

Pathways of transformation or transgression? Power relations, ethical space and labour rights in Kenyan cut flower value chains

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Abstract

This chapter explores the potential of multi-stakeholder standards initiatives (MSIs) to open up new spaces for engagement between the private sector, trade unions, NGOs and others for dialogue and action to promote labour rights. We focus primarily on an MSI in Kenya, HEBI. MSIs in agri-food chains represent a new form of ethical policy space, which are being created at multiple levels and locations, primarily because of processes at an international level. Through our analysis of the power dynamics in Kenyan cut flowers, we seek to build up an understanding of the politics of specific MSIs, and broader trajectories of transgression into corporate activity and vice versa. Despite momentum leading to increased participation in governance in public policy, the creation of ‘invited’ or ‘claimed spaces’ on their own cannot alter power or change the status quo; in the context of significant power imbalances the potential of MSIs to effect change is severely limited. This is because overarching power relations shape the space – sometimes leading to the sidelining of alternative voices. The private sector is not monolithic and there are divergences of approach, yet ethical sourcing and stakeholder engagement in these spaces is not yet, nor is it likely to lead to a transformation of worker rights. In a context of such significant power inequalities in value chains, more powerful actors tend to control social discourse and material resources, shaping the outcomes of new spaces in their own interests. This will continue to be the case whilst support is lacking for workers, smallholders and local communities to articulate their own narratives about ethics in value chains.

Introduction

In the widespread trend for more participatory governance in public policy and planning (Cornwall and Coelho 2007; Nelson 2008; Gaventa and Mayo 2009), novel forms of engagement between private authority and civil society are also emerging in, for example, the development of private standards and monitoring systems (Giovannucci and Ponte 2005; Busch and Bain 2004). This chapter focuses on participation in private sector and value chain governance. In the late 1990s international NGOs and trade unions engaged with large retailers and brands to improve the content and implementation of labour codes, which had been initially written by companies in response to media, NGO and trade union pressure (Barrientos 2000, Hughes et al. 2007). The participation of private sector, trade unions, and NGO representatives and government observers in multi-stakeholder initiatives theoretically represents a new opportunity for improving the development and implementation of labour standards in global value chains (Tallontire 2007).

We focus on a multi-stakeholder standards initiative (MSI) in Kenya, called the Horticultural Ethical Business Initiative (HEBI) drawing upon the findings of research on private standards in agrifood chains.¹ Through our analysis we seek to build up an understanding of the politics of MSIs, and broader trajectories of transgression into corporate activity and vice versa. The term ‘transgression’ infers an overstepping of boundaries, but the desirability of the boundary and its transgression depends upon an individual’s or a group’s social position, relative power, perspective and identity. Transformation, similarly, has a subjective element but refers to a process of more radical and profound change – again the desirability of a pathway depends upon normative objectives.

To achieve the normative objective of improvements in worker livelihoods and empowerment, in the context of retailer power, a critical question is ‘how effective are standards and MSIs in achieving these goals?’ The next section sets out a conceptual framework which characterises value chain governance processes. The framework is used to analyse whether MSIs are shaping action on social and environmental issues and if so, in whose interests? Our analysis of the now-defunct HEBI suggests that despite momentum leading to increased participation in governance in public policy, the creation of ‘invited’ or ‘claimed spaces’ on their own cannot alter power or change the status quo; in the context of significant power imbalances the potential of MSIs to effect change is severely limited. This is because overarching power relations shape the space – sometimes leading to the sidelining of alternative voices. The private sector is not monolithic, and there are divergences of approach, and in other countries the national context and political landscape may provide more fertile ground for an MSI to operate in. But in the context of retailer power, we contend that ethical sourcing and stakeholder engagement in these spaces is not yet, nor is it likely to lead to a *transformation* of worker rights. This is because in a context of such significant power inequalities in value chains, more powerful actors tend to control social discourse and material resources, shaping the outcomes of new spaces in their own interests. This will continue to be the case whilst support is lacking for workers, smallholders and local communities to articulate their own narratives about ethics in value chains and for collective action to challenge hegemonic discourses and power relations.

Unpacking power and processes of change in value chain governance

To analyse power in MSIs in the context of global agri-food chains, we draw on and extend the ‘power cube analysis of democratic spaces for citizen engagement’ developed by Gaventa (2006, 2007) as means of unpicking how the ‘ethical space’, (i.e. the arena for action on ethical issues in agri-food chains), is shaped, extended, closed and transgressed. The creation of ‘ethical spaces’ has been driven largely from the North, but in recent years there have been efforts to mark out new ‘ethical spaces’ in the Global South. The creation of new spaces for debate, policy-making and

¹ The authors gratefully acknowledge funding from the UK’s Economic and Social Research Council and Department for International Development, for the project Governance Implications of Private Standards Initiatives in Agri-Food Chains, grant ref: RES-167-25-0195. Empirical research between 2007-9 has included over sixty interviews in Kenya and Europe with private and public sector actors, non-governmental organisations and trade unions, focus group discussions with workers and smallholders in the Kenyan export horticulture industry July and December 2008, and three stakeholder workshops in Nairobi (September 2008).

collective action (and the associated rhetoric) theoretically represents an advance in development terms, where progressive objectives can be achieved through them. However, it is not always clear exactly how such spaces emerge in reality, who they involve, and what their potentials might be. There is a risk that such spaces can merely mask power inequalities, in situations where more deep-seated structural changes are needed (Gaventa 2006: 23).

Our conceptual framework here is based upon Gaventa's analytical tool, known as the 'power cube' (2006: 25) which can be presented diagrammatically with three inter-related dimensions (one along each side of the cube), namely: a) power, b) place and c) space. In Gaventa's work and our extension of we interconnect with other research and writing from human geographers, political scientists and critical development scholars (e.g. Escobar, 1995; Sharp, 2009; Sharp et al, 2000) on the need to explore 'what it means to be powerful and what ... the essence of power [is]' (Crawford, 2003: 143), the dialectics of domination and resistance and the intimately related connections of knowledge, power and space/place.

In order to develop a fuller understanding of MSIs and their power and spatial relationships over time, we have added the concept of pathways to emphasize the temporal element of value chain governance processes and human development. Thus, in the context of MSIs, value chains and their governance, we use the following understandings of power, place, space and pathways.

Power

Three concepts of power guide our analysis of power operating in private initiatives on ethical issues - visible, hidden, and invisible power: Visible (or instrumental/overt) power was originally defined as 'A has power over B to the extent that he can get B to do something that B would not otherwise do' (Dahl 1957 as cited in Lukes 2005: 16; Clapp and Fuchs; 2009:8). But the powerful can limit the choices of others through setting the agenda or restricting the choices that others can make (Lukes 2005 through '*hidden*' power. This is also known as structural power because of its linkage to social, economic and political structures in society (Clapp and Fuchs 2009:8). '*Invisible power*' is exerted through social processes which encompasses 'the various ways of suppressing latent conflicts within society' such as through the media (Lukes 2005: 59). Also known as '*discursive power*' (Clapp and Fuchs 2009), and extends to 'the norms and rules governing social behaviour' which 'tend to ensure that certain outcomes are reproduced without any apparent exercise of agency' (Kabeer 1999: 437).

Discursive power can be empirically elusive, but is part of the process by which the powerless can gain power from within and be empowered (Rowlands 1997) and thus of relevance to worker empowerment. The operation of discursive power and the agency of social groups in value chain governance have been relatively neglected to date. Earlier studies concentrate more on economic power and market share (Clapp and Fuchs 2009) and whilst recent analyses touch upon value chain power dynamics at a macro level (Gibbon and Ponte 2005), they rarely capture the nuanced dynamics or unpack different stakeholder narratives adequately. Nor do they address the actual impacts of value chains at the local level (Nelson, Martin and Ewert 2002, 2007, Bolwig et al. 2008, Tallontire 2007, Tallontire et al. forthcoming).

Place

Power, whether visible, hidden and invisible, interacts with and is exercised in specific geographical locations or *places* and Gaventa (2006) suggests there are three dimensions: the local, national and global. This is because an analysis can focus on power in everyday local life, on the mediating role of the nation state (e.g. in decentralization processes), or on global governance and the challenges for citizen engagement in different contexts. MSIs are being created at multiple locations, both North and South, primarily because of international drivers promoting ethical sourcing. Global agrifood chains comprise commodities which are produced in specific social and environmental locations, and moved around the globe for consumption in other places and spaces.

Space

The notion of space as a democratic arena for participation and negotiation we draw from Cornwall (2002:2-3). The creation of a new space of citizen or civil society engagement with government or private authority is not a neutral act – it has repercussions both within the space and in other decision-making spheres which are insufficiently recognized. Certain actors and factions may be given entry to debate and decision-making, but others may be excluded and agendas reshaped.

A critical question is how a space is formed and by whom, i.e. is it closed, invited or claimed? (Gaventa 2006). Closed spaces are restricted to representatives of authorities with limited external consultation. Invited spaces are those in which an authority allows other stakeholders to participate. Claimed spaces are those in which less powerful groups create sufficient pressure to gain entry to a closed space and articulate their demands. Perceptions may vary amongst stakeholders as to which category a new space falls into and what legitimacy it has. MSIs in agri-food chains could be viewed as an *invited* policy space (private sector inviting other actors in to the regulatory arena), but it could also be argued that there is a counter process of *claiming* space occurring, internationally and nationally, as NGOs, trade unions and sometimes donors engage in labour and environmental issues in value chains.

State-society relations in any particular location will shape the context in which these new spaces emerge (Commins 2007). Participatory budgeting has been qualitatively different in Brazil and the UK, for example, with the former occurring in a context of social inequality, demand for change, and has followed principles of wealth redistribution, whereas in the UK it has been initiated by government with a narrow focus on existing problems and without explicit and integral wealth redistribution (Nelson 2008). Human geographers have long argued that power is asserted through the landscape and boundary setting around places (Sharp 2009). Power struggles occur in which different groups seek to define a place, and shape relationships between the municipal and national structures of government and influencing international processes (Sharp et al. 2000). Value chains are actually *simultaneously* shaped through power struggles amongst value chain actors with top-down influence from globally-branded firms playing out in interaction with bottom-up responses of local, place-based institutions. In other words local institutional environments interact with the governance of value chains at the global scale in a process of struggle which

co-produces outcomes in a specific place (Neilson and Pritchard 2009). To date, limited analyses have been conducted of how these struggles occur in the context of private standard setting and implementation and MSI creation.

Space and place are not coterminous, particularly in the context of globalised communication and information networks (Massey 1994). Spaces can be viewed in a material sense (as distinct places which can be filled and populated, but still essentially a fluid concept) or as metaphorical spaces which are meeting points, a network or grouping that is less tied to a particular physical location, or to synchronous communication. In global value chains discursive and invisible power is exerted by powerful actors at some physical distance from physical location of production and from emergent MSIs.

Pathways

The power cube can be used to consider power dynamics over time (Gaventa 2006: 25, 27), but the temporal dimensions are not made particularly explicit. We have thus added a *pathways* dimension to our conceptual framework to consider the historical and future trajectories of value chain governance and the relative resilience of MSIs. Will they collapse, or survive and to what effect? This follows the trend in geography, political science, development studies, and climate adaptation which explores governance as a *process*. Moving beyond static ideas of power structures, more fluid understandings of governance are sought in which power relations are socially constructed and enacted and multiple narratives compete over time. For example, Manuel-Navarrete, Pelling and Redclift (2009) argue that (climate change) governance evolves, with power relations persisting, breaking down or being gradually transformed through the agency of factions in a powersphere within a broader socio-ecological context. Similarly, work on resilience in complex, adaptive social-ecological systems (Chapin et al. 2009; Walker and Salt 2006) also emphasizes the importance of understanding *pathways* because of the new challenges that climate change poses, the imperative of planning with longer time-frames in mind, and due to the recognition that past decisions may lock-in societies to unsustainable development paths which can be difficult to overturn. The uncertainties of climate change mean that decision-making is becoming increasingly complex, requiring greater foresight, adaptive capacity and resilience. Social groups and movements, however, have agency to influence development pathways, but more powerful groups dominate social discourses and material wealth drowning out alternative visions (Leach, Scoones and Stirling 2010).

With these renderings of power, place, space and pathways in mind, we focus on value chain governance as a *process* in the particular context of Kenya through analysing pathways and stakeholder narratives. We would like to identify where boundaries are being transgressed and whether changes are of a systemic and fundamental nature or not. We ask ‘How are the constellations of actors in the ethical ‘spaces’ such as MSIs changing or persisting over time, and with what consequences for development?’ Before getting to the specifics of the case of HEBI as an MSI, we wish to more generally explore the rise of MSIs as progressive governance tools in agri-food supply chains that start in the Global South.

Multi-stakeholder initiatives (MSIs)

International MSIs emerged in the mid-90s as some international NGOs, trade unions and large retailers agreed to collaborate to develop more robust, consistent labour standards.² Global sourcing by retailers and brands had rapidly expanded, often based on cheap labour in producing countries, but concerns about working conditions has led some civil society organisations to demand improvements (Barrientos and Dolan 2006). Their engagement in MSIs for instrumental and efficiency reasons represented a step-change from the confrontational relationships in the past (FIAS 2005, Barrientos 2007, Pattberg 2006). Many stakeholders were optimistic about piloting MSIs as a potential ‘safe space for discussion to address common problems’ (Brown 2007: 16). For example, in the South African wine industry, an MSI was established - WIETA – to promote ‘social dialogue’ and with the result that ‘both workers and employers are benefiting’ (ibid: 14). However, the limitations of MSIs in contexts of significant power differentials were noted: e.g. the limited voice given to workers, the replication of gender inequalities and the importance of covering the interests of casual, contract, migrant workers (Blowfield 2005, Dolan and Opondo 2005; Nelson et al. 2005; Martin et al. 2006, Tallontire et al. 2007, Barrientos 2008, Blowfield and Dolan 2008).

Standardisation in UK retailer-led global chains has been driven not only by labour issues, but also by food safety imperatives with company and then industry level private standards being applied to production conditions (Jaffee 2005, Fulponi 2006). GlobalGAP certification has become a minimum requirement for suppliers wishing to sell through multiple retailers, often supplemented by retailer food safety and quality standards in certain European markets. Consequently food safety has dominated the attentions of many retailers, suppliers and bilateral donor links (Humphrey 2008, Henson and Reardon 2005, Jaffee 2005). In 1998 the UK government established the Ethical Trading Initiative involving the private sector, NGOs and trade unions to tackle ethical issues in value chains. Elsewhere in Europe concerns focused mainly on fair trade in flowers and sectoral initiatives, but rarely involved mainstreaming of ethical issues in food retailer value chains. Food safety proponents also recognised the need to address labour standards,³ but adopted a ‘welfare’ focus rather than a labour *rights* approach.⁴

Standards and auditing have formed the basis of ethical sourcing to date and have proliferated, but a number of concerns have been raised, firstly, about the effectiveness of auditing *social* issues (Auret and Barrientos 2004, O’Rourke 2003, ETI 2006). Secondly, the capability of third-party auditing firms and the quality of service has been questioned (O’Rourke 2006, ETI 2006, Usher and Newitt 2009). Thirdly, the evidence of continuing labour abuses, particularly at smaller farms and in countries where there has been less experience of codes of practice (Women Working Worldwide 2007). Fourthly, technical issues such as excessive cost, instances of fraud, the failure to incorporate elements of good practice (use of local expertise,

² See O’Rourke 2006 for discussion of the evolution of different forms of MSI in the US apparel sector; see Hughes et al 2007 for a contrast between MSIs in the US and UK.

³ Beginning in 2005 the GlobalGAP Risk Assessment on Social Practices (GRASP) was developed as a ‘voluntary’ add-on to GlobalGAP certification (Heise et al 2007).

⁴ GlobalGAP clauses on ‘worker health, safety and welfare’ (WHSW) were recently strengthened but do not cover ILO Core Labour Rights (GlobalGAP 2008)

confidential, off-site interviews with workers, and a more iterative approach to interviewing) have been questioned. Finally, the findings of recent impact assessments which have shown limited progress particularly on empowerment indicators, discovered a poor fit between workers and code provisions and lack of coverage for temporary workers despite standard implementation and auditing experimentation (Nelson et al. 2006, Barrientos and Smith 2007).

UK retailers and brands have tried to respond to these concerns through a number of parallel initiatives which simultaneously advance their interests and control and may compete with other approaches. For example, they have created a centralised database to assess risk based on third party auditing and a standardised auditing methodology.⁵ Some of the biggest global food retailers and brands (especially Carrefour, Tesco, Metro, Migros, Ahold, Wal-Mart and Delhaize) are also part of the Consumer Goods Forum⁶ which has begun a Global Social Compliance Programme (GSCP). This is essentially a private sector led body, with limited trade union and NGO involvement which aims to harmonize social codes (GSCP 2008). However, critics argue that the GSCP may ignore existing efforts at harmonisation or indeed undermine them.⁷ Labour rights standards are thus a crowded field with new ethical spaces of different kinds emerging at different levels, primarily originating in industrialised countries and often competing with each other for priority in the overall ethical or technical agenda.

The next section explores the experiences of the development, governance and ultimate abandonment of the HEBI as a way to institute more progressive and ethical labour standards in Kenyan horticulture. In exploring this case, we provide a brief historical background but then take the specific conceptual framings presented earlier of power, place, space and pathways as separate analytical ‘slices’ through the specific case of HEBI. In doing so, we hope to reveal and elucidate the political dynamics at work within this particular MSI, and to provide insights and questions for those involved in similar initiatives about who is ultimately shaping the ethical space in value chains and to highlight processes of cooperation, resistance and discursive power.

HEBI: A new ethical space in Kenya?

Export-oriented horticulture began in Kenya in the 1940s and floriculture started in the 1950s with rapid growth in the eighties and nineties (Dolan et al. 2003, Dolan and Humphrey 2000). The economic success story of the horticulture sector has been marred lately by allegations of labour rights abuses, and poor working conditions and

⁵ A database called SEDEX has been established to share data amongst buyers on the extent of code compliance of suppliers. Similarly the SEDEX Associate Auditor Group has attempted to fine-tune social auditing so that ‘best practice’ is accumulated (the SMETA methodology).

⁶ The Consumer Goods Forum is a grouping of major retail and manufacturing companies which was created in June 2009 by the merger of CIES - The Food Business Forum, the Global Commerce Initiative (GCI) and the Global CEO Forum, CIES was originally Comité International d’Entreprises à Succursales (CIES – International Committee of Food Retail Chains), see <http://www.ciesnet.com/index.asp>

⁷ See for example letter from the Clean Clothes Campaign rejecting an invitation to participate with GSCP, <http://www.cleanclothes.org/documents/07-06-07-GSCP.pdf>.

environmental management. By the mid-1990s horticultural producers, particularly in the flower sector, were the subject of a myriad of social codes (Barrientos et al. 2003). In 1996 a group of cut flower producers formed their own association, the Kenya Flower Council (KFC), with the objective of developing a reputation for quality. In the 1990s the KFC strengthened social aspects of its code as labour rights campaigns began in Switzerland and Germany focusing on the flower sector (Dolan et al. 2003).⁸

An initial local campaign began when workers at the Del Monte pineapple plantation and factory made allegations of labour rights abuses and complained of union inaction at a national level. The shop stewards of the Kenya Union of Commercial and Allied Workers approached the civil society organization Kenya Human Rights Commission (KHRC) in mid-1999, and the latter coordinated a campaign which led to some changes by suppliers and steps were taken to establish a Kenya Standard on Social Accountability. But many NGOs were not satisfied with progress (Brown 2005: 12).

Campaign attention soon turned to the flower sector and initial allegations from KHRC on poor practices in this sector were followed by a joint study by Women Working Worldwide (a British NGO and member of the ETI) and the Kenyan Women Workers Organisation (KEWWO). The UK based NGO suggested that the ETI complaints mechanism be activated, given the systematic violation of the ETI code by retailer members (Hale and Opondo 2005: 308). Simultaneously, the KHRC 'threatened to go international' with the campaign unless working conditions were improved within three months (Dolan and Opondo 2005: 12). An ETI delegation visited Kenya to investigate. Just prior to their arrival a number of Kenyan stakeholders undertook a series of stakeholder workshops funded by DFID and the Royal Dutch Embassy (Brown 2005:12). A Steering Committee was set up to promote social accountability in horticulture and this became the Horticultural Ethical Business Initiative (HEBI) in early 2003 (Dolan and Opondo 2005, Hale and Opondo 2005, ETI 2005).

The stated aim of HEBI was 'promotion of ethical social behaviour in the horticulture and floriculture industry in Kenya'⁹ and initially comprised government, civil society organizations, trade associations, employers and donor/NGO observers. But a critical stakeholder, the trade unions, did not accept the invitation to participate because of historical antagonism between the unions and NGOs related to roles and mandates (Dolan and Opondo 2005: 94-5). Initial progress was made in establishing HEBI as an organisation, in adapting international codes to the Kenyan context, in adopting a participatory social auditing methodology and in conducting pilot audits.¹⁰

Although international press reports maintained pressure on the industry, HEBI then stalled. Stakeholder narratives on the causes of the failure of HEBI vary and are

⁸ Both the KFC and the Fresh Produce Exporters Association of Kenya (FPEAK) had codes of practice from the late 1990s although with limited reference to worker issues beyond health and safety and largely focused on quality and food safety

⁹ HEBI. no date. HEBI homepage. <http://www.hebi.or.ke/index.htm>, Accessed 1 December 2008.

¹⁰ A Kenya-specific code was developed by HEBI stakeholders, adapted from the ETI base code. A small secretariat and Board of Directors were inscribed. A participatory social auditing (PSA) methodology was developed and training of individuals and firms carried out. Pilot social audits were conducted on ten farms. Both key industry associations - FPEAK for vegetables and flowers and KFC for flowers endorsed HEBI.

unpacked in the next section in order to understand how different groups articulate the role of this particular ethical space. In doing this we use the lenses of visible, hidden and invisible power to reveal how the excessive power of the retailers dominates value chain governance but interacts with local context and place, to co-produce specific outcomes in Kenya and in the HEBI ethical space.

Analysing labour rights power in HEBI and the broader value chain

In this section we discuss the different types of power at work in Kenyan cut flower value chain governance as exercised by diverse factions and groups in different locations and the nature of the ethical space in terms of how and by whom it was created.

Power relations in HEBI

Visible power

From the point of view of the civil society stakeholders involved, retailers and the ETI used visible power to form HEBI. They were not overtly forced to participate in the process and the objective may not have been intentional on the part of the private sector actors involved, but the effect of using this MSI to advance action on labour rights has actually been to quash the momentum generated by the pressures being applied by the press and NGOs. Civil society activists were prevented from using information collected during the pilot social audits in their advocacy activities and their participation in HEBI was only permitted if they agreed to maintain complete confidentiality. When HEBI faltered, the private sector moved decision-making power away to more closed spaces such as the Kenya Flower Council. Thus the power of the private sector at both the national and international levels has largely maintained its force in determining the trajectory of labour rights action and in agenda setting. The sudden expansion of Fairtrade added to HEBI's hiatus, as did election violence in Kenya, and some of the international NGOs and donors have also shifted their attention away from labour rights – but according to most civil society representatives interviewed, HEBI was not given the support it required from the private sector to be effective and at the same time the momentum of the on-going campaigns was undermined. Retailers can therefore use their power to create and validate local or Southern MSIs when it suits their objectives, and then facilitate their decline when no longer required.

Hidden power

In the historical governance of the HEBI two instances of what we are calling 'hidden power' have worked to limit the role of HEBI and its effectiveness as a progressive tool for improving labour rights, and ultimately this has led to its demise. First, Kenyan exporters exercised hidden power, especially in the early days of shaping the agenda for HEBI. KFC played a fairly significant role in developing HEBI's code, but did not follow up with support for the organization. Ineffectual management was installed with the support of private sector actors and some barriers to cooperation were put in place. In our stakeholder workshops several NGO participants argued that they had not had sufficient opportunity to participate in audits.

Second, retailers exerted hidden power in framing the debate in HEBI by ensuring that their vision of what an MSI should be would prevail, i.e. a space focused on

compliance and problem solving rather than a space to enhance accountability and voice of workers and communities through the use of participatory social auditing. However, even amongst the retailers, there were two countervailing trends: whilst steps were taken for greater harmonization in social auditing, some retailers recognized the limitations of compliance-oriented social audits. As a result some retailers have supported both widespread risk assessment followed by a smaller number of rapid audits or more detailed studies and remediation sometimes using participatory social auditing and local expertise. In the early 2000s, proponents of participatory social auditing envisaged its use by retailers on a regular basis (e.g. see Auret and Barrientos 2004). However, this has not happened, because retailers are more concerned with ensuring their sourcing is 'ethical' through compliance with certain standards rather than promoting transformational social change. A private sector consultant we interviewed stated that participatory social auditing as an integrated approach to workplace management 'is dead in the water'. In contrast, many NGO representatives involved in the HEBI still argue that the full participatory social auditing methodology should form the basis of all audits in this arena.

Whilst NGO representatives stressed the importance of using a Kenyan code such as the HEBI code, which is adapted to local conditions, retailers preferred code harmonization, but conceded that there may be local variation in indicators. In Kenya, HEBI civil society members argued for the use of the HEBI code in all audits, whereas retailers used their buying power to demand that internationally agreed codes were used (with national code processes *interpreting* certain criteria from a local perspective only). Local MSIs are viewed by many retailers as 'local resources' or service-oriented bodies, that may be involved in verification, witnessing some audits, analyzing the data and engaging in awareness raising, but not as an entity that can bring together local actors and voices to promote accountability and change. HEBI participants were aiming to develop their own *auditing* body to oversee the use of the HEBI code, but this over-stepped the mark in the view of key retailers and so this construction of the MSI ethical space has been excluded through the use of this hidden power of retailers.

Some NGOs and trade unionists argue that donors and some international companies were unrealistic and naïve about 'local' MSIs, and politics, a view also shared by some retailers. For many participants involved in the early days of HEBI, its establishment was a rapid response to the 2002 allegations, providing a quick fix. Some Kenyan civil society members reflected that ETI and other northern actors 'rushed the formation of HEBI without proper institutional structures in place'. However, interviews with Northern private sector interests found a clear desire for rapid establishment of HEBI and quick action to tackle problems. The private sector retailers and Kenyan exporters, with their resources, competitive edge and driving objective of maintaining reputation, were generally less encumbered by concerns of achieving consensus and legitimacy in the development of the MSI. Many of the private sector actors interviewed emphasize the need for 'pragmatic' approaches to finding solutions,¹¹ but their discourse of learning is a technocratic one, which often glosses over the power related issues of differentiated access to resources and agendas. Despite sitting on the HEBI board, leading Kenyan flower exporters and

¹¹ E.g. Some retailers, brands and NGOs have recently jointly employed a consultancy to help them in a 'pragmatic' approach to learning, drawing on local expertise for assessments and remediation (Impactt 2009: 21).

their associations gave it only faint support. They did not value the greater credibility and legitimacy that HEBI might offer, were protective of their own code and resistant to the increased scrutiny of participatory social auditing and the changes that might then be required.

Invisible or discursive power

Invisible or discursive power can be linked to the influence of specific agents or can be used to refer to prevailing dominant ideas (Fuchs and Lederer 2007: 8-9). Our fieldwork has revealed that there are dominating narratives which are shared across stakeholder groups in this industry which are not questioned by less powerful actors.

Firstly, the assumption that private standards are the main (possibly only) solution to improving worker conditions/rights is widespread amongst donors and the private sector and to some extent the NGOs that have participated in the ETI. Alternative approaches (e.g. capacity building, awareness raising, shared equity schemes, worker alliance building, networking and advocacy) and enforcement of governmental regulation have received a lot less financial support and attention than private labour and other ethical standards, which raises questions of opportunity costs. Secondly, assumptions are common that code compliance and impact assessment are one and the same, but recent impact assessments indicate patchy progress. Thirdly, many civil society stakeholders suggest that private standards and MSIs are demanded by organized consumer activist movements in the North, and retailer power in the value chain is thus underestimated. Fourthly, participatory social auditing is still seen by many NGO representatives as a methodology which can render private standards more effective (e.g. see Hale and Opondo 2005), but the HEBI story indicates that a method alone cannot be successful without major attitudinal shifts of suppliers and retailers to implement the process fully. Yet Kenyan civil society and private sector actors interviewed were not calling for retailers to share in the costs of upgrading labour standards.¹² Private sector actors resisted the application of the PSA methodology which was a key part of HEBI (preventing NGO representatives from discussing the findings publicly, stopping implementation, shifting to more commercial methods and auditors etc). The emphasis on auditing in HEBI also diverted the energy of civil society campaigning away from discussion of broader, structurally embedded issues (e.g. the living wage, the role of retailers in assisting suppliers to achieve higher labour standards).

Retailers have used their control of social discourse to shift the dominant narratives around local MSIs as accountability and transformation mechanisms to service provision tools, with participatory social auditing used only in cases deemed problematic. However, many of the civil society and some government representatives gave positive appraisals of the HEBI as a means of adapting standards to the local context – compared to the use of international auditors who are not familiar with local conditions. Local NGO representatives have called for HEBI and participatory social auditing to be revived, indicating limited awareness of the shift in position of Northern retailers which has effectively closed the ethical policy space - at least in the sense of a mechanism of transformative change. National and international private sector actors have adapted and adopted countervailing measures,

¹² In our workshops there were complaints about the cost of compliance and a desire for others to share in this, but this was only when pushed by the facilitators and with little detail on what this may entail.

whilst giving HEBI insufficient support. Suppliers have little choice but to follow what is demanded of the retailers and these alternative measures become the norm.

Place in HEBI

The power relations shaping HEBI emanate from different geographical locations and have implications for place with respect to HEBI- in which place does it belong? Is it an international, national or local initiative? Whilst HEBI can be regarded as a national level organization (being registered in Kenya and with a local stakeholder steering committee), retailers and international actors clearly have a hidden role in determining its existence, the boundaries of its operation and who is invited to participate or is left out. National level dynamics influenced the evolution of HEBI (e.g. the refusal of trade union leaders to formally participate and the reluctant participation of private sector and NGO actors). These actors operated primarily at the national level, with participation from the local level being negligible – workers and smallholders were not directly represented in the discussions of HEBI either by community representatives, or by effective trade unions. There was an implicit assumption that NGOs could play a role in representing local level so that the initiative could play a role at the local level. However, much of the power shaping and influencing HEBI emanates from outside the national level, local level actors had no involvement at all, and the nature of this international power is poorly understood by many of the national level actors.

The majority of the Kenya HEBI stakeholders interviewed (such as middle management, NGO representatives and auditors) did not understand how power is exerted by buyers in the global value chain. Quite often they referred to ‘the market’ in an abstract sense, with Western consumers perceived of as being highly organised ethical activists demanding change from retailers, with the latter being fairly passive followers of consumer demands. It is not clear if this obfuscation of the actual power of retailers in the UK market is intentional or not. Large-scale consumer campaigns have not been the major driver for change that Kenyan stakeholders assume – more it is the concerns of retailers to avoid reputational damage that has driven their activities in the ethical sphere, and they are active generally in seeking market advantage through interpreting and forecasting consumer desires.

Spaces in HEBI

In the Kenyan agricultural sector labour rights are conventionally discussed and regulated through labour laws in a *closed* space in which the Ministry of Labour has authority to set minimum standards. Government also facilitates dialogue between the labour unions and employers which forms the basis of collective bargaining agreements (CBAs). The national space relating to labour rights was not only previously ‘closed’ but also ineffective, leading to the emergence of private forms of governance in horticulture. Whilst Kenyan horticulture is not alone in having problems with the process of ‘social dialogue’, there has been widespread discussion of the catalogue of poor compliance with labour laws due to a lack of enforcement and governmental capacity and limited observance of workers’ rights and relatively weak trade unions (Dolan et al. 2003, Kiai 2003, Women Working Worldwide 2007). The private sector had been relatively free to determine labour standards on their own farms.

The new ‘ethical’ space of HEBI represented an opening up of this space of labour rights regulation to other actors. Whilst civil society actions demanded the opening up of this new space, and could therefore say this is ‘*claimed space*’, the mechanism which emerged – the MSI - was not of their choosing. Seeing a window of opportunity as the space began to open donors encouraged the key stakeholders to join a committee and following ETI’s intervention this became the formalised HEBI institution. Only some Kenyan horticultural companies were part of the process (typically those involved in KFC, partly due to their prominence and links to UK buyers), and although by doing this they helped to further open up the ethical space on labour rights governance, they did not give it sufficient support to flourish.

International retailers played a key role in sowing the seeds of the idea for HEBI as an MSI and international NGOs also saw the ETI model as the way to forge a co-operative alliance between stakeholders (see the ETI report by Brown 2005: 12). Donors, particularly the UK Department for International Development and the Royal Dutch Embassy, supported the formation of HEBI by providing funding. Thus it could be said that donors, international NGOs, international retailers and the ETI shaped an *invited* space between them, in which a mechanism was chosen (an MSI) and civil society and trade unions were allowed to participate. The mechanism itself and the stakeholders it included may have had potential for transformative action, but was depoliticized rapidly through the choices of the more powerful retailers and the absence of the trade unions. The latter rejected this ethical space as lacking legitimacy (maybe with good reason), but the real driver for non-participation was personal antagonism and self-interest rather than any kind of principled stand or constructive alternatives (Riisgaard 2009).

Some NGOs have recently reported that they were actually reluctant to be involved in HEBI which in their view was specifically designed to ‘clip the wings of the civil society’, but felt pressured to join. Nevertheless, there was some optimism from some parts of civil society: one of the HEBI civil society participants said that they had hoped that the MSI would provide an entry point to engagement on labour rights with the private sector and ‘would be a gateway to the horticulture business in the long run’. Several civil society interviewees also commented that there was insufficient time given to build trust between the private sector and themselves, on top of the underwhelming support from the growers for the initiative which then led to its demise.

Interestingly, many Kenyan export managers also now distance themselves from the initiative, seeing it as belonging to civil society, perhaps reflecting the fact that the decision-making power was actually strongest amongst international actors. Kenyan companies, as represented by the KFC, which was seeking to establish itself as the arbiter of quality and reputation in the national flower sector, agreed to the participatory social auditing training and pilots in response to the media and NGO pressure, but with the creation of HEBI this pressure was somewhat reduced and they did not follow through by using HEBI tools and services or ensuring appropriate management systems were developed. The secretariat failed to produce a strategic plan, convene regular meetings or to move forward with concrete action and donor funding was withdrawn around 2007. Several civil society actors claim that this led to HEBI being ‘assassinated’.

Neither civil society organisations nor private sector actors in Kenya now lay claim to or feel ownership of HEBI, although some representatives of the former still think that its revival might still be worthwhile - reflecting their frustration at a lack of progress on labour standards and their perception of being sidelined from the ethical space. The KFC and some of the export companies regard HEBI as being ‘done and dusted’, although they have drawn some lessons (e.g. the value of using female auditors and instigation of gender committees).

The pathways of ‘ethical space’

Analysing the historical pathway and conditions informs our understanding of where action on Kenyan labour rights might go next. HEBI’s short lifespan has its antecedents in the historical, institutional context of antagonism between all major actors and limited space for civil society engagement in policy-making.¹³ Kenyan NGOs and trade unions have previously lacked freedom and voice (Brown 2004) and personality clashes and role conflicts characterise relations. The lack of union participation in HEBI undermined its credibility and frustrated NGO representatives. The shift from campaigning to collaboration was also rather sudden for some NGO representatives. Private sector participants continued to distrust the participating NGO and human rights activists as being too biased and political, not ‘working with the industry but against the industry’. Retailers have sought other less complicated and challenging means of tackling labour rights or rather of minimizing reputational risk relating to labour rights. The KFC remains the main Kenyan body concerned with labour rights issues in the horticulture sector, given the limited reach of the union and the concentration on food safety issues by the other industry association. One interviewee feared that the end of HEBI signalled a return to ‘rich farmers auditing rich farmers’ – i.e. a closed club. Whilst this is largely true there are some nuances to this story, with the Kenya Flower Council continuing to engage with *some* NGOs and increasingly with government in response to changes in labour laws.¹⁴

One of the key flaws in HEBI (and private standards generally) was the historical negligible representation or direct participation of workers and smallholders (never mind other local communities and social groups) in debates, in the setting of standards and in their implementation (e.g. through auditing by an MSI). Some small steps may have been taken in terms of labour union engagement with industry, at least informally, particularly on Fairtrade certified farms.¹⁵ There appears to be the beginnings of dialogue between the KFC and the main union in question – KPAWU.¹⁶

¹³ Exemplified in the attacks on NGOs in speeches by the leadership of COTU (e.g. accusation that NGOs were inciting workers (Atundi 2005, COTU 2006)) and accusations by NGOs of the trade unions being too close to government and therefore ineffectual (see Kiai 2003).

¹⁴ The KFC code and auditing procedures have drawn upon HEBI’s code and approaches to a certain degree, and the KFC certification committee which approves audit reports does include non-executive non-industry members as well. The KFC is also fostering dialogue within the industry and with NGOs, but only more service-oriented ones such as AfricaNow. In fact KFC is increasingly seeking more interface with government, including an arrangement with Kenya Bureau of Standards and in recognition of the stronger labour laws

¹⁵ Fairtrade has been regarded as a key driver for adoption of collective bargaining agreements on flower farms.

¹⁶ KPAWU was invited to sit on the KFC certification committee in 2009; it is not clear if this has been accepted.

However, there is still resistance to unions amongst Kenyan flower and vegetable exporters, some of whom have lobbied against the implementation of a new labour law. Some leading Kenyan flower companies demonstrate greater willingness to engage with NGOs in awareness raising and capacity building, particularly at the workplace level or in relation to welfare issues.

Some retailers and supply chain partners began to look beyond HEBI for social auditing in their mainstream business and some UK retailers sought market differentiation through Fairtrade certification, which also contributed to HEBI's failure.¹⁷ At the same time, some of the powerful international retailers have concentrated their control, shifting decision-making back to the international rather than the national sphere, and to more exclusive private authority rather than multi-stakeholder initiatives involving civil society and trade unions and the learning-by-doing approach ethos of the ETI.

Civil society actors have searched for new ways to seek improvements in labour rights in Kenya. The Kenyan NGO, KEWWO, is establishing new regional networks (the Global Horticultural Workers' and Environmental Rights Network, GHOWERN), which also involves some trade unions, although as yet the key Kenyan union (KPAWU) has not co-operated.¹⁸ These new networks may renew earlier (pre-HEBI) energy to shape the necessary pre-conditions for more successful MSIs in the future or find alternative strategies for improving labour rights.

The limited impact of the ETI base code, especially in food sectors compared to clothing has been acknowledged,¹⁹ and the ETI Board now argues that members must make a 'quantum leap', moving away from auditing and remediation alone, to creating 'good workplaces' based on 'mature industrial relations'.²⁰ However, some global retail and food industry players are keen to promote greater harmonisation of standards and practices, and have characterised ETI and other MSIs as national 'silos', operating by their own rules in their distinct market spheres and with limited reference to others.²¹ There is a risk that the ETI, (and other southern MSIs with which it is engaging), could themselves lose ground in the wake of the emergence of new global level initiatives further concentrating power in value chain governance.

¹⁷ Kenyan flower farms had been certified to Fairtrade standards before 2005 but only through one national labelling initiative (Max Havelaar Switzerland). In 2008 the FLO cut flower standard enabled several larger exporters with direct links to UK retailers to seek Fairtrade certification for their roses. By 2008, there 20 FLO certified companies in Kenya, 18 producers and two traders in Kenya, FLO-Cert database, <http://www.flo-cert.net/flo-cert/index.php>, accessed 23rd December 2008.

¹⁸ For example whilst union representatives from elsewhere in East Africa participated in a September 2009 GHOWERN conference in Nairobi, KPAWU was absent.

¹⁹ At the ETI Tenth Anniversary Conference, 23 October 2008 a new strategy aimed at re-energising labour organisation and representation was launched and the deepening the relationship between voluntary codes and labour regulation was emphasized.

²⁰ <http://www.ethicaltrade.org/news-and-events/news/ethical-trade-quantum-leap>, accessed 14 October 2009. There have also been moves to improve ETI member reporting, not only in relation to the Base Code but also the Principles of Implementation

²¹ For example conference speeches publicising GSCP in late 2008.

Conclusion

Can MSIs lead to transformational changes in labour rights for workers? The HEBI case indicates that ethical spaces can be opened up by NGO and media pressure allowing broader stakeholder influence over labour rights, but for this space to be effective and to persist requires the transgression by the interests of more powerful, private sector value chain actors to be prevented. The huge power of UK retailers in the UK market and in their global supply chains means that they have significant power over Kenyan labour rights and their agenda is more likely to hold sway. Having flirted with southern multi-stakeholder initiatives, they have moved back to the international sphere, although now there is greater coordination between globally powerful retailers and closed spaces dominated by compliance approaches dominate at international and national levels. Both NGOs and retailers have generally shifted their focus away from labour standards to some extent, because of the rise of competing priorities (e.g. food safety, climate change etc) which has also undermined specific national level campaigns in producing countries. The substantial investment and efforts to transform labour rights that is needed from retailers and suppliers has yet to be mobilized and the agency of workers is limited by an approach which holds little meaning for them, as it is based on documentary control and has proscribed boundaries. Arguably, the spaces for dialogue have changed, but only through a reconfiguration of the existing constellation of actors, rather than any transformational change in the actors having influence and in action on the ground on labour standards.

Some progress has been achieved, with the horticulture industry finally acknowledging that serious labour rights abuses are occurring. Suppliers are now collaborating with some of the less combative, service oriented NGOs as well. However, this was arguably achieved by the campaigns rather than HEBI itself. Similarly, the Kenyan government is more active on labour issues, promulgating new labour legislation, which faces resistance from the private sector, and the labour inspectorate suffers from decades of under-investment. Given the continued weakness of the trade unions and the side-lining of advocacy oriented NGOs, the possibilities for accountability to workers in this new policy context is limited, unless civil society actors can claim and sustain new, more effective ethical spaces for action.

Gaventa (2006: 30) suggests that transformation only occurs in a new power space in 'rare moments when social movements or social actors are able to work effectively across each of the dimensions simultaneously'. To try and create such a moment, it is likely that increased alliance building, vertically and horizontally, may be required in more overtly politicized approaches to stimulate new forms of dialogue, challenge dominant narratives in ethical policy spaces which restrict the types of action undertaken and generate alternative narratives on desirable development and labour rights pathways.

More collective action by citizens, communities of practice and social movements is still urgently needed, but cannot be confined to the contingent spaces of MSIs – where the boundaries and decisions are largely being driven by more powerful factions within the private sector, as well as by donors and governments. Donors and governments, in particular, must review their understanding of the potential of standards and MSIs to achieve progress on labour rights, with greater awareness given

to the political processes by which groups jostle for control of material resources and social discourse. More analyses of governance processes in agri-food value chains (including the role of MSIs) in other countries are needed, with an unpacking of dominant narratives a top priority. More anthropological analysis would be useful to show how these dominant narratives are formed through shared symbolic representations at the root of a group or faction's language, ritual, values, cultural practices and myths, conferring identity on the members and enable members to assert their own interests.

More thought and attention should be given to how to support less powerful groups to articulate their *own* narratives and for more transformational ethical spaces for debate and action to thus emerge. Greater horizontal linking and citizen mobilization – at multiple scales - is needed to allow alternative narratives to challenge the hegemonic ones. This process should help to *transform* the social contract that businesses have with farmers, workers, consumers and wider society in the global North and South, achieving more socially just and environmentally sustainable pathways.

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