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International Regime Governance and Apparel Labour Upgrading in Export Processing Zones in Urban Kenya

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Abstract
This paper analyses the extent to which international regimes on production and trade in apparel offer labour upgrading opportunities in Kenya under the regime on labour. Focussing on the African Growth and Opportunity Act's labour conditionalities, it presents evidence to show that, apart from the non-employment of children, other conditionalities on wages, hours of work, occupational safety and health, forced labour and right of association and right to organise and bargain collectively have not been met fully. Employing a dependency reading of regimes, the paper argues that the governance of regimes on production and trade in apparel, while not a necessary condition, was a sufficient condition to account for this trend. This evidence implies that Sub Saharan African countries need to overcome a lack of strategic reading of the dependency embedded within international regimes, while social movements and their sympathisers need to demand the full implementation of minimum labour conditions.

Key Words: *Apparel, Global Value Chain, Dependency, Regimes, Governance, Upgrading, Urban*

1. Introduction

To what extent can exportism create opportunities for workers in Sub Saharan Africa (SSA)? With regard to the apparel industry, understanding two sets of contradictions is crucial in answering this question. The first set relates to the structural regime on production and trade in apparel. Theoretical claims from the 1950s suggested that the North was to hand over the industry to the South (see Vernon 1971). However, the North has handed over the industry only partially, mainly because of trade restrictions (see Aggarwal 1985), which were somewhat eased in 2005 when the 1974 Multi Fibre Agreement (MFA) expired. In response to this scenario, countries which were restricted, which were mainly Asian, applied false labelling and/or relocated some production to non-MFA signatories or countries whose quotas were not fully utilised (Dicken 2003); hence the industry in the South, rather than being inhibited, expanded. This brought the first main wave of apparel exportism in SSA. Kenya was hit by the first MFA-related wave from India, Pakistan and Sri Lanka in 1993 (Government of Kenya [GoK] ca. 2000).

The second set of contradiction relates to two neo-statist regimes on production and trade in apparel that create regional spheres of accumulation that contradict multilateralism. Firstly, since at least the early 1980s, the European Union's (EU)

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Generalised System of Preferences (GSPs) offered ‘preferential’ quotas and duty reduction on African apparel imports under a double transformation Rule of Origin (RoO). However, only Mauritius, and to some extent Madagascar and South Africa, could meet the RoO requirement. Then secondly, the United States’ (US) GSP, initially instituted in 1976, was improved by the African Growth and Opportunity Act (AGOA) in 2000. AGOA marked the second investment wave in SSA because it was more liberal than previous GSPs in three major ways. First, AGOA included apparel, which previous US GSPs had excluded. Second, it removed landed duty on African apparel imports, which previous US and EU GSPs had imposed. Third, previous US and EU GSPs had imposed a double transformation RoO on apparel. Under AGOA, least developed countries, of which nearly all SSA countries are, were exempted from this RoO requirement. Because of AGOA’s RoO exemption, nearly 100 per cent of apparel exports from Kenya since 2002 go to the US. The first wave of AGOA-related investment boom in Kenya came from Sri Lanka in 2001, while the second came from India in 2002 (Export Processing Zones Authority [EPZA] 2005).

Thus, these two Kenyan investment waves, although fuelled by contradictions, have, nonetheless, created a window of opportunity for a Kenyan export oriented apparel industry. In addition, the waves have brought with them the surveillance of labour standards in the Kenyan apparel sector by the international regime on labour. The regime has two forms. Firstly, there is a ‘public’ form revolving around the state/ International Labour Organisation conventions. Also, there has been a recent failed attempt to increase the effectiveness of policing the regime through the International Monetary Fund, the World Bank, United Nations Summits and the World Trade Organisation’s (WTO) social clause. Another ‘public’ route is through Preferential Trade Agreements (PTAs) and Free Trade Agreements (O’Brien *et al* 2000; see also Stevis and Boswell 2008). Secondly, there is a ‘private’ form that excludes the state to some extent. There was first a development driven by unions in 1960s and 70s which gave birth to world company councils. The 1970s witnessed the second development driven by transnational corporations under corporate social responsibility. The third development was the adoption of the European Social Charter in 1992 (Stevis and Boswell 2008). Lastly there is the more effective ‘private’ route of the loose social movement around which one finds the work of independent research institutes, Non Governmental Organisations (NGOs) and unions not recognised by governments and international unions and organisations.

The scope of Kenyan labour upgrading in the apparel sector within the governance of these four regimes has never been analysed fully. The existing conventional economic studies consider only some aspects of labour upgrading and only within some aspects of regime governance. For instance, Were’s (2011) study looks at only the link between the casualisation of labour and export trade in four subsectors in the manufacturing sector, among them textile. In the lexicon of this paper, the dictation of global export trade is the governance of the structural trade regimes under the WTO. As social institutions, the regimes combine control strategies (imposition of quotas, tariffs *et cetera*) with spontaneous structural emergence of the regimes themselves. This results in the fallacy of composition problem, since, practically, the South as a whole cannot simultaneously export the same products to the North. This contributes to the casualisation of labour in the South. The weak link between export trade and casualisation of labour that Were’s study establishes may be explained by the fact that the regime on labour interacts with other regimes in capitalism in complex ways, and hence its interaction with trade regimes under the

WTO may not be sufficient to account fully for the casualisation of labour phenomenon.

Outside mainstream economic analysis, the Global Value Chains (GVC) analysis has been the other substantial research programme focused on industrial upgrading. The GVC analysis has similarly considered only some aspects of labour upgrading, whereby labour upgrading is considered as part of industrial upgrading, i.e., increasing production efficiency by re-organising the production system (McCormick and Rogerson 2004; McCormick *et al* 2009). However, by introducing the concept of industrial governance, and with specific regard to this paper, the governance of labour standards, the analysis has to a large extent captured regime governance. Nonetheless, the analysis privileges control lead firm chain governance, and when it infrequently engages with systemic governance, concentrates on control aspects of such governance.

In the tradition of the GVC analysis, this paper analyses labour upgrading as part of process upgrading. However, it goes beyond the analysis to analyse the control-emergent systemic governance of labour as an issue area in global capitalism. It addresses two key questions. Firstly, what has been the experience of implementing labour standards - as represented by labour conditionalities enshrined in AGOA - in the apparel export sector? Secondly, what are the reasons behind the experience? The evidence shows that labour upgrading has been insignificant. In deciphering these results, this paper posits that the governance of regimes on production and trade in apparel, while not a necessary condition, was a sufficient condition to account for this trend. The remainder of this paper falls into four sections. First, the paper defines the key concepts of regimes, governance and upgrading, and outlines its research methodology. Second, the paper presents empirical data on upgrading trends in the Kenyan apparel industry. The text then uses a dependency perspective to discuss the governing role of regimes in accounting for the trends, as well as to show the limitations of the mainstream theory in GVCs for apparel - the GVC analysis- in analysing this issue. It closes by looking into future possible systemic leverages for labour upgrading in Kenya and SSA.

2. Methodology

This section looks at the concepts and methods used in this paper. International regimes, governance, and upgrading are the principal concepts used for the analysis.

2.1. International Regimes

Krasner (1982) defined international regimes as the explicit and implicit principles (beliefs of fact, causation and rectitude), norms (standards of behaviour defined in terms of rights and obligations), rules (specific prescriptions or proscriptions for action) and decision-making procedures (prevailing practices for making and implementing collective choice) around which actor expectations converge in a given issue area. An issue area is ‘an organised or partially organised system of interaction’ (Cox 1972: 207). An international regime, therefore, is both a designed institutional structure and an emergent social institution of transnational scale that creates order at that level given the absence of a sovereign transnational order.

Although the regimes considered in this paper are more designed than emergent structures, this paper highlights the interplay of both definitions, while taking the latter as its primary understanding. This clarification is crucial because, although some mainstream International Relations scholars (for instance Heron 2002) discuss regimes in their true design-emergent form, what they refer to as 'regime' is the 'designed mode of governance'.

2.2. Governance

The most ubiquitous mainstream approach to the study of GVCs for apparel- the GVC approach- defines chain governance as the setting and/ or enforcing of parameters in a value chain, primarily by lead firms. Within this definition, the analysis has been preoccupied with 'internal' chain control. True, the analysis discusses 'external' chain control as well. However, it is not given as much attention. The same could be said of 'internal' chain emergence because the analysis discusses it only implicitly.

However, the GVC analysis also discusses the concept of 'institutions' though it is not clear what this term means. In Gereffi (1995: 113) it is the 'local, national and international conditions and policies that shape the globalisation process at each stage in the chain' (author's emphasis). In Gereffi (1999a: 37), it is the 'social and organisation dimensions of international trade networks' (author's emphasis). In the view of Gibbon and Ponte (2005), policy regulation and quality conventions are part of GVC 'external' governance- a view that is in line with Gereffi's (1995) definition of institutional framework.

We should not be hindered from seeing the forest for the trees. This paper collapses both governance and institutional framework into one broader notion of governance because it views governance as control and emergent dynamic of organising capitalism. The concept of regimes in GVCs helps in showing not only the role of 'external' governance but also the interplay between control and spontaneous emergence. Furthermore, as far as issue areas are concerned, 'external' governance, which is largely regime governance, plays a greater governance role than the 'internal' governance, which is mainly control lead firm governance. This paper focuses on labour as one of the most important and/ or prominent issue areas in the GVC for apparel.

2.3. Upgrading

This paper analyses labour upgrading first as part of process upgrading, and second as part of systemic governance. Industrial upgrading is defined by Gereffi (1999b: 51-2) as 'a process of improving the ability of a firm or an economy to move to more profitable and/ or technologically sophisticated capital and skill intensive economic niches'. Humphrey and Schmitz (2001), McCormick and Schmitz (2002) and Schmitz (2004) identify four upgrading types: product, process, functional and inter-sectoral. Product upgrading is movement into more sophisticated product lines; process upgrading is increasing production efficiency by reorganising the production system or introducing superior technology; functional upgrading is acquiring new functions, such as branding, marketing and designing; and inter-sectoral upgrading is where a firm moves into a different sector using the knowledge acquired in particular chain functions.

However, conventional industrial upgrading is vulnerable to the criticism of being empty of social improvement, incorporating not even the New Management Systems (NMSs) of Asia (Biel 2000). These are the new flexible ways of managing labour that are different from earlier post-World War II Taylourist-Fordist forms. NMSs constitute four main elements: Just in Time/ Total Quality Management principles; decentralised management, multi-skilling (production work integrated with quality control, for example), multi-tasking and team work; union recognition to involve, motivate and control workers, as well as lifetime employment to enhance commitment to the firm's ideals; and exporting all the above, or as much as possible, to suppliers upstream (see Humphrey 1995). Accordingly, this paper considers labour upgrading as part of process upgrading, i.e., increasing production efficiency by re-organising the production system. Within this, at least some aspects of NMSs such as labour multi-tasking are subsumed.

Conversely, introducing NMSs is actually a way to augment exploitation of labour beyond Taylourism and Fordism –something that is incompatible with its true upgrading. Furthermore, some aspects of NMSs such as granting lifetime employment are not necessarily meant to improve production process efficiency, but to enhance, in an exploitative way, its commitment to capitalism. Moreover, anti-sweatshop conditionalities may improve production process efficiency and may boost commitment to capitalism, but they primarily serve other exploitative milieu interests in capitalism of ensuring social reproduction of labour and of maintaining and/or restoring international social order at the grassroots. Consequently, this paper analyses anti-sweatshop conditions independently of the conventional industrial upgrading model. This definition of upgrading can only be captured by a conceptual model incorporating the other two concepts of international regimes and systemic governance.

The paper will focus on AGOA labour conditionalities to represent the 'public' form of the regime on labour through PTAs. AGOA's eligibility criteria include the requirement that the beneficiary SSA country should establish, or should make continual progress towards establishing:

protection of internationally recognised worker rights, including the right of association, the right to organise and bargain collectively, a prohibition on the use of any form of forced or compulsory labour, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health (US Congress 2000: 4).

2.4. Research Strategy

The overarching research strategy in this paper is deductive analysis since, although the first research question is of the 'what' type, the second one, which is more central, is of the 'why' type. In deductive strategy, we reach an explanation by constructing a deductive argument whose premise will be either well-established abstract propositions or hypothetical propositions that can be tested; and not necessarily in the strict sense of the conventional cause and effect explanation (Blaikie 2000: 25, 61, 74, 76). Deductive strategy is grounded in critical rationalism. In its opposition to positivism, in which the inductive strategy is grounded, it posits that researchers should impose theories on the social world rather than wait for it to reveal its regularities (Blaikie 2000: 104-7, 111-2), and, as a result, the theory that offers least resistance to falsification should be preferred as the most probable explanation of the issue at hand.

However, deductive strategy accepts the use of answers to 'what' questions associated with inductive strategy as topics for which answers to 'why' questions can be sought. Therefore, this paper will first answer the 'what' question by uncovering the trends in labour upgrading in the Kenyan apparel export industry. Then, it will use the observed trends to answer the 'why' question by testing the hypothesis that the governance of regimes on production and trade in apparel was a sufficient condition to undermine upgrading in Kenya. The testing will be by way of imposing a dependency framework.

In its most basic formulation, the dependency perspective posits that 'it is not just that there is one group of countries in the world which happens to be developed and another which happens to be poor. The two are organically linked; that is to say, one part is poor because the other is rich' (Biel 2000: 78). On the one hand, a dependency framework helps us to see international regimes as institutions that embody, and act as instruments of, the will of the core (developed countries) to dominate the system. This means that labour upgrading in the periphery (developing countries), especially the periphery of the periphery (the poorest of such countries, such as Kenya), is a Herculean task. On the other hand, Marxism, from which the dependency perspective springs from, is opposed to determinism, and hence the dependency perspective describes structure not for the sake of it, but in order to provide the starting point for an understanding of the role of agency. With regard to this paper, understanding of the objective situation of regime governance of labour should inspire Southern agency in its struggle to embed industry by way of upgrading its labour.

2.5. Data Collection Methods
The methods for collecting primary data were focused semi-structured interviews with production workers in a case study firm called Protex in the outskirts of Athi River urban centre in Kenya. These interview data were supplemented with limited content analysis of original documents and the author's own informal observations. Original documents were limited because the data on workers was originally collected as part of a larger set of data in a larger study where original documents were used in an extremely minor way as far as the specific issue being addressed in this manuscript- conditions of workers- is concerned. Thus, the only original documents used in this paper are the US Legislation (AGOA), Kenya Human Rights Commission log on anti-sweatshop conditions and raw data used by the EPZA in compiling its unpublished annual reports. And to be clear, the author made observations in relation to five of the six conditions that were being investigated, namely age, hours of work, occupation safety and health, forced labour and right to organise and bargain collectively.

2.6. Data Selection: Population and Sampling of Workers
There are four zones that have apparel EPZ firms. These are Athi River, Nairobi, Mombasa and Voi. The firm under study, Protex, is in Athi River Zone, the largest of the four. The firm has 1 064 workers. These (and other EPZ workers in Athi River Zone) live in two small industrial urban centres surrounding the EPZ- Kitengela and Athi River. In 2009, Kitengela had a population of 58 167, of whom 28 079 were females. Athi River is part of the larger Mavoko Municipality, and the latter had in 2009 a population of 110 396, of whom 51 003 were females (GoK 2010). The centres are about five kilometres apart and each is about two kilometres from the EPZ itself.

Protex was purposively selected from the 20 firms operating in Kenya in April 2007. The target population was the approximately 20 000 EPZ apparel workers in Kenya in 2007. The accessible population was 1 064 workers in Protex. The author randomly sampled 71 workers, made up of 33 female workers. The author had envisaged that the fieldwork data would generate substantial quantitative results. However, as he continued with data collection and later analysed it, it occurred to him that very little of this data would be represented quantitatively- such as in numbers that can be quantified and summarised, with the final results being expressed in statistical terminologies. Therefore, he ignored the detailing of the random sampling procedure in writing this paper because it was initially taken to ensure repeatability, which was no longer relevant for the purely qualitative approach he eventually adopted. According to Golafshani (2003), the question of replicability in the results does not concern a purely qualitative approach. What is important is credibility. This is because:

qualitative research uses a naturalistic approach that seeks to understand phenomena in context-specific settings.... [it is] any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification.... [Rather than seeking] causal determination, prediction and generalisation [it seeks] illumination, understanding and extrapolation to similar situations (Golafshani 2003: 600).

2.7. Data Reduction and Analysis

In analysing this data qualitatively, the author first read through it to familiarise himself with it. He then grouped it into categories, themes and patterns. Next, he established relationships between these groups on the one hand, while establishing their relationship with the concepts of the research on the other hand. This data was analysed in the light of the first research question, namely the extent to which labour upgrading had taken place in Kenyan apparel EPZs.

Therefore, the responses given are not from a few of the 71 workers: they are a summary of the themes and patters that emerged from collating the views of all the 71 workers interviewed, and represent a consensus of the majority of the workers. It is also important to note that the experiences of the sampled workers were not restricted to Protex as most of them had worked for at least two EPZ firms and according to them, their experiences at the various firms they had worked for differed little.

3. Apparel Labour Upgrading Trends in Kenyan EPZs

3.1. Labour Upgrading as Process Upgrading

Considering labour as part of the production process, we begin by stating that labour flexibility in capitalism is double faced. There is, first, the maximisation of skills of the labourer to increase productivity without necessarily increasing wages. A pilot survey the author had carried out earlier as a basis for the main study revealed that lack of labour flexibility in this respect has contributed to low productivity, i.e., Kenyan apparel EPZs have not maximised the exploitation of a multi-skilled labour force. The survey had used a database, initially collected by EPZA in order to prepare its unpublished reports, to assess the level of multi-skilling in Kenyan EPZs (see also EPZA 2003; 2004). These skills were: production management, financial management, stitching, sewing, cutting, screen printing, formulation of garment washing chemicals, HIV Aids awareness and fire fighting.

To start with, the first two are relatively technical while the last two are not directly related to production; the rest of the skills are basic. Secondly, the pilot survey revealed that training was not an ongoing process; it took place immediately after recruitment as an induction to familiarise the workers with the operations in the factory and often lasted a few days or weeks. Thirdly, the pilot survey showed that workers were never allowed to combine any of these skills at the shop floor, yet skills integration at the shop floor is the key plank in multi-skilling workers.

The other face of flexibility is the hiring and retrenching of labour. The pilot survey showed that Kenyan apparel EPZ labour is flexible in this respect; workers are hired and fired regularly, and in most cases, on flimsy grounds. This is corroborated by Kenya Human Rights Commission (KHRC) when it argued that GoK collaborated with international financial institutions by formulating flexible labour laws in response to the institutions' labour-related conditionalities and recommendations, such as those contained in the structural adjustment programmes. Among other things, GoK embraced 'suppression of trade unions… [as the recommendations] circumvented the requirement of union involvement in the redundancy of workers… [for they] introduced the concept of retrenchment and gave employers exclusive, unequivocal and unbridled power to hire and fire workers' (KHRC 2005: 4-5, 18).

3.2. Labour Upgrading as Systemic Governance

There is no child exploitation among apparel EPZ firms in Kenya. Initially, social auditors used to include workers' age in their social audit questionnaires, but with time they dropped the question after they established that there is not a single child labourer in the Kenyan apparel industry. The author's own observations and interviews with workers showed that the age for most workers was between 24 and 26 years, and almost all fell between 21 and 29 years (Personal Interview, Protex EPZ Ltd Workers 2007).

In 2007, wages for permanent contract machinists was US$89 a month, which is above the 2009 statutory monthly minimum wage of US$ 80 (Saulo and Rajab 2009). However, firms keep a counterfeit payroll which shows that workers earn higher wages, i.e., US$ 104. This counterfeit payroll is what firms sometimes present to the auditors who are not keen to interview workers in detail. Workers further confessed that 'helpers' (a class of flexible workers who hang around the firm for daily allocation of duties as and when such opportunities arise- the closest in Kenya to home workers in Asia and elsewhere) earn about US$ 74 (Personal Interview, Protex EPZ Ltd Workers 2007).

In January 2003, all EPZ firms in Kenya were engulfed in strikes. This was triggered, in one respect, by one apparel firm that had forced workers to work on a public holiday (Personal Interview, Protex EPZ Ltd Workers 2007), but more so, by a new government taking power in December 2002. Other sectors also experienced the strikes. The Minister of Labour visited striking workers in the EPZs. Later, 28 worker representatives held meetings with the Ministers of Labour and Trade and Industry, and the EPZA Chief Executive. For the first time, all EPZ firms adjusted wages to reflect the statutory minimum wage, and an annual percentage increase was put at eight per cent in 2003, to rise by one per cent thereafter until a 'living wage' was attained. Also, normal overtime was to be paid at 1.5 times the normal rate, and holiday and Sunday work was to be paid at double the normal rate (KHRC ca. 2003; Personal Interview, Protex EPZ Ltd Workers 2007).

The social audits that intensified in 2003 have not improved wages substantially. Firms increase wages only if the statutory minimum wage rises, and not necessarily immediately. The higher pay for overtime and holiday work is rarely implemented, and only about eight hours in a week of such work are paid. Yet workers often work for longer hours (see below) (Personal Interview, Protex EPZ Ltd Workers 2007). Furthermore, while what would constitute a 'living wage' in Kenya is a moot question - with the employers' body arguing that what workers earn does constitute such a wage and the government remaining largely muted on the issue - trade unions and workers in Kenya are emphatic that current wages are nowhere near 'living wage' (Saulo and Rajab 2009).

EPZ workers' week is at least 52 hours. This is a violation of both the Kenyan law, where the working week is 45 hours, and their contract with the firms, where the working week is 48 hours. Before 2003, workers in some firms had 120 hours in some weeks (KHRC ca. 2006), and most of the extra hours were never paid. Firms would pay only eight hours for weekdays, about five hours for Saturday and no pay for work on Sunday. Rather than punch their cards on Sunday, management would put down the hours worked on an 'unofficial register'. When auditors enquired about it, they would be shown the official punched cards that contain records of work done from Monday to Saturday. A worker claimed that he, respectively, worked for a firm called Global on a public holiday and on a Sunday for eight hours but when he asked to be paid he was threatened with the sack. Another claimed that the firm only pays about half of overtime hours, while another worker working for a firm called Rolex stated that management would record all overtime, but at the end of the month workers would only be paid a fraction of it, as little as one-fifth of the total. Some firms also docked workers' pay for the time which they spent answering calls of nature (Personal Interview, Protex EPZ Ltd Workers 2007).

The audits instituted since 2003 may be credited with some improvements. After 2003, firms were forced to record all overtime on a separate card, although not all is paid. Also, management asks workers whether or not they are interested in doing overtime work rather than demand they do it, as was the case before (Personal Interview, Protex EPZ Ltd Workers 2007).

However, some issues remain. The extra hours have only reduced from an average of five to three per day. Also, this improvement is only in some firms such as Protex. It was claimed by one of the workers that Rolex workers still work a 16 hour shift. Another case in point is when a firm wants to relocate. It contrives a crisis to justify failure to pay workers for the last month worked. The crisis is soon followed by news that the firm is under receivership, and before workers are aware of it, a new investor has taken over (Personal Interview, Protex EPZ Ltd Workers 2007).

3.3. Occupational Safety and Health

The author observed that most of the issues on occupational safety and health have been addressed. Buildings are ventilated, well lit, fire extinguishers and basic first aid kits are installed, thanks in part to the audits instituted in 2003. Moreover, workers injured on duty are now taken to hospital at company expense. In some cases, management improves sanitation after an audit has pointed it out (Personal Interview, Protex EPZ Ltd Workers 2007).

However, some critical issues remain unaddressed. There is overcrowding, and sanitary conveniences are lacking. Also, management does not provide protective apparel and appliances. Workers claimed that protective masks are issued only shortly before auditors conduct an audit. These are made of paper and therefore, although they are not recalled after the audit, they wear off after a few days and are not replaced until there is another audit. Also, after the audit, management shirks its responsibility of ensuring that workers wear their protective masks. Evidently, firms expose workers to high health risks (Personal Interview, Protex EPZ Ltd Workers 2007).

Before 2003, most of the overtime and weekend work was forced. This has not improved much since then because the production target of 1 000 pieces per 8-hour shift is way above the industry average of between 600 and 800 pieces per 8-hour shift that workers cannot meet it. As a result, management forces workers to work more than eight hours per day to meet their production quotas. In one case, workers were given a one day notice that the following day, despite being a public holiday, they were to report to work. They picketed, forcing management to reverse the decision. However, after the workers returned to work, managers threatened to sack any worker who failed to report for work on that particular holiday. Most succumbed to the intimidation, and those who did not report for work were indeed sacked (Personal Interview, Protex EPZ Ltd Workers 2007).

Before 2003, workers were not allowed to join a union, associate with NGOs, or organise and bargain collectively. However, after the strikes they were allowed to join the Kenya Textile and Tailors Workers Union for the first time (KHRC ca. 2003; Personal Interview, Protex EPZ Ltd Workers 2007).

There were other gains following the 2003 strikes. At Protex, most of the workers are now unionised. Also, today, it is unlikely to have a repeat of the Tristar mass sack of workers which occurred when the latter sought to complain to the Ministry of Labour officials during a strike (Personal Interview, Protex EPZ Ltd Workers 2007).

Some violations of workers' rights remain. For example, graduation, after three months, from a casual labour contract to a permanent labour contract, is still a mirage for many workers. A worker, who was once working for Rolex, claimed that the firm makes this graduation impossible by continuously changing the payroll number every time a three-month contract approaches its end (Personal Interview, Protex EPZ Ltd Workers 2007). And while management fiat has been minimised, striking is still fraught with much witch hunting. A case in point is one that involved workers in a firm called Rising Sun. A delay in salaries sometime in mid-2006 triggered a strike that led to its closure. Later the firm re-opened and promised to re-absorb workers on condition that they terminated their contracts, received some terminal benefits for their service, and applied on new contracts. About 500 workers succumbed to the threats. The rest, about 1 500, were never employed there again (Personal Interview, Protex EPZ Ltd Workers 2007).

4. Implication of Regime Governance on Labour Upgrading in Kenya and SSA

4.1. A Dependency Reading of Regimes

In the light of the Kenyan labour upgrading results of the previous section, this section uses a dependency interpretation of regimes to argue that control lead firm GVC governance is nested within a pluralistic mode of control-emergent international regime GVC governance. This international regime GVC governance is aimed at Northern accumulation, perpetuation of dependency and attainment of milieu goals of, among others, social reproduction of labour and a low-level international social order. Effectively, the paper proposes that regime governance is a determinant of labour upgrading, in the sense that the dialectical relationship between, on the one hand, regimes on production and trade, and on the other, the regime on labour, leads to labour conditions rarely improving in practice.

Taking the structural regime on production and trade in apparel and the EU- and US-based state-centric regimes on production and trade in apparel first, these co-opt emergent industrial clustering in the South, while simultaneously restricting any substantive unsupervised industrial upgrading in the region. In practice, a delicate balance is pursued: the structural regime pushes for a managed multilateral approach within the WTO to co-opt general global industrial spontaneous emergence, while the state-centric regimes pursue state-centred protectionist agreements to both co-opt general global industrial spontaneous emergence and engender it where it has failed to emerge spontaneously. State-centric regimes are also configured to restrict substantive Southern accumulation in another sense by introducing conditionalities against sweatshop labour, so that the South cannot maximise on its cheap labour.

The configuration on labour standards, although partly related to the interest of international regimes on production and trade in apparel of restricting accumulation in the South, mainly operates within its own international regime on labour standards. Its overriding systemic objective is that, while achieving only minimum work conditions will restrict any substantial accumulation, it will also guarantee both social reproduction of labour and social order.

The implication of such regime governance on upgrading in Kenya and SSA is that, in pursuit of Northern accumulation, instrumental barriers created by the three regimes on production and trade in apparel constrain industrial upgrading in SSA. These barriers include quota limitations for the structural regime, and quotas and a restrictive RoO for the neo-statist regimes. It also implies that, in pursuit of global accumulation, the emergent nature of the structural regime leads to the emergence of major players who crowd SSA out of destination markets. Currently China plays this role. China began to lead in apparel exports in the 1990s, accounting for 15 per cent of world exports in 1995. By 2007, the country accounted for 33 per cent of world apparel exports (Morris and Barnes 2009). AGOA's acclaimed supply response, whereby SSA apparel exports to the US rose from US$ 584 million in 1999 to US$ 1.8 billion at their peak in 2004 (Author's calculation based on United States Office of Textiles and Apparel (USOTEXA) 2005), was merely a temporary phenomenon. For the 2005 liberalisation of the sector brought in stiff Chinese competition: in 2005, SSA exports declined by 21 per cent (by value) and by 19 per cent (by volume) from their 2004 level; in 2006, the further decline was 12 per cent (by volume) and 13 per cent (by value) from their 2005 levels (Author's calculation based on USOTEXA 2006). Although this is a relatively nominal decline, the situation was only saved by the temporary Chinese export restraints placed by the North in 2005. When these restraints cease in 2013, Chinese effect in crowding SSA out of the US market is likely to be much more profound.

These implications, in turn, imply a race to the bottom. However, in pursuit of milieu goals, the regime on labour, and to some extent neo-statist regimes, call for labour upgrading. But in juggling, on the one hand, Northern and global accumulation, and on the other, labour upgrading, the system is petrified by undermining the former than by a failure to achieve the latter; hence labour conditions rarely improve in practice.

4. 2. *Regime Governance versus Lead Firm Governance*

This paper therefore argues that the GVC analysis is ill equipped to analyse systemic chain governance in so far as it privileges control lead firm chain governance, and when it infrequently engages with systemic governance, concentrates on control aspects of such governance. Some GVC theoreticians agree. Bair (2005) admits that the approach has neglected the structural theorisation. She argues that this is an unacknowledged break from the original World Systems-inspired literature, in particular Hopkins and Wallerstein (1977; 1986), which gave birth to the GVC analysis. Echoing her, Gibbon et al (2008: 316) argue that the 'GVC analysis has moved away from its world-system origins, focusing on the elaboration of a firm centred conceptualisation of governance instead of delineating a general capitalist or systemic logic driving commodity' (see also Gibbon and Ponte 2008).

However, their response is still lacking in fully appreciating the governing role of international social institutions, of which regimes are the main ones, in GVCs. Phelps et al (2009: 314), despite referring to the 'institutional structuring of countries' participation in the international economy which centres on the terms of international arrangements such as AGOA', do not address the institutional mechanism in the international regime represented by AGOA. Gibbon et al's (2008) recent theorisation of ‘external’ governance is equally insufficient. For they aver that chain governance should be seen in three senses: governance as driving, governance as coordination and governance as normalisation. Governance as driving was the GVC approach’s original conceptualisation of chain driving, whereby theoreticians distinguished between producer-driven and buyer-driven GVCs. The former is governed by lead firms controlling key product and process technologies, the latter by lead firms controlling intangible aspects, such as brands, markets and designs. Governance as coordination concerns itself with supply relationships- analysing governance types within particular segments of a chain. The two governance types constitute what this paper has referred to as ‘internal’ governance. Governance as normalisation partly refers to what this paper has referred to as ‘external’ governance, for instance, the governing role of conventions as denoted by Gibbon and Ponte (2005). While it touches on systemic governance, it does so partially- as it does not explicitly refer to international regime governance. Moreover, it still fails to overcome the primacy of control dynamics. Overall, therefore, governance as normalisation is still lacking in its understanding of ‘external’ regime governance.

This paper argues that chain governance should instead be differentiated into two kinds. First is systemic issue area chain governance which pertains to international regime governance. It is a tapestry of systemic emergent processes and control strategies. Second is chain level control, whose main focus is the control and distribution of economic rents in the chain. There are emergent processes here as well, but the control mechanisms take pre-eminence.

4.3. International Regime Governance and Labour Upgrading

Based on its interpretation of regime governance, this paper argues that, as far as labour upgrading is concerned, international regime governance plays a bigger role than chain level control in determining chain upgrading outcomes. Regime analysis helps us to understand that, while all countries cannot advance to the industrial level, capitalism is likely to continue to promote low-value exports from countries in SSA such as Kenya. This argument is particularly given credence by Young-Ho Kim’s model, which synthesised Dependency and Modernisation theories to show the ‘spreading’ and the ‘backwash’ effects of capitalism in the South, which, respectively, create development opportunities and sucks value into the core. Kim (1987: 182, 199) argued that ‘neither of the [effects] is likely to exist alone without the other’. They ‘will also co-exist and interact with each other on a short term basis’ but eventually ‘they will show a clear tilt either towards dependency or development’.

In other words, imperialism, and capitalism, have no economic model to balance the dialectical relationship between the ‘spreading’ and the ‘backwash’ facets of dependency. It seems that in SSA, left on its own, this balance will tilt towards excessive ‘backwash’, which undermines labour upgrading, which in turn might potentially undermine social reproduction of labour, as well as increase international social disorder. It is therefore more probable that neo-statist regimes will be used to promote these milieu goals in SSA through low-value exports, which bring with them minimum ‘spreading’, and minimum labour upgrading, in the region. This works in concert with the regime on labour in maintaining minimum labour standards in the South.

It is at this regime level, rather than at chain level, that the lack of labour upgrading in Kenya and the broader SSA is better contextualised. Thus, as far as the largely poor upgrading levels observed in Kenya are concerned, this paper argues that the governance of regimes on production and trade in apparel, while not a necessary condition, was a sufficient condition to account for them.

5. Conclusion

Workers rights are grossly violated in the apparel industry in Kenya. Wages are low, overtime is not paid, the right of association is partial and labour is overworked. On the basis of this evidence, this paper concludes that future strategies to upgrade labour in Kenya and SSA through the apparel industry should not rely entirely on GVC research and conventional economic analysis.

Applying a dependency perspective, first, Kenya needs to overcome its lack of strategic reading of the dependency embedded within international regimes. For example, although it is a degradation of labour, the country needs to exploit its cheap labour to at least achieve industrial upgrading, and presumably achieve national accumulation, which might upgrade labour later. Then second, social movements, and other actors sympathetic to the cause of labour upgrading in Kenya and SSA, could take advantage of the systemic weakness shown in this paper- that of the necessity to meet systemic milieu goals- by pressing for the full implementation of minimum labour conditions. The point is that the argument that labour upgrading will undermine Southern competitiveness needs to be rejected. It is significant that having quite an organised and militant workforce did not inhibit Kenya from taking advantage of AGOA. Labour upgrading might be seen as a 'humanising' of GVCs without responding to the fundamental issue of dependency. However, since labour can advance its interests to the full only outside capitalism- in a system that is more socially and environmentally sustainable- there is no reason why this 'humanising' of GVCs should not be pursued in the mean time.

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