*, 2002: 1). In order to attract the attention of global audiences, Seidman points out, transnational activists often frame labour rights transgressions as human rights abuses, diverting attention from less spectacular, run of the mill violations of labour rights by corporations. Moreover, often the interests of local labour activists in the global South are ignored or underplayed by transnational activists, who coordinate consumer boycotts in the North, she argues. What's more, so-called independent agencies tasked with monitoring these codes of conduct become dependent on contracts from their clients, thus compromising their independence. Rather than creating 'privatised regulatory schemes', Seidman argues, 'transnational campaigns should shift their efforts to strengthening the institutions of democratic citizenship.' When such campaigns strengthen the voices of workers themselves, rather than 'simply publicizing the worst kinds of abuses', they may achieve this more readily (Seidman, 2007: 144; also see Seidman, 2008).

Seidman's critique of labour codes of conduct should be read against the backdrop of companies moving production to new labour markets where workers often struggle to assert their rights under labour repressive regimes (Silver, 2003; Bonachich & Appelbaum, 2000). Codes of conduct, driven by Northern consumer movements, have been presented as an alternative to state regulation, or the lack thereof. Seidman's is one of a number of critiques of this new framework.

These are valid criticisms, but a problem remains. It does not address the dilemma that such states are often unwilling, and sometimes even incapable of protecting minimum labour standards. Michael Burawoy points out the problem with Seidman's argument. According to him, she fails to 'examine the relation of state and society to understand when the state might protect the interests of labour or when it might mount an assault on labour.' He elaborates: '[Seidman] follows the Nirvana Principle, according to which rejecting one solution, *ipso facto* makes its alternative preferable. Just because international solidarity is both infeasible and problematic does not of itself imply that focusing on the state provides any better solution. In the contemporary era states have been notoriously hostile to labour' (Burawoy, 2010: 303-4).

Indeed, codes of conduct often arise when states follow labour repressive policies (Jenkins, *et al*., 2002; Barrientos & Smith, 2007; Locke & Romis, 2009). In the South African case, whilst quite critical of voluntary initiatives such as the Sullivan Principles, trade unions in the seventies and eighties strategically used such links to put pressure on multinational corporations to recognise trade unions for black workers (see Southall, 1995; Fig, 2007). Our aim here is to explore the *interaction* between states, companies, workers, trade unions and international campaigns around labour codes of conduct comparatively. We are interested in the relationships and possibilities created on the ground by the interaction between codes of conduct inspectors, government officials, and trade union activists. Could these global connections strengthen local social institutions in any way, or do they necessarily undermine the state and civil society?

Instead of choosing three similar cases of labour repression, we decided to examine the garment manufacturing industries of three southern African countries – South Africa, Lesotho and Swaziland – because they illustrate different dynamics. South Africa is ostensibly a country with good labour laws, and it is thus assumed that workers do not require the additional protection of private sector regulation. Lesotho is a country where labour codes of conduct, particularly one introduced by the Los Angeles based company *The GAP*, have come to play a very prominent role (see Seidman, 2009). Swaziland, Africa's last remaining absolute monarchy, is a labour repressive regime and, curiously enough, much less international attention is paid to labour abuses here than in Lesotho.

In order to explore how labour codes of conduct operate in practice, we have used a number of methods, including direct observation, interviews (semi-structured and open) and the analysis of documents, which yielded both primary data and secondary data.

Primary data was gathered during three fieldtrips in South Africa, Swaziland and Lesotho in 2008. Due to the size difference between the countries, we focused on the area in and around the town of Ladysmith, KwaZulu-Natal province in South Africa. Ladysmith/Emnambithi is a traditional garment producing area in South Africa, which like the rest of the South African garment industry has experienced considerable changes over the last 15-20 years. We conducted interviews with managers and workers from 12 factories; 5 in Swaziland, 4 in Lesotho and 3 in South Africa. First, we interviewed the managers at the premises of the firms (often including a tour of the premises, 11 in total), and then a number of local assistants interviewed ten workers per firm (121 in total, see Appendix A for a list of firms). In Swaziland the interviews were conducted by Penuel Malinga and Xolile Dlamini, in Lesotho by Lineo Ramabele, and in South Africa by Lindiwe Hlatswayo. All interviews were conducted in the home languages of workers, Sesotho in Lesotho, SiSwati in Swaziland, and IsiZulu in Ladysmith. Fieldworkers translated their responses back to English. As women constituted the vast majority of the workers, the local assistants were asked to interview at least 8 or preferably 9 women among the 10 in order to ensure a proper gender balance. Since the selection of employees for interviews by codes of conduct inspectors is such a sensitive matter, the interviews with the workers took place outside factory gates or in the home environment of the workers, in order to avoid interference from the managers. This means that random sampling was not possible.

These interviews yielded quantitative as well as qualitative data. Where we draw on quantitative data to compare working conditions in the three countries, we by no means suggest that the findings can be generalised to the countries as a whole. We do not use inferential statistics and our data should be treated as descriptions of the working conditions and perceptions of only those workers we interviewed, applicable only (but not generalised to) to the factories where they work. We use the qualitative data to supplement and exemplify the quantitative findings providing nuances and details. We furthermore interviewed 28 key informants among government, government agencies, consultants, trade associations (employers and unions), in each of the countries based on an open interview schedule (the list of interviewees is found in Appendix B).

The secondary data consists of a broad range of input on the garment industry in the three countries, including governmental reports, consultancy reports, journal articles, information from trade associations, unions, firms and clusters.

To summarise, in order to explore the relationships and possibilities created on the ground by the interaction between codes of conduct inspectors, government officials, and trade union activists, we have structured a comparative analysis based on the similarities and differences between South Africa, Lesotho and Swaziland, but also similarities and differences between the factories within the three countries. We first provide background information on the garment manufacturing industries of the three countries. Mainly based on the interviews with workers, we then look at how codes of conduct play out in practice, focusing on (i) workers' knowledge of how codes of conduct operate, (ii) regulation by the state, (iii) and the role of trade unions in garment factories.

2. The Garment Industry in Southern Africa

Because of its ability to shift production easily, the garment industry is often referred to as a 'footloose industry' (Gibbon, 2002; Ravioli, 2006; Seidman, 2009). However, it is also considered to be a 'foot in the door industry', a key industry in kick-starting industrial development (Gereffi, 1995; DfID, 2000; Kaplinsky & Morris, 2008). Accordingly, numerous developing country governments have viewed the industry as being ‘attractive’ and have engaged in substantial efforts to attract foreign investors.

In the 1980s and 1990s the industry’s geography and Africa’s share in production were influenced by global regulation through the Multi-Fibre Agreement (MFA). From 1994-2004 these were affected by the Agreement on Textiles and Clothing (ATC), where a quota system ensured a spread of global production. The MFA/ATC and the African Growth and Opportunity Act (AGOA) led to the sourcing of garments from some African countries, such as Mauritius, Madagascar, Kenya, and southern African countries such as Lesotho and Swaziland, including to some extent also South Africa. Nevertheless, Africa remains a minor player, with sub-Saharan Africa constituting a mere 2.6% of global textiles export, and 3.7% of clothing exports. China, on the other hand, has been particularly successful in attracting orders for garments, and has emerged over the last 20 years as the key producing nation with global shares of 20% in textiles and 27% in clothing (Kaplinsky & Morris, 2008: 260).

With industrialised countries holding the main buying power in the industry, so-called buyer-driven global value chains structure the intensive competition in the industry with one outcome being a predominant emphasis on cost control and efficiency which lead to low prices (Gereffi & Memedovic, 2003; Kaplinsky, 2005; Barnes, 2008). The result has often led to fierce competition where the eagerness of governments in terms of providing the ‘best incentives’ to companies has resulted in low wages and poor working conditions, described by some as a race to bottom (Lambert, 1999; Silver, 2003).

How did this footloose industry gain a foothold in southern Africa? In the early 2000s, as pointed out above, this was largely due to the Africa Growth and Opportunities Act (AGOA) promulgated by the United States of America, South Africa, Lesotho and Swaziland saw an influx of clothing manufacturers. Another reason for this was that the South African currency, the ‘rand’ (R), to which Lesotho and Swaziland’s currencies are tied, was favourable to the US dollar at the time. In Lesotho 50 000 new jobs were created, and in Swaziland 40 000, while the picture is more difficult to establish in South Africa, as some companies benefitted from the AGOA, while the main bulk of firms focused on the domestic South African market and were under pressure and numerous firms closed simultaneously due to the ending of the ATC. Mostly young women work in these factories, producing merchandise such as jeans and T-shirts for the US market. These are massive orders with low margins, but high profits because of the size of the orders (Bennett, 2006; Madonsela, 2006).

The pressure resulting from the ending of the ATC was magnified when, around 2005, the Rand nearly doubled in value to the dollar from its levels in early 2000, which came as a shock to exporters. Lesotho and Swaziland lost around 20 000 jobs each as manufactures relocated to China and Vietnam. In South Africa, the decline of the industry accelerated. In March 1996, the industry employed approximately 228 000 workers. In 2003 the figure was around 143 000. The downward trend continued after 2003 (see Morris & Reed, 2008; Bennett, 2006; Madonsela, 2006; Vlok, 2006: 230). Empty factory space in Lesotho and to some extent in Swaziland was often filled by relocated South African operations.

This is the context in which campaigns to implement labour codes of conduct have operated. Lesotho is classified as a ‘least developed country’, with the clothing industry representing the first major industrialisation within the country. Lesotho has aggressively been targeted by international activists because of sweatshop conditions, leading to high profile campaigns around codes (Seidman, 2009). This led to the GAP, one of the major US companies that sources products from this country, implementing labour codes of conduct in the factories that supply garments for the US market. There are two full-time inspectors who are tasked with enforcing the GAP’s labour codes of conduct in Lesotho. The International Labour Organisation (ILO) has also paid particular attention to the case of Lesotho. Swaziland, on the other hand, has received much less attention for such activism (apart from a study by the Centre for Research on Multinational Corporations), though as an absolute monarchy it was almost excluded from the AGOA due to its labour repressive stance (De Haan & Stichele, 2007). Curiously enough, no major campaigns have emerged to force firms to abide by such codes in Swaziland. Finally, South Africa has received almost no attention. This is perhaps less puzzling than Swaziland, since the country is seen as a having good labour laws and a strong, militant labour movement. South Africa's labour regime is often presented as one of the most progressive in the world (Barrientos, *et al*., 2001; Barrientos, *et al*., 2003). Seemingly, campaigning for codes in this context might appear somewhat irrelevant. The lack of attention paid to labour rights and standards in South Africa is based on the assumption that national labour laws are actually implemented in factories. Our research findings seem to problematise this assumption.

3. Performing Inspections: Workers' Engagement with Codes of Conduct

How do workers experience codes in their workplaces? What are the differences between the three countries and are there differences between companies operating within the three countries? At the very basic level, workers in Lesotho tended to be more aware of whether such codes were applicable to their workplaces. Here 65% of those we interviewed said that such codes applied to them. Still, 35% or more than one in three workers interviewed did not know or think that a code applied to their workplace. Notably, an even higher proportion of workers in Swaziland (42% in total) answered 'no' or that they did not know whether such codes applied to them (see Table 1). While the figure was the highest in South Africa (53% in total), it is more understandable that a number of workers were in doubt as the codes were hardly talked about in firms with sub-standard working conditions, and confused quality standards in firms with better working conditions.

TABLE 1 ABOUT HERE

In addition to these general differences between the countries, there were great variations between firms within the three countries. At factories that supplied garments for the higher end of the South African market, codes of conduct were in place. However, workers were generally confused about whether people who visited the factory were codes of conduct inspectors, or just inspecting the garments on behalf of buyers. As one, a 26 year old packer, mentioned: ‘I’ve seen people who check the work, but I’m not sure if it is these inspectors.’ She felt that this made workers ‘more efficient.’ Another, a 35 year old packer, said: ‘I’ve seen people come in, but I think they are from companies we sew for, because they check for rejects and whether we have packed properly.’ At another factory, a 31 year old machinist, said. ‘They go through all the departments checking work, quality of work, the machines that we use… They have reduced wastage and our machines are in a good condition, and this prevents needle accidents,’ she said. Our interviews with managers in these firms confirmed that individual company codes merely required them to abide by labour and health and safety laws, and inspections were of a general nature.

The picture was completely different at the other South African factories. At one, we were unable to gain access in spite of an appointment with management. The company gates were locked and our local fieldworker was only able to interview a single worker. The other firm where we were able to interview workers paid the lowest average wage to its employees of all the factories where we interviewed workers in the three countries (for more detail, see Table 5). This was well below the minimum set by the bargaining council agreement between employers and the union (Interview: Mhlongo). The firm mostly supplied to the lower end of the South African market. Here, very few interviewees were aware of inspectors who enforced labour codes of conduct. One of the interviewees, a 22 year old runner, said: ‘I’ve seen inspectors, but I’m not sure if they come for the code… They check around the company looking at the work, the machines and talk to some people.’ There were however regular inspections by buyers who were concerned about the quality of the garments.

In Swaziland, 58% of the workers we interviewed were aware of codes that were applied to their workplaces. As in the case of South Africa, there were major differences between factories in Swaziland. One factory was regularly visited by codes inspectors. A machinist explained: ‘They go around the factory and inspect us while we are working. They then pick some of us for interviews about our working conditions.’ Another described them as ‘buyers’, who interviewed workers about working conditions. Yet another mentioned that workers are selected at random for these interviews. One worker, a 33 year old trimmer, felt that the implementation of codes had improved the cleanliness of the factory, and led to the introduction of different toilets for men and women. In spite of these positive impacts at this specific firm, there seemed to be some systematic deception when it came to inspections. When asked whether the codes had improved conditions, a 24 year old helper mentioned the fact that ‘the company gives us safety masks when the buyers are coming.’ This was confirmed by a 26 year old quality controller, who said that ‘the management tell us not to tell the truth’ to code inspectors. Yet another said: ‘The company tells us not to tell the truth… We will lose our jobs if they know the truth, as the company will close down.’

This was also the case at another firm, where workers felt that the codes had impacted positively. They saw their on-site clinic, the bread rolls all workers received with tea (intended as nutrition for workers who have to take antiretroviral medication for HIV/Aids), as well as safety material as a direct consequence of the code. But even here, according to a 27 year old machinist, workers were told by the company ‘not to speak bad about the company as we may lose our orders and it will have an impact on our salaries’. Another worker, a 31 year old woman from the pressing department said: ‘The HR manager once called us into a meeting and told us not to badmouth the company to the buyers because the company loses when the buyers are told the truth. He said we must say good things at all times.’

In contrast to these Swaziland firms, where there were at least some attempts to implement codes, others came across as completely cynical. A personnel officer at one of them put it in somewhat Orwellian language: The procedure was for them to ‘select workers who are experienced or senior in the factory, as they understand our operations’ to be interviewed by codes of conduct inspectors. A worker interviewed here was more frank about the process:

> ‘There are people from other countries which… I don’t know, from South Africa, or other countries… they come to the factory. They normally select people to be interviewed by the inspectors. They normally call a meeting for all the workers that would be interviewed. I am one of those. We are told by management not to talk bad about the factory, for example safety clothing and the company doctor. Before they come, we are all given safety masks to cover our faces, as well as uniforms. If you tell the inspectors what they said [i.e. told you to say], they sometimes give you a day off with pay, or whenever you ask to go to hospital or to attend [to] family problems you are free to go. The supervisor will do you a favour.’

At another factory, a 26 year old woman and a member of the Swaziland Manufacturing and Allied Workers’ Union (SMAWU), explained:

> 'If you are known as a unionist, then your communication with management will be bad. We are being discriminated against. If you were once interviewed by inspectors and you spent time with them explaining, then you are in trouble. They suspect that you are now telling them the truth about the factory. They will target you. If you make a mistake they will shout and make you sign a warning letter… If you want a good relationship with management, don't use your brain, don't join a union, do not complain about heat, dust, or whatever.'

Thus far we have seen significant differences emerging between firms both South Africa and Swaziland. In Lesotho, the approach was more homogenous, with the firms where we interviewed workers competed for export, mass markets. Here 65% of the workers we interviewed were aware of codes in their workplaces. However, workers sometimes confused codes of conduct with their production scores. Very few were aware of people from outside their firms who inspected working conditions. One, a 39 year old machinist, even remarked: 'People from outside are not allowed in the firm.' About their code of conduct, a 32 year old ironer said: 'Yes, but it is not used.' Asked whether a code of conduct had impacted on working conditions, a 27 year old male packer said: 'There is no change in the firm. We are depending on the Chinese decisions, not other things.' Another, a 24 year old female cutter, said: 'No change, because they [codes of conduct] are not exactly applied. It's the final discretion of the Chinese.' At one factory, some workers were under the impression that it referred to the fact that they were not allowed to eat or talk while they worked. Here, a 30 year old machinist said: 'Yes, but the target is the most important.'

At one factory, a 23 year old machinist related how codes of conduct inspections were carried out: 'Those who come are here maybe once a year and these are buyers. When they come all of us have to put on our nose bags and when you don't have it you have to go home that day, otherwise it might be a bad reflection to the visitors.' There also seems to be a practice where the company inspects the workers' clock cards, and those who have a certain number of points against them, have to leave and are not allowed to speak to codes inspectors. Sometimes, when the 'buyers' visit, workers are sent home at 10:00. A 28 year old woman from the embroidery department said codes inspectors visited the factory randomly. 'They normally pick, say, two employees, and interview them,' she said.

In summary, while there were basic levels of awareness of codes of conduct among the workers we interviewed, there were higher levels of awareness in Lesotho than the other two countries. We also identified differences between firms within the countries. These differences relate to how firms fit into production networks, with firms in South Africa and Swaziland supplying the higher end of the South African market being subjected to codes. In Lesotho there were fewer differences between firms. When engaging the interviews with workers closely, it is clear that a majority of firms – even those that seem to have better labour practices than other – engage in performances for the benefit of inspectors, and expect workers to go along with these performances. As a result, workers' understandings of inspections are tied up with these performances and they seem to internalise the logic of "putting forward your best foot" when inspectors visit factories.

4. The State and Labour Inspections

We now turn to an analysis of how workers saw the state and its enforcement functions. First, the workers experiences regarding the level of government inspection presents a rather dire picture of the situation in all three countries (see Table 2 below). Indeed, only 23% of South Africans, 8% of Basotho workers, and 12% of the Swazi workers we interviewed were aware of government officials monitoring their wages and working conditions.

TABLE 2 ABOUT HERE

At some of the factories in South Africa workers were aware of visits by the Department of Labour, who enquired about their wages and whether they were satisfied with their wages levels. However, even though they complained about this, nothing was done about the situation. There were fewer differences between how workers experienced this in different factories. A 31 year old machinist said government inspectors visited the factory about two times a year, and ask 'workers about their salaries and working conditions.' She added: 'When they come the boss disappears.' Another said: 'I can't say, many people visit the company, but mostly it is people from the stores we are sewing for.' At one of the factories none of the workers interviewed had ever seen an inspector from the Department of Labour.

Our interviews with an official from the Department of Labour and a representative from the bargaining council (a centralized negotiation forum for employers and unions in the industry that sets minimum wages) revealed a fragmented and under-resourced inspection system. Employers often refuse inspectors entry, and the police are too understaffed to enforce such rights (Interviews: Mhlongo, Madlala). The local media reported on a labour inspector who was assaulted by an employer. In short, regulatory entities are understaffed and do not have the resources or the power to make a difference as our respondents in the Department of Labour, the bargaining council and the industrial promotion agency Ithala frankly admitted (Interview: Wenham & Steenkamp)

In Swaziland, where trade unions are seen to be part of the opposition to the monarchy, the role of the state is highly controversial. Here labour inspectors had much better conditions compared to Lesotho and South Africa. However, in spite of regular inspections, the influence was very limited and hardly with any impact. A key reason seemed to be that foreign garment companies were seen as ‘friends of the king’, which implies that workers have to treat them as such. Also, the inspectors have little influence compared to other government departments (Interviews: Nkhambule & Dlamini). At one of the factories where we interviewed workers, a certain minister was mentioned by name, and his role described as follows:

> ‘He is not monitoring the company if it conforms to the regulations set by government. One thing we are sure of is that the minister is a friend to our company director. They regularly visit his home and donate food and other building material. We don’t think the minister would do his job in terms of monitoring the wages and codes of conduct due to his relationship with the company directors.’

Another interviewee said: ‘Even the minister once told us that we must respect our company, because if we talk bad about our company to strangers we may anger our bosses and they may close and we lose our jobs.’ She expanded on the visit to the factory by a government minister:

> ‘The minister once visited our factory and he addressed the workers. In his address he told us that the money we are getting is far better than what the company is paying in other countries. He did not mention the country he was referring to. As Swazis we grow up respecting our leaders and we are told that they cannot lie to their people. But we feel that government is doing nothing about our wages. We are suffering.’

In Lesotho, as in Swaziland and South Africa, the lack of resources and political will constrain government enforcement. To be sure, at a very basic level the lack of vehicles leads to inspections happening rarely. The Department of Labour here have to compete with other government departments for the use of vehicles (Interview: Matsoso). Not surprisingly, then, very few workers in Lesotho were aware of their wages and working conditions being monitored by the government. They only came ‘when there are strikes,’ said a 30 year old checker, ‘once in a blue moon.’ A 25 year old male machinist from another factory said: ‘Before I used to see the government vehicle parked outside the firm when I used to cue outside for work, but not any longer.’

Given this absence of state regulation, as some have argued, codes can fill the vacuum, which has indeed happened in the case of Lesotho where an influential buyer (GAP) took unilateral initiative and followed through with regular monitoring and so on. So, a certain level of standard can be maintained in spite of a lack of government labour inspections. In addition, the GAP initiative had also led to a government initiative aimed at skills development in the industry (see Commark, 2003, 2007) and a public-private partnership, the ALAFA (Apparel Lesotho Alliance to fight AIDS) initiative, including the government, international donor agencies and the local companies, addressing HIV/Aids and ensuring a clinic or regular presence of medical personnel on each participating company (Interview: Chen). While there was contact between the Labour Commissioner and code inspectors, we found very little evidence of real cooperation.

In summary, our findings reveal that there seems to be very little synergy between codes and government regulation. Clearly, government regulation, and in particular low levels of enforcement, does not assist the workers in enforcing their rights.

5. Trade Unions and Codes of Conduct

We see in all three countries, in spite of some variation, confusion among workers over whether codes apply to their factories, as well as how the inspection functions are supposed to operate. These misunderstandings are tied up with workers being required to perform inspections in order for companies to retain their contracts with buyers. Added to this is the lack of enforcement of rights and standards by government departments. Given this, what impact do codes have on the ability of workers to enforce their rights through collective organisation? In order to investigate these possibilities more closely, we now turn to an analysis of how workers perceive the impact of codes on their ability to bargain collectively over wages and conductions. This would imply the right to freedom of association and the right to free collective bargaining, which form part of all codes. We look at levels of union membership and presence of the unions at the factories as indicators. We were specifically interested in the interplay between codes and unions. Do codes open up space for unions to engage employers on matters wages and working conditions?

There were major differences regarding the attention workers got from trade unions. The unions in Lesotho tend to visit workplaces much more often than their counterparts in South Africa and Swaziland (see Table 3). However, while about half of the workers in South Africa never sees a union representative, the situation in Swaziland is mostly one of unions not being allowed on to the factory premises.

TABLE 3 ABOUT HERE

South Africa had the lowest union membership; with only 23% of those we interviewed indicating that they were members. There were significant differences between the factories where we interviewed workers (see Table 4).

TABLE 4 ABOUT HERE

The Southern African Clothing and Allied Workers' Union (SACTWU) was represented in two of the South African firms that complied with labour law and being rated as having good practices (Interview: Mthembu). Nevertheless, there were indications that younger workers were becoming cynical about the power of their union. As one, a 20 year old runner, said: 'Most people do not use unions and if they are dismissed, they don't report it most of the time. They just want the money due to them and get out.' This employee also said the union tended to recruit members from outside the gate. In fact, during that year, she had come across them twice. Another, a 26 year old machinist, was dismissive of trade unions: 'Unions are not my thing. They have too much politics and I am not into that.' Another: 'I don't see the need. It is not going to help me in this company.' According to her, the union only visits the workplace when there is a problem. 'So I hear,' she said. A 32 year old packer, who also checks for rejects, said: 'I once joined the union, but I don't care anymore, because money was deducted from us, but it was said that the boss did not pay it in.' A worker at another factory explained why she was not a union member: 'Because unions are not effective. There was money deducted from us, but when people go to the bargaining council, existence of these payments is denied.'

Nevertheless, several employees at these factories who were union members mentioned that the union had protected them from being dismissed in the past. One said: 'I just joined because everybody was doing so and because I might need their help someday.'

The reason why workers were not union members was different at the low-paying South African operation. Here, a number mentioned that they did not want to join unions, because they could not afford to pay subscription fees. 'I am already earning too little. I can't afford the union subscription fee,' said a 24 year old employee, who earned around R30 per day. Another, a 29 year old packer, said: 'I see no reason [to join a union], this is not a job worth fighting for and all unions do is to get money from you and do not help much.' Another, a 29 year old machinist said: 'I don't need it [the union]. I'm not planning to stay at the firms for long, just for experience and then I can go to better paying firms.' The union regularly visited the factory to sign up members, but most of our interviewees had little faith in the organisation to improve their wages.

In South Africa, unions are highly successful in organising the workers in the formal, registered companies. They seem quite comfortable in this position, maintaining levels of service to those who are easily serviced. But due to the breakdown of the South African state and an increasing inability to enforce the legislation, informalisation and the proliferation of sweatshop-like entities (now accounting for more than 90% of the companies in the Ladysmith/Emnambithi area), a major segment of the labour market are not represented at all. To make matters worse, workers in these companies seem disillusioned with unions and see little reason for being union members. Because South Africa is seen as a country with good labour laws, there is also little engagement by the labour movement with codes as an organising strategy at the local level. At the national level, unions have attempted, mostly unsuccessfully, to get South African retailers to implement codes of conduct in their workplaces. We saw no evidence, however, of these campaigns filtering through to the local level. Indeed, illustrating the extent to which the logic of codes had still not filtered through to South African buyers, Michael Lawrence, the executive director of South Africa's National Clothing Retailers Federation (NCRF), said the following in September 2010: 'Though we typically don't do work with noncompliant manufacturers, the reality of the supply chain is so complex that work gets passed on (to non-compliant factories)... It is not our job to do the policing' (I-Net Bridge, 2010).

The highest union membership was in Swaziland, where 46% of those we interviewed were members. There were differences here between those companies that supply the higher end of the South African market and those that are linked into lower-end markers, sometimes as subcontractors to other operations. We start with a discussion of some of the better companies. At one of these factories, a 32 year old female machinist, also a union member, proudly mentioned: 'The union is our voice when we want to talk to management. They look after our welfare as workers.' According to her, the union regularly visited the workplace to report back on their negotiations with management. A 25 year old machinist mentioned that communication between workers and management had been 'difficult in the past, but,' she said, 'last week the director came and told us to report our complaints to the shop-stewards, who will then tell him. With these changes we hope we will have smoother communication.' Another, a 24 year old machinist, told how her contract was terminated unlawfully, but that the union had represented her and she won her case.

But at some of the other companies in Swaziland, there were also serious cases of union-bashing. At one factory a worker related how the company had built a wall around the premises, 'to ensure that workers during lunch they do not talk to union organisers or leaders. Once you are seen talking to union leaders you are automatically fired.' Nevertheless, she joined the union in July 2007, and they 'only meet the union leaders in our rented flats. We are still new to the trade union movement.' This was essentially confirmed by a personnel officer, whose opinion was that their factory was 'one of the best,' since there was no union. He explained: 'We communicate with the workers directly through their workers committee. As a company we realised that unions cause unrest, strikes and a lot of problems in the textile industry.' He also mentioned that union leaders were not allowed to visit the workers at the company.

There was a similar situation at one of the other factories, as an interviewee described: 'Our bosses do not want us to be union members. Once they find out that you are a member of a union you are fired.' Union officials are not allowed onto the premises. A 22 year old packer had the following impression:

> 'I am scared of dismissal from work once management discovers that I am a member of a union. Some colleagues of mine were dismissed in the past for being members of the union. The management believe[s] that once there a members of a union in the company they will influence the other workers to riot against the management… The union normally come[s] and wait[s] at the gate to recruit us, but no-one goes to them for fear of victimisation. During our lunch, the Chinese are at the gate to monitor our movements, even after work.'

A 22 year old woman who works in the cutting department explained what happened during the previous strike:

> 'With the last strike… which lasted two weeks, we were told not to take part and security was provided by the government to help us go to work. At work there was police. Later, after the strike, the minister came to the factory and he thanked us for not taking part in the strike action. He said it showed that we appreciate[d] our working conditions.'

In Swaziland, the unions are at loggerheads with the king as the factory owners and managers are perceived to be ‘friends of the king’. Criticising them is similar to criticising the king. In spite of codes, companies here seem to succeed in keeping unions out of their firms. Companies that do recognise unions do so because of the nature of their markets and production process, rather than codes. In contrast to Lesotho, unions in Swaziland consider codes as irrelevant to their local struggles. One of the union organisers told us how they had contacted the US retailer Wal-Mart about labour rights abuses. The retailer’s response had been to instantaneously cancel the contract with the Swaziland supplier, resulting in most of the workers in the factory losing their jobs (Interviews: Gina & Simelane; Fakudze & Manana).

When it comes to Lesotho, Table 3 above presents a bit of a puzzle. The fact that unions in Lesotho visited workplaces regularly, mostly once a week, did not mean that workers necessarily joined unions. Only 25% of the workers we interviewed here were union members. How do we explain this? Again, as in previous sections above, there were no major differences between factories in Lesotho. A 33 year old male sewing machine operator from one of the factories explained why he was not a member of a union: ‘I have only one reason when I consider that the type of service is not good. I have been a member in the past, but this time around I decided I will not join. I was a member when I was retrenched, and I paid for nothing.’ He also mentioned inter-union rivalry between LECAWU (Lesotho Clothing and Allied Workers Union) and FAWU (Factories and Allied Workers Union) at the factory: ‘In this company there are two unions, FAWU and LECAWU. They always compete for membership and this has created problems within the unions themselves. The type of service they offer is also compromised.’ He mentioned that LECAWU visited the factory on Tuesdays, but was not sure about FAWU. Another, a 25 year old machinist, mentioned weekly visits by both FAWU and LECAWU. The low membership for Lesotho is consistent with the impression we got from our interviews that the unions here tended to rely on pressure via codes of conduct inspectors to enforce minimum standards, rather than active organisation. Correspondence from the unions to local manufacturers is often ‘cc’ed’ to the retailers’ offices in the US, so as to increase pressure on them to respond to union demands. This was confirmed by interviews with trade unionists, as well as other informants (Interviews: Billy & Likoti; Maraisane).

Lesotho, then, illustrates how divisions among workers and a lack of union initiative can lead to codes standing in for such organising, instead of making it possible. Unions seem to rely on symbolic pressure (by faxing their grievances to buyers as well as the companies they have those grievances with) rather than real workers’ organisation. It is questionable whether this approach could be construed as codes opening up space for union organisation.

In summary, what does this analysis of the extent to which workers are able to assert their labour rights tell us about codes of conduct? Unions are clearly in a difficult position and are only able to make a difference to some extent. In both South Africa and Swaziland there were major differences between firms. These differences relate more to the market segments served by firms than the impact of codes. In both countries, unions do not really engage with codes as tools for organising, in Swaziland because they burnt their fingers when a major contract was taken away from a producer. Lesotho had the potential for unions to use codes as organising tools, due to the high profile campaigns around US retailers. Nevertheless, the country is a clear example of what happens when codes take the place of real union organising, showing the perverse effects they can have.

6. Conclusion: A Developmental Dilemma

Which relationships and possibilities are created on the ground by the interaction between codes of conduct inspectors, government officials, and trade union activists? Could these connections strengthen local social institutions in any way, or do they necessarily undermine the state and civil society? Our findings show that workers in the three countries had different experiences of codes. In South Africa and Swaziland there was little awareness of the potential impact such instruments could have on working conditions. In Lesotho, where there is a high profile campaign, workers are more aware of such codes, but confusion over who various visitors to factories are and active corporate deception of inspectors and whitewash diminish the importance of the instruments. Quite understandably, workers perceived the impact of the implementation of codes of conduct on labour rights and standards their firms as negligible. This differed between firms, with workers in firms supplying to the higher end of the South African market being more positive. But this can also be related to the better working conditions demanded by the labour process itself and codes as such. Table 5 provides a breakdown of the average wages of workers we interviewed by firm.

TABLE 5 ABOUT HERE

Related to this, a number of similarities and differences can be observed in the perceived impact of codes on labour rights among the different types of firms in each of the countries. The use of the nation states as the locus for consumer activism is clearly problematic. It is often assumed that South Africa has good labour laws, sometimes even described as ‘Rolls

Royce' labour laws (see Barrientos *et al*., 2001; Barrientos *et al*., 2003), whereas Lesotho and Swaziland have weaker labour regimes. As a 'least developed country', Lesotho's state bureaucracy is underdeveloped, and Swaziland's labour statutes have some labour repressive elements as Africa's last remaining absolute monarchy. Indeed, because of this, Swaziland was almost excluded from the benefits of the United State's Africa Growth and Opportunities Act (AGOA), which led to many of the garment manufacturers locating their operations southern Africa in the first place. Our findings show that there are differences in wages *between* the companies in the three countries and our findings also reveal that there are significant wage differentials in garment factories *within* the three countries. More surprisingly, the differences in wages were the biggest in South Africa and there were some workers in South Africa who were paid wages much lower than their counterparts in Lesotho (see Table 5 above). To be sure, government enforcement of minimum standards in all three cases, at least in the perspective of workers, seems rather weak.

Also, codes inspectors tend to focus on standards (such as working hours, health and safety), not rights to freedom of association and collective bargaining rights. Trade unions are only engaged at a superficial level. Codes often only contain limited areas of adherence, with references to 'the need to adhere to/comply with local legislation.' As local legislation often sets low standards, such as (very) low minimum wages, or is weakly enforced, it is relatively easy to adhere to 'local legislation'. In some cases this does not even take place, as we have shown. In all three countries the minimum wages have either not been changed for years (Lesotho and Swaziland), or have only been increased marginally (South Africa). This means that wages have not kept pace with the increases in costs of living, hence making it more and more difficult for the workers and their families to make ends meet. Our interviews with management revealed that the conditions stated in the codes were not challenging them to take wide-ranging steps to improve conditions. In a competitive situation, where many other demands needed to accustomed, the codes did not lead to any noteworthy changes on the part of the workers, in particularly an increase in wages.

Fierce price competition in the industry, including increasingly tough demands on frequency of delivery, improved quality and delivery on time, puts certain limitations on what could reasonably expected from codes. As the governments involved all are inclined to believe that only by providing the companies a set of incentives (tax holidays, reduced rates on water and electricity among others) and keeping the minimum wages down, the companies will be attracted or stay. However, because these governments do not have any particular strategy regarding sustaining the industry, the local industry is vulnerable in situations where changes in the global industry are frequent and the future decisions of major buyers not predictable. While government agencies like the Lesotho National Development Cooperation and the Swaziland Investment Promotions Agency are doing qualified work in lobbying and attracting companies to the countries (Interviews: Mabuza; Mohale, Tshukulu & Jasina), lack of industrial policies (Interviews: Kathide & Le Roux; Dlamini; Seleteng) leave worthwhile efforts like Lesotho's training scheme (ComMark, 2003; 2007) and health initiatives like ALAFA difficult to sustain. This begs the question as to what happens when the industry is no longer competitive (in the cases of South Africa and Swaziland) and major firms no longer source garments from the country, as seems to be the case in Lesotho (see Seidman, 2009).

Our study points to a dilemma. Critics of codes argue that the state should be responsible to regulate labour conditions. But what if the state is unable or unwilling to do so? The alternative could be the strengthening of civil society, in particular trade unions as representatives of employees. This, as our study shows, is also not a straightforward matter. Clearly national policies are not adequate, nor are such voluntary initiatives. Given the absence of a coherent global approach to the governance of trade the garment industry, it will remain more of a footloose industry than a 'foot-in-the-door industry', and codes of conduct will remain an inadequate response to the structural abuse of workers' rights, also in Southern Africa.

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Table 1: Is there a code of conduct that applies to your workplace?

	South Africa	Lesotho	Swaziland
Yes	47%	65%	58%
No	23%	35%	16%
Don’t know	30%	0%	26%

Table 2: Is there a monitoring of wages and working conditions by government officials?

	South Africa	Lesotho	Swaziland
Yes	23%	8%	12%
No	67%	85%	84%
Don’t know	10%	8%	4%

Note: Figures may not add to 100% because of rounding

Table 3: How often does a union visit your workplace?

	South Africa	Lesotho	Swaziland
Every week	14%	82%	32%
Only when there is a problem	14%	3%	5%
Union never comes, not allowed in	52%	9%	53%
Other	20%	6%	10%

Other responses included ‘once a year,’ ‘once a month,’ etc.

Table 4: Are you a member of a trade union?

	South Africa	Lesotho	Swaziland
Yes	23%	25%	46%
No	77%	75%	54%

Table 5: Average weekly wages of workers interviewed by firm, all values equivalent to the South African Rand

Lesotho 1	182.0250
Lesotho 2	182.6250
Lesotho 3	187.8900
Lesotho 4	184.2000
Swaziland 1	289.0600
Swaziland 2	255.1940
Swaziland 3	307.7700
Swaziland 4	207.2100
Swaziland 5	306.0000
South Africa 1	356.0000
South Africa 2	271.6667
South Africa 3	167.5000
Total	235.8704

Appendix A: Size, ownership and location of the twelve firms interviewed

	Size (Number of employees)	**Ownership**	**Location**
Lesotho 1	450-500 employees.	Taiwanese	Maseru
Lesotho 2	4000 employees.	Taiwanese	Maseru
Lesotho 3	1800 employees	South African	Maputsoe
Lesotho 4	7000 employees	Taiwanese	Maseru
Swazi 1	450-500 employees	Taiwanese-Swazi	Manzini
Swazi 2	1300 employees.	South African	Manzini
Swazi 3	350-400 employees	Taiwanese	Manzini
Swazi 4	600 employees	Taiwanese	Nhalango
Swazi 5	Unknown	Taiwanese	Manzini
SA 1	150 employees.	Taiwanese	Ladysmith/Ezakheni
SA 2	250 employees.	South African	Ladysmith
SA 3	400 employees	South African	Ladysmith
SA 4	Unknown	South African/Indian	Ladysmith

Appendix B: Interviews with key respondents and firms in Lesotho, Swaziland and South Africa, May, September and October 2008

Barnes, Justin, CEO, B & M Analysts, Durban, South Africa. Several interviews and email exchanges prior to, during and after the field trips.

Bennet, Mark, independent consultant, Johannesburg, South Africa (former advisor to ILO and other international organisations in Southern Africa). Several interviews and email exchanges prior to, during and after the field trips.

Billy, Macaefe (Mr), General Secretary of Factory and Allied Workers' Union (FAWU) and Mr Stephen Likoti, Deputy General Secretary, FAWU, FAWU office, Maseru, Lesotho, 20.05.2008

Chen, Jennifer (Ms), President of Lesotho Textile Exporters Association (LTEA), Maseru, Lesotho, 16.10.2008

Dlamini, Phumelele (Mrs), Head of Industry Section, Department of Enterprise, Manzini, Swaziland, 10.09.2008

Fakudze, Alex (Mr) & Mr Sipho Manana, President & General Secretary of Swaziland Manufacturing & Allied Workers Union (SMAWU), Manzini, Swaziland, 15.09.2008

Financial Controller, Taiwanese owned factory, Manzini, Swaziland, 19.09.2008

Gina, Mduduzi (Mr), General Secretary of Swaziland Processing, Retail and Allied Workers' Union (SPRAWU), and Mr Hlangani Simelane, Deputy General Secretary, SPRAWU, SPRAWU Office, Manzini, Swaziland, 23.05.2008

Khathide, Madoda (Mr), Executive Manager, Economic Development, Emnambithi/Ladysmith Municipality & Mr Bertie Leroux, Manager, Economic Development, Ladysmith, South Africa, 20.10.2008

Kipling, Jack (Mr), President CLOTRADE (Clothing Trade Council of South Africa), Cape Town, South Africa, 13.10.2008

Mabuza, Sabelo (Mr), Director – Investment Facilitation and After Care, Swaziland Investment Promotion Agency (SIPA), Manzini, Swaziland, 15.09.2008

Madlala, Sam (Ms), Inspection Officer, Department of Labour, Ladysmith, South Africa, 17.10.2008

Manager, South African owned factory, Ladysmith, South Africa, 20.10.2008

Manager, Taiwanese owned factory, Maseru, Lesotho, 15.10.2008

Managing Director, South African owned factory, Ladysmith, South Africa, 21.10.2008

Managing Director, South African owned factory, Maputsoe, Lesotho, 16.10.2008

Managing Director, Swazi-Taiwan Joint Venture, Manzini, Swaziland, 17.09.2008

Managing Director, Taiwanese owned factory & PA to MD, Maseru, Lesotho, 16.10.2008

Managing Director, Taiwanese owned factory, Nhlangano, Swaziland, 18.09.2008

Maraisane, Daniel (Mr), General Secretary of Lesotho Clothing and Allied Workers' Union (LECAWU), LECAWU office, Maseru, Lesotho, 20.05.2008

Matsoso, Mamohale (Mrs), Labour Commissioner, Labour Department, Maseru, Lesotho, 20.05.2008

Mhlongo, Mndeni (Mr), Designated Agent, National Bargaining Council for the Clothing Manufacturing Industry, Labour Affairs Division, Ladysmith, South Africa, 20.10.2008

Mohale, Molupe (Mr), Project Manager, Mr Sello Justice Tshukulu, Manager, and Mrs. Mabeibi Jasina, Foreign Investment Promotion Officer, Lesotho National Development Corporation (LNDC), LNDC Office, Maseru, Lesotho, 21.05.2008

Mthembu, Israel, (Mr), Regional Coordinator, Southern African Clothing and Textile Workers' Union (SACTWU), Ladysmith, South Africa, 20.10.2008

Nkhambule, Jinnoh (Mr), Commissioner of Labour & Mrs Khabo Dlamini, Principal Labour Officer, Department of Labour, Manzini, Swaziland, 18.09.2008

Owner & Production Manager, Taiwanese owned factory, Ladysmith, South Africa, 20.10.2008

Production Manager, Chief Engineer, HR Manager, South African owned factory, Manzini, Swaziland, 16.09.2008

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