



**WORKING
Paper 49**

Are trade unions and NGOs leveraging social codes to improve working conditions? A study of two locally developed codes in the South African fruit and wine farming sectors

21 November 2017

Margareet Visser and Shane Godfrey

PLAAS Working Paper 49: Are trade unions and NGOs leveraging social codes to improve working conditions? A study of two locally developed codes in the South African fruit and wine farming sectors

The PLAAS *Working Paper Series* is designed to share work in progress. Please send any suggestions or comments to the author(s).

©Institute for Poverty, Land and Agrarian Studies, University of the Western Cape, November 2017
Partners: *This paper was commissioned by the DST-NRF Centre of Excellence in Food Security*

Authors: Magareet Visser and Shane Godfrey

margareet.visser@uct.ac.za

Copy Editing and Proofreading: Liz Sparg

Layout: Mologadi Makwela

Cite as: Visser, M., Godfrey, S. (2017) 'Are trade unions and NGOs leveraging social codes to improve working conditions? A study of two locally developed codes in the South African fruit and wine farming sectors', *Working Paper 49*. PLAAS, UWC: Cape Town.

Institute for Poverty, Land And Agrarian Studies

Faculty of Economic and Management Sciences
University of the Western Cape
Private Bag X17
Bellville 7535



Tel: +27-(0)21-9593733
Website: www.plaas.org.za
Twitter: @PLAASuwc

Fax: +27(0)21-9593732
Email: info@plaas.org.za
Facebook: www.facebook.com/PLAASuwc

ACKNOWLEDGEMENTS

The authors would like to thank the [DST-NRF Centre of Excellence in Food Security](#) for funding this research. The role of Mario Jacobs of Labour and Enterprise Policy Research Group (LEP) in conducting interviews with trade unions for this research project and writing up the findings is acknowledged.

ABSTRACT

The paper explores one aspect of the food security question, namely the livelihoods of farmworkers, which ultimately speaks to the sustainability of farms and the provision of food. It focuses on the emergence of locally made private social codes (Wine and Agricultural Ethical Trade Association – WIETA, and Sustainability Initiative of South Africa – SIZA) in the Western Cape fruit and wine sectors and how compliance with such codes has increasingly become a requirement to export to certain markets (being an aspect of vertical governance in the fruit and wine value chains). Many standards in private social codes duplicate rights in national legislation, but some standards improve on statutory rights and certain enabling standards that offer leveraging opportunities to worker organisations to further improve wages and working conditions. Such leveraging constitutes a form of horizontal governance of the fruit and wine value chains.

The paper analyses key sections of the two locally made social codes against the Fairtrade code and Sectoral Determination 13 (SD13). The analysis indicates where the codes improve on SD13 and how they compare to the Fairtrade code, which is generally seen to offer the best enabling standards for workers. The paper then presents the results of empirical research on the extent to which worker organisations – that is, trade unions and labour-oriented non-governmental organisations (NGOs) – have leveraged relevant standards to effect improvements for workers. The role of the state in facilitating such leveraging is also explored.

The paper finds that, in general, worker organisations have little knowledge of the WIETA and SIZA codes and hardly any attempts have been made to leverage the codes. The only contestation of the codes that had a significant impact was from an actor outside the sector and country, namely the documentary film-maker who produced *Bitter Grapes*. The paper questions why worker organisations have made so little of the codes. The low capacity of such organisations is one explanation, but these organisations are also disenchanted with the codes because WIETA's and SIZA's sanctioning of non-compliance has been insufficient.

However, probably the main reason for the failure to leverage codes is that they focus on the farm rather than the value chain. This focus excludes (primarily) global retailers and the failings in vertical governance from an assessment of the limited impact of codes. On the one hand, it is evident to many that codes are more for appearances to mollify consumers, rather than to drive real changes in working conditions and labour relations on farms. On the other hand, in terms of farmers' bargaining power vis-à-vis global buyers and worker organisations' ability to make gains for workers by leveraging the codes, the effectiveness of the codes' horizontal governance has been seriously undermined by the South African state.

Institute for Poverty, Land And Agrarian Studies

Faculty of Economic and Management Sciences
University of the Western Cape
Private Bag X17
Bellville 7535



Tel: +27-(0)21-9593733
Website: www.plaas.org.za
Twitter: @PLAASuwc

Fax: +27(0)21-9593732
Email: info@plaas.org.za
Facebook: www.facebook.com/PLAASuwc

ABBREVIATIONS

AFIT	Association for Fairness in Trade
AFRIWU	Agricultural, Food, Fishing and Retail Industry Workers' Union
AMDF	Agrarian Multistakeholder Dialogue Forum
AWETUC	Agricultural Workers' Empowerment Trade Union Council
BAWSI	Black Association for Agricultural Sector
BAWUSA	BAWSI Agricultural Workers Union of South Africa
BCEA	Basic Conditions of Employment Act
BFAP	Bureau for Food and Agricultural Policy
CCMA	Commission for Conciliation, Mediation and Arbitration
CSAAWU	Commercial, Stevedoring, Agricultural and Allied Workers' Union
DAFF	Department of Agriculture, Forestry and Fisheries
ECARP	Eastern Cape Agricultural Research Project
ESTA	Extension of Security of Tenure Act
ETI	Ethical Trading Initiative
EWTC	Ethical Wine Trade Campaign
FAWU	Food and Allied Workers' Union
ILO	International Labour Organisation
LRA	Labour Relations Act
NGO	Non-governmental organisation
SDTU	Society Development Trade Union
SIZA	Sustainability Initiative of South Africa
TCOE	Trust for Community Outreach and Education
VCRT	Value chain round table
WIETA	Wine and Agricultural Ethical Trade Association

Institute for Poverty, Land And Agrarian Studies

Faculty of Economic and Management Sciences
University of the Western Cape
Private Bag X17
Bellville 7535



Tel: +27-(0)21-9593733
Website: www.plaas.org.za
Twitter: @PLAASuwc

Fax: +27(0)21-9593732
Email: info@plaas.org.za
Facebook: www.facebook.com/PLAASuwc

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	3
ABSTRACT.....	3
ABBREVIATIONS	4
TABLE OF CONTENTS	5
1. INTRODUCTION	1
2. METHODOLOGY	7
3. THE CODES IN THE WESTERN CAPE FRUIT AND WINE SECTORS	8
4. LEVERAGING THE CODES BY TRADE UNIONS AND NGOs, AND VIA THE MEDIA.....	28
5. HAS THE STATE PLAYED A ROLE IN FACILITATING THE LEVERAGING OF CODES	40
6. CONCLUSION.....	41
REFERENCES.....	45

Institute for Poverty, Land And Agrarian Studies

Faculty of Economic and Management Sciences
University of the Western Cape
Private Bag X17
Bellville 7535



Tel: +27-(0)21-9593733
Website: www.plaas.org.za
Twitter: @PLAASuwc

Fax: +27(0)21-9593732
Email: info@plaas.org.za
Facebook: www.facebook.com/PLAASuwc

1. INTRODUCTION

Food security (or insecurity) has many variables. Each variable tends to be located, to a greater or lesser extent, in a particular academic discipline. Studying food security is, therefore, a multi-disciplinary project. This paper examines, from a socio-legal perspective, one narrow but important (and often overlooked) aspect of the food security spectrum, namely the livelihoods of farmworkers. Ultimately, the focus on farmworkers' livelihoods speaks to the sustainability of farms and food security more broadly. The narrow focus on farmworkers, one of the poorest communities in South Africa, also highlights a food security meta-narrative, namely power. The wielding of such power ultimately determines how much food farmworkers can put on their plates.

This paper examines how economic power, channelled through value chains and private social codes, is contested (or not contested) by organisations representing farmworkers, within the context of national legislation and state policies that aid or undermine their efforts. The paper therefore contributes to understanding how power in a particular facet of the provision of food plays out to affect food security of farmworkers integrated into food supply chains.

Private social codes that set labour standards for suppliers in value chains have generally been developed in the global North and are enforced at suppliers in the global South. Such codes have typically been created to maintain or improve labour standards in the dispersed supply chains of global lead firms and to ensure that workers in their supply chains are ethically treated. These codes can be formulated by a range of actors, including lead firms, which develop their own 'in-house' codes (such as Tesco's 'Nurture'); multi-stakeholder organisations, such as the Ethical Trading Initiative (ETI) and the Wine and Agricultural Ethical Trading Association (WETA); and producer organisations, such as the Sustainability Initiative of South Africa (SIZA). Even if a lead firm is not the direct creator or enforcer of a private code, it has the ultimate sanctioning power, as only it can eliminate producers from its supply chain for lack of compliance. Codes of this type are, therefore, described in the value chain literature as a form of 'vertical governance', that is, they are controls exerted by lead firms over their suppliers.

While they are developed in the global North and are motivated by the aim of lead firms to protect their reputations, the private social codes also emerge to fill regulatory gaps that exist due to inadequate legislation and/or enforcement by national states. This means the codes are formulated and implemented within a local context that is influenced by a matrix of power dynamics between various local actors. The most important actor in this matrix is usually the state, which determines the regulatory framework in which local actors operate, as well as producers, worker organisations and civil society.

Vertical governance is, therefore, contested by what is referred to as 'horizontal governance, that is, the power exerted by local actors on different segments of the value chain.

Social codes usually comprise a basket of standards that typically include a stipulation regarding minimum wages, requirements with respect to working conditions, and health and safety standards. Such standards often duplicate national legislation, but can also include standards that are higher than those set by national legislation, such as conventions of the International Labour Organisation (ILO), that have not been ratified by a particular country.

However, the term 'social code' refers to more than just a document. There are usually three components or stages in the implementation of a social code: the making of the code itself (which might be an ongoing process because of regular amendments to standards); the auditing of compliance with the standards in the code (a physical inspection that can be done by a third party); and certification or sanctioning (engagement with the supplier or producer on the basis of the auditor's report regarding non-compliance, and certification or sanctions following remedial actions by the supplier or producer).

In practice, these arrangements are diverse: often the maker of the code also conducts the audits and attends to certification, but in some cases there is a different organisation for each of the three stages. The arrangements are also dynamic: lead firms might discontinue their own codes and join a multi-stakeholder organisation, in the process adopting the code and enforcement mechanisms of the latter.

Lead firms do not necessarily require all their suppliers to comply with private social codes, but can insist that only suppliers in a country or region that has a reputation for labour abuses adhere to codes. At this stage, all the major retailers who import South African fruit (such as those based in the United States, United Kingdom and Europe; the main destinations for South African fruit) require that South African fruit suppliers adhere to ethical standards and can provide proof thereof. The Scandinavian wine monopolies all require South African wine producers to comply with ethical standards.¹ Where retailers do not have their own in-house code that lays down ethical standards, they will probably require a WIETA or SIZA audit to provide proof of compliance.

As noted above, vertical governance by lead firms can be contested. First, suppliers or producers can resist the imposition of a code on themselves by developing and implementing their own 'local code'. A local code can replace existing codes, such as retailers' own codes, if it is viewed as acceptable by buyers in the global North.

¹ Telephonic discussions with Retha Louw, CEO of SIZA (2 October 2017) and Christo Conradie, Manager of Wine Cellars at Vinpro (2 October 2017)

While this means suppliers are still bound by a code in order to supply lead firms, they have at least created the code themselves and have some control over its implementation. This could be seen as resistance to vertical governance or the development of a form of horizontal governance.

Second, codes can be contested by workers and their organisations. One form that such contestation takes is consumer opinion in the public domain. Codes must be credible and legitimate, which means that they need the tacit approval of organised labour. It is labour – not employers or their organisations – which occupies the moral high ground. As Du Toit (2001:17) contends, ‘the idea that someone is being consulted, somewhere, about something, plays a powerful legitimating role’.

Organised labour’s ability to grant or withhold legitimacy and credibility with respect to social codes is, therefore, an important source of power, which has been described as ‘symbolic power’ (Van Holdt & Webster, 2009: 59–60, 80) or ‘moral power’ (Fine, 2007: 256). Van Holdt and Webster contend that symbolic power is constituted in the public sphere and elaborates on images and ideas that resonate with community and public consciousness. Moral power, Fine argues, involves the recasting of workers’ struggles as being one of ‘right’ against ‘wrong’, providing the basis for an appeal to opinion makers and politicians as well as to allies in civil society. These are potential new sources of power for labour movements that are battling with the loss of older and more traditional sources of power in the labour market.

In instances where a code is developed in the global North and enforced in the global South, it is more difficult for workers to tap into this new source of power, due to their relative distance from consumer audiences in the global North. Local trade unions can try to bridge this gap, and the media is key to alerting consumers and trade unions in the global North, but much can slip past unnoticed, where the distances are great. Contestation by workers and their organisations becomes much more viable if the code is developed by their employers, and the organisation formed to implement the code is close at hand. Again, there is dynamism in this contestation. There is likely to be continual tension between local organisations implementing codes and the lead firms they are supplying. Similarly, workers’ contestation over the code and its implementation could be ongoing.

While workers and trade unions will always find it a challenge to influence codes, trade unions have much more power to contest local codes – from design through to implementation, monitoring and re-evaluation – than they have with regard to national legislation. On the other hand, national legislation sets a floor of rights with which the code must comply (or improve upon) and government appoints inspectors to enforce these rights, although this is often done quite poorly. Furthermore, national legislation applies to all employers and employees in the country (or in a sector, as the case may be) which gives it wider application, from the perspective of trade unions.

But the relationship between national legislation and codes – both local codes and those applied ‘from the outside’ – is a complex one that is only beginning to be investigated by researchers.

One of the key debates in international value chain literature has been whether worker organisations can leverage private social standards to improve the lives of workers (see Barrientos, 2013; Riisgaard, 2009; Barrientos & Smith, 2007; Nadvi & Waltring, 2004; Du Toit & Ewert, 2002; Frundt, 2001). Because private social codes are created to reassure Northern consumers that workers in the global South are treated ethically, public attacks on the credibility of codes – typically launched by activists via the media – can be a powerful lever to improve the lives of Southern workers as they ‘shame’ lead firms into applying more pressure on their supply chains to ensure better working conditions.

Goodman and Watts (1994) and Watts (1996; cited in Du Toit, 2001:1) argue that the significance of private regulatory regimes – which include private standards – cannot simply be read off from, or reduced to, corporate interests. Such regimes must be seen as sites of struggle and contestation, the outcomes of which cannot be deduced from the actors’ structural positions.

In a similar vein, Nelson and Tallontire (2014) argue that local actors integrated in value chains can, by actively engaging with and shaping private social codes, use these vertically imposed governance structures as opportunities to exert *horizontal* governance of the chain. Riisgaard (2009) argues that private social standards offer farmworkers and their organisations the opportunity to ‘ride’ standards, that is, use them to advance workers’ interests. The above literature has, however, generally not focused on local codes as a distinct type, that could be more or less effective at ensuring compliance with labour standards and more or less susceptible to pressure from workers.

The South African fruit and wine sectors, which are located primarily in the Western Cape Province, provide interesting cases through which to examine a number of the issues identified above. First, the agricultural sector was historically excluded from the mainstream labour statutes under apartheid. This was partially addressed in the early 1990s, but full integration of the sector into the legislative framework regulating labour relations and the labour market came only with the reform of labour legislation after the democratic elections of 1994, in particular the new Labour Relations Act² and the new Basic Conditions of Employment Act³. However, at about the same time, the new government deregulated the system of marketing boards, through which agricultural produce had previously been sold.

² Act 66 of 1995

³ Act 75 of 1997

Under the marketing board regime, farmers – represented as a collective by the marketing board – had some bargaining power vis-à-vis buyers, in particular large foreign retailers. The deregulation of the system meant that, at the same time farmers had to adjust to rising wages and working conditions, they had to face foreign retailers as individual producers. Within a few years, the noose tightened with the launch of private social codes in the sector. The history of the sector meant that, faced with this pressure, most farmers sought to cut costs by restructuring their labour forces.⁴

The first private social code in the South African agricultural sector came with the establishment of WIETA in 2002. However, joining WIETA was not required in order to export to Europe, which meant that only a few wine producers and hardly any fruit farmers signed on. Then, in 2007, a dedicated code was launched for the fruit sector with the establishment of SIZA.

Ten years later the majority of overseas retailers importing South African fruit require South African producers to comply with ethical standards, while all Scandinavian importers require South African wine producers to comply with ethical standards. In this paper we examine the emergence of WIETA and SIZA. The reason why these codes were introduced, the impact they have had on labour standards, and whether workers' organisations have been able to leverage them to raise standards are questions that have not been examined in academic literature.⁵

We first discuss the contestation that led to the establishment of SIZA and WIETA, and in particular the events that led to ethical codes becoming compulsory for exporters. Next, we assess whether workers' organisations have leveraged the codes to improve labour standards on farms supplying customers in the global North. We do so in light of low trade union density in the fruit and wine sectors and very limited collective bargaining.⁶

Third, we explore the extent to which the state has influenced the capacity of local actors to engage with codes to improve labour standards. Neilson, Pritchard and Yeung (2014) argue that state action, as much as inaction, creates the enabling or disabling conditions that shape whether and how firms, regions and nations are able to engage with global markets, and their capacities to benefit from such engagements.

⁴ Farmers made increasing use of temporary workers and labour brokers to supply workers. This went along with a preference for using labour that lived off the farm.

⁵ Only two studies have examined the impact of social codes on working conditions and worker empowerment in the South African context (see Du Toit, 2001, and Barrientos, 2006). Both focused on interventions by the British-based Ethical Trading Initiative (ETI). Du Toit (2001) reported on an ETI pilot conducted in 1998 on South African fruit and wine farms, in which producers participated voluntarily. Barrientos (2006) reported on an assessment of the ETI Base Code in the fruit industry in 2003. Both studies, however, were conducted prior to compulsory enforcement of social codes on wine and fruit farms in the Western Cape for specific markets.

⁶ South African farmworkers' structural and associational power, as defined by Wright (2000), is extremely weak, given that farm work is relatively unskilled and that there is an abundance of low-skilled labour in South Africa. Only about 5% of South African farmworkers are unionised.

Finally, we use Nelson and Tallontire's (2014: 483) typography of narratives to plot the evolution (or regression) of codes in the Western Cape farming sector. They argue that standards have a 'discursive impact in the battle of ideas about how best to respond to perceived problems of sustainability and equity'. To this end they identify four types of narratives. The 'Global Sourcing' narrative, which is promoted by retailers and brands, views standards primarily as a way to secure their supply chains and manage reputational risk. The 'Pragmatic Development Narrative' begins to raise concerns about the welfare of workers and smallholders in value chains.

The 'Broader Development' narrative shifts the idea of standards from a paternalistic worker welfare paradigm to a process-oriented labour rights theme that also focuses on workers' livelihoods. Lastly, the 'Potentially Transformative' narrative regards workers and smaller producers as active participants in the process of tackling social and environmental problems in value chains. Such efforts move beyond a narrow definition of labour rights to raise higher level concerns, such as living wages. We find this typography of narratives a useful way to examine the evolution of social codes in the fruit and wine sectors in South Africa.

The overall aim of the paper is to explore whether the fact that WIETA and SIZA are local bodies that implement 'locally made' codes – the main instruments being used to prove that producers comply with ethical standards when they export to specific markets – has given workers' organisations the opportunity to influence the processes of code-making, auditing and certification. To the extent that they have not, we explore why this might be the case.

The paper is structured as follows: Section 2 outlines the methodology used for the research, and Section 3 discusses the background to the emergence of the local certification bodies, focusing on the contestation that led to their establishment. The progression from voluntary certification to enforced certification is also tracked.

In Section 4 the structure and functioning of WIETA and SIZA are compared, but the main focus of the section is on a comparison of the two codes with the Fairtrade code. The latter code is viewed as the gold standard of private social codes and is, therefore, a good benchmark against which to assess the WIETA and SIZA codes.⁷ Section 5 discusses how aware local worker organisations – specifically trade unions – are of the two codes and the extent to which they succeeded in 'riding' the codes.

⁷ The Fairtrade code has been adopted by a very small minority of South African fruit and wine producers.

2. METHODOLOGY

The research involved semi-structured interviews with seven trade union organisers from the following unions: the Food and Allied Workers' Union (FAWU); BAWSI Agricultural Workers Union of South Africa (BAWUSA); the Rural Agriculture Workers' Union (RAWU); the Commercial, Stevedoring, Agricultural and Allied Workers' Union (CSAAWU); Sikhula Sonke; Agricultural, Food, Fishing and Retail Industry Workers' Union (Afriwu); and the Society Development Trade Union (SDTU).

Four of the interviews were conducted face-to-face and two were telephonic. The managements of three NGOs that deal with labour issues in the agricultural sector were also interviewed. These were the Trust for Community Outreach and Education (TCOE), which works closely with CSAAWU; the Association for Fairness in Trade (AFIT), a network comprising small farmers and workers on Fairtrade member farms, which aims to help farmers and workers leverage the Fairtrade code to their advantage;⁸ and the Eastern Cape Agricultural Research Project (ECARP), an NGO based in Grahamstown. ECARP was included in the research as its area committees engage with SIZA.⁹

Semi-structured interviews were also conducted with the managements of WIETA, SIZA and FLOCERT, an organisation that certifies producers against the Fairtrade standard. Two WIETA board members, one of whom represented the NGO sector and the other the producers, were also interviewed. Finally, Tom Heinemann, who produced the documentary *Bitter Grapes*, was interviewed and a representative of the Swedish NGO, Afrikagupperna, was e-mailed for information about the context in which the documentary was made. All respondents were given the option to speak anonymously and three chose to do so. Due to the sensitivity of their positions, no details about them are divulged other than the date on which they were interviewed.

Interviews were supplemented by a desktop review that included: an analysis of the three codes (WIETA, SIZA and Fairtrade) and the sectoral determination (SD13); background documents providing more information about the codes; standard operating procedures for conducting audits; complaints procedures; and background information about the formation of the code-making bodies and information on their board composition. Media reports on the impact of the documentary *Bitter Grapes* were also scrutinised and online searches were conducted to obtain information on specific issues that came up during interviews.

⁸ By March 2017 twenty commercial farms and three small farmer cooperatives were members of AFIT.

⁹ ECARP has facilitated the creation of a number of farmworker committees on Eastern Cape farms. These committees were not established to meet the demands of social codes, but rather to give workers a united voice when negotiating with farmers. ECARP farmworker committees are organised into area committees. In turn, area committees are organised into district committees. The idea behind the different levels of committee is that grievances can be escalated to a higher level. For instance, if a producer ignores the grievances of a farm committee, the grievance can be escalated to an area committee who would then visit the farmer to try and resolve the grievance.

3. THE CODES IN THE WESTERN CAPE FRUIT AND WINE SECTORS

3.1 The emergence of local codes in the wine and fruit sectors

3.1.1. The wine farming sector

In 1997, in an interview with the British Broadcasting Corporation (BBC), John Platter, a well-known commentator on the South African wine industry, exposed poor labour conditions in the industry. The interview received wide press coverage and led to a call to boycott South African wine.¹⁰ The industry had to scramble to limit the damage to its reputation and counter the threat of a boycott. A year later, the Ethical Trading Initiative (ETI) launched a series of pilots in its retailer members' supply chain, including in the South African wine industry, to establish whether producers would be able to meet the standards set in the ETI Base Code. A number of South African wine producers agreed to participate in the pilot project. The process initiated a discussion about ethical trade issues among South African wine producing organisations, organised labour and civil society stakeholders. The outcome of those discussions was the creation of the Wine Industry Ethical Trade Association (WIETA) in 2002 (Taylor, 2003). WIETA began conducting audits on wine farms that had become members, that is, the audits were voluntary in that they were limited to those farms that had joined WIETA. The focus of the audits was compliance with national labour legislation, including the Occupational Health and Safety Act and the Extension of Security of Tenure Act (ESTA).¹¹

Ten years later, the situation changed following a strike accompanied by protests that erupted in De Doorns, the historical hub of the Western Cape's table grape production. Media coverage of the protests was extensive and reached the ears of Northern wine buyers. The wine industry, where branding is a key feature, is more susceptible to reputational risk than the fruit sector, because fruit – including table grapes – is sold mainly as a commodity. The backlash from the lead firms in the global wine value chain, especially those based in Scandinavia, was therefore much more severe than in the fresh fruit value chain.

Following the protests, the Swedish government-controlled liquor monopoly, Systembolaget, issued a 'red flag status' to the South African wine industry. This indicated that Systembolaget was considering stopping the purchase of South African wine. Thereafter, Systembolaget's entire board of directors and management flew to South Africa to familiarise themselves with working conditions on farms. 'While they went away seemingly satisfied, they did to an extent put a "hold" position on supply. They want to see that things improve on the social side,' explained Rico Basson, the CEO of Vinpro, the commodity grouping of the South African wine industry.¹²

¹⁰ See: <http://www.nytimes.com/1997/02/19/garden/accusations-roil-plan-on-ownership-of-south-africa-s-wine-industry.html>

¹¹ Act 62 of 1997

¹² http://www.wieta.org.za/news_article.php?id=898; Interview with Rico Basson, CEO of Vinpro, 3 July 2013, Paarl

This meant that Systembolaget gave the wine industry until 2014 to improve conditions on farms. In 2014, audits became a requirement (that is, compulsory) for farmers who wished to supply the Scandinavian market. At the same time, WIETA launched an ethical certification seal to verify that producers comply with its code of conduct.

Given that Sweden is a major destination for South African wine, Systembolaget's partial 'hold' and intention to enforce audits reverberated through the South African wine industry. Major South African liquor companies, such as KWV and Distell, informed their bulk wine suppliers that the farmers that supplied them would have to undergo an audit, or else they will not be able to export their wine to Sweden. This led to an increase in the number of farms being audited by WIETA from 20 to 100 farms per month. By July 2013, 575 wine producers had signed up with WIETA – more than double the number registered in the previous year.¹³

The creation of the WIETA code therefore started with the failure of horizontal governance by the state – specifically its failure to enforce new legislation extended to farmworkers after 1994. The threat of a boycott from ethically conscious customers in the global North led to self-regulation by local producers, who established the 'locally made' WIETA code to supplement poorly enforced statutory rights. But contestation over labour standards a decade later, with the code becoming compulsory if a farmer wanted to export wine, led to compliance.

3.1.2. The fruit farming sector

The fruit sector's 'Platter' moment arrived in 2006, when the South African NGO Women on Farms, with the help of the international NGO Action Aid, launched a campaign in the British media to expose poor working conditions on South African fruit farms.¹⁴ The two NGOs bought a single share in the British supermarket Tesco for a female South African farmworker, who was flown to Britain for Tesco's annual shareholders' meeting. At the meeting she confronted the chairperson of Tesco about her poor working conditions. The response from Tesco was a promise that it would look into its social auditing procedures in South Africa. Women on Farms also invited the actress Emma Thompson to South Africa, who vocally condemned poor working conditions on South African farms in the British media. This generated further negative publicity for South African fruit farmers (Barrientos, 2009). Tesco's response was once again to commission more rigorous audits of its supply chain.¹⁵ In September 2008, Tesco launched its Ethical Trade Programme in South Africa, which involved making use of WIETA to monitor compliance with the WIETA code at farms supplying Tesco with fruit.

¹³ SWEDISH RESPONSE WOSA, 31/07/2013. See http://www.wieta.org.za/news_article.php?id=898; Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

¹⁴ See: <http://www.wfp.org.za/programmes/27-trade-justice/103-trade-justice.html>. Also see 'Introduction to SIZA code'.

¹⁵ Interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West

Fruit farmers, however, were unhappy that audits were being ‘forced’ upon them and started venting their anger at WIETA. An NGO representative on the WIETA board explained:

Theirs was not a voluntary engagement with WIETA: they were being dragged into the organisation. The stick was that if you don’t cooperate, then your access to export markets would be in jeopardy. So they went in, but kicking and screaming. In my view [the main point of contestation] was not primarily about WIETA; it was the notion of not wanting to be regulated. At the time that WIETA was established, the sectoral minimum wage was also being introduced in 2003...So WIETA was another enforcement agency, plus this one had much more impact than the Department of Labour. (Mzukisi Mooi, Centre for Rural Legal Studies).¹⁶

He also claimed that representatives of the fruit industry were uncomfortable with the ‘radicalness of organisations that were sitting on the WIETA board and structuring how WIETA was moving forward’.¹⁷ At the same time, WIETA was buckling under capacity constraints because it had switched from doing voluntary audits on wine farms to compulsory audits of fruit suppliers to Tesco.

The result was that the fruit industry chose to part ways with WIETA. Its official reason for doing so was that it was uncomfortable with WIETA simultaneously being ‘player and referee’, which referred to the fact that the organisation was setting standards, making use of contracted auditors (who were essentially under its control), and eventually making the certification decision.¹⁸ The route the fruit sector took was to use private auditing companies to certify farms against the ETI Base Code. At about the same time, however, the umbrella organisation representing various fruit commodity groupings in South Africa (Fruit SA) began to develop its own ethical trade organisation, the Sustainability Initiative of South Africa (SIZA).¹⁹ The idea was to develop a code, in consultation with a wide range of stakeholders that would be acceptable to fruit farmers and retailers. It was argued that the advantage of such a code would be to avoid duplication of audits by individual retailers, each of which had its own in-house standards. But the initiative can also be seen as an attempt by producers to exert horizontal governance in the value chain by taking control of code-making and enforcement from retailers and WIETA (with its more radical stakeholders).

¹⁶ Interview with Mzukisi Mooi, Centre for Rural Legal Studies, Stellenbosch, 15 February 2017

¹⁷ Interview with Mzukisi Mooi, Centre for Rural Legal Studies, Stellenbosch, 15 February 2017

¹⁸ Anonymous source (2), 1 March 2017

¹⁹ Fruit South Africa (FSA) is a non-profit organisation formed by the Citrus Growers’ Association of Southern Africa (CGA); HORTGRO (representing pome and stone fruit farmers); South African Table Grape Industry (SATI); SUBTROP (representing the avocado, litchi, mango and macadamia industries); and the Fresh Produce Exporters’ Forum (FPEF). It was established to address common issues in relation to all aspects of the fruit industry of South Africa.

Since 2007, when Tesco started to require South African fruit producers' compliance with ethical standards, other international retailers have followed suit. By 2017, retailers in all the South African fruit industry's major export markets – with the exception of the East and Africa – required that their suppliers comply with ethical standards.

While SIZA is the custodian of its own code, it has entered a service level agreement with five independent auditors, which producers can use to conduct audits against the SIZA code.²⁰ The audit companies not only conduct the audits, but also rate producers and issue audit confirmation letters to producers. Producers are supposed to upload their audit results onto an online platform.²¹ While the platform is password protected and producers have to allow their buyers access to it, failure to do so is a bad reflection on the producer. SIZA distances itself from these processes 'for the sake of impartiality'. Audit results are extremely important to producers, because an audit can potentially exclude farmers from supply chains – a consequence much more grave than a fine from a Department of Labour inspection.

3.2 The local code making bodies

The growth in the membership of local code-making or certification bodies can be directly attributed to enforced compliance with ethical standards requested by exporters. By 2014, a year after audits became compulsory for wine farmers who wanted to export to the Swedish market, 60% of South Africa's winegrowers were WIETA accredited.²² By 2017, WIETA had 1 453 members, while SIZA had approximately 1 550 members.²³ In contrast, the number of farms that are voluntarily Fairtrade certified is much lower: only 45 producers in the entire agricultural sector were Fairtrade certified in 2016. This can be ascribed to its more onerous standard, but also to its high certification costs.

Representation of labour on the boards of code-making or certification bodies is important for these organisations as well as for labour. The bodies need labour to be represented to give them credibility in the public domain. Codes act as a bulwark that protects the reputations of producers in consumer markets, while labour representation assures consumers that suppliers have adopted acceptable working conditions. If labour contests the process of code-making, monitoring and enforcement, or withdraws its backing of a private social code, the credibility of the code-making or

²⁰ Interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West. Audit companies are required to adopt a code of conduct, but also have to adopt the Global Social Compliance Programme reference tool. Auditors are also required to meet basic competencies outlined by SIZA and to use a prescribed audit process and methodology.

²¹ SIZA audits are uploaded on the SIZA platform, while WIETA audits are uploaded onto the SEDEX platform. SEDEX is a global non-profit membership organisation collaborative platform for sharing responsible sourcing data on supply chains. Companies use SEDEX to manage their performance around labour rights, health and safety, the environment and business ethics.

²² See: http://www.wieta.org.za/download/New_Wieta_Seal_Fact_Sheet.pdf (visited 3 May 2017).

²³ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch; interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West

certification body will be threatened. This gives labour a certain amount of bargaining power with regard to codes, which allows it to shape the code as well as influence the implementation of the code. For instance, the WIETA board reviews audit reports and approves accreditation, besides giving labour the opportunity at regular board meetings to engage with representatives of producer organisations.

WIETA's board comprises ten members: five are nominated by producer organisations, three by trade unions and two by civil society (the latter are from worker-aligned NGOs). Labour representatives on the board are supposed to be elected by the labour constituency of WIETA, but only FAWU and BAWUSA are represented.²⁴ Furthermore, there appears to be no mechanism whereby the trade unions in the sector meet to elect representatives. So, it seems that whoever is available at the AGMs of unions that are members of WIETA get nominated to its board. Attendance at board meetings by union representatives also seems to be sporadic because of the capacity constraints these unions operate under. The result is that labour is often under-represented at board meetings.

In contrast, it was reported that employer organisations are much better prepared for WIETA board meetings. For example, Vinpro consults widely with its members before any changes are made to a WIETA standard or policy.²⁵ Labour does not appear to do the same, which CEO of WIETA, Linda Lipparoni, found frustrating. She argued that trade unions should be engaging more critically with WIETA's policy and standards:

I think it is important, otherwise you get a dominant producer voice and the compromise [for labour] is just far greater than what it should be...we've got to get down to having those discussions with workers around what are the issues and bring them back into the policy battle...²⁶

CSAAWU and TCOE, which have never been WIETA board members, have called for shop steward representation on WIETA's board. The two organisations argue that 'direct worker voices' need to be heard on the board, which should not be 'squeezed out by NGOs that do not have direct experience on the ground'. The demand probably arises from frustration with the current flawed representation of labour rather than reflecting the truth. The Centre for Rural Legal Studies, for example, is an NGO represented on the WIETA board that also organises workers on the ground. Moreover, even though shop stewards might bring worker voices onto the board, they would still not be representative voices, given that only about 10% of Western Cape farmworkers belong to a union.

²⁴ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch; NGO members include the Centre for Rural Legal Studies, Women on Farms and the National Farm Workers' Forum.

²⁵ Interview with Christo Conradie, Manager of Wine Cellars at Vinpro, Paarl, 20 February 2017; See also http://www.wieta.org.za/news_article.php?id=898; interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

²⁶ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

Despite the above shortcomings, WIETA is a multi-stakeholder body, which is not the case with SIZA. SIZA has only recently constituted an independent board, but there are no labour representatives on it, or on its audit reference group or its audit expert group, which set audit policy and standards, and adjudicate disputes over audit findings, respectively. SIZA has approached the Commission for Conciliation, Mediation and Arbitration (CCMA) to assist it to recruit a labour representative for its board, but without success. This begs the question: why does SIZA ask the CCMA for assistance instead of directly liaising with organised labour? It is not surprising therefore, that SIZA has now decided to 'pick' a labour representative for its board.²⁷

It is interesting to note that, although the Fairtrade code is the most worker-friendly of the three codes, it has no workers represented on its standards committee or its board.²⁸ This suggests that the presence of workers at board level is not necessarily a prerequisite for a good code.²⁹

3.3 Local codes compared to the Fairtrade code and national legislation

3.3.1. South African labour legislation

Labour legislation in the agricultural sector does not have a long history. For many years the sector was excluded from labour legislation altogether, and until shortly before the transition to democracy in 1994 it was excluded from the 1956 Labour Relations Act (LRA) and exempted from certain clauses in the 1983 Basic Conditions of Employment Act (BCEA).³⁰ It was only after the adoption of the new LRA in 1995 and the new BCEA in 1997 that farmworkers became eligible for the same rights as other employees. A third key piece of legislation, ESTA, was introduced in 1997 to give more tenure security to workers living on farms.

In 2003, in terms of the BCEA, a sectoral determination was issued for the agriculture sector which set a minimum wage and a range of other standards for the sector not dealt with in the BCEA.³¹ Although complemented by the BCEA and the LRA, SD13 is the primary source of rights for workers in the sector. Its provisions are enforced by the inspectorate of the Department of Labour. The government's enforcement of the above laws and SD13 has been woeful.³²

²⁷ Interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West

²⁸ The Fairtrade board includes four members nominated by the three producer networks, four members nominated by the national Fairtrade organisations and three independent members.

²⁹ In 2010 Fairtrade established the Advisory Committee on Workers' Rights and Empowerment (WRAC) to strengthen its knowledge of and partnerships with trade unions and labour rights organisations. WRAC consists of representatives of trade unions, labour rights NGOs, companies and Fairtrade members. Fairtrade consults the committee on ways to promote freedom of association and worker organisation and for advice on wage levels.

³⁰ Respectively, Act 28 of 1956 and Act 3 of 1983

³¹ Sectoral determinations are issued in terms of the BCEA. They set wages and vary some of the conditions in the BCEA to fit the circumstances of specific sectors.

³² GroundUp: 'Labour department can't protect workers', 9 May 2017, *Daily Maverick*. Available online at <https://www.dailymaverick.co.za/article/2017-05-09-groundup-labour-department-cant-protect-workers/#.WRmhiWdf34i>

Given the number and geographical spread of farms, the Department of Labour has adopted a strategy of 'blitz' inspections, but concerns have been raised that the inspections are not rigorous enough. Furthermore, it is alleged that the inspections do not provide sufficient guarantee of compliance with labour standards for overseas buyers. So, despite the inclusion of the agriculture sector within the post-apartheid labour regulatory framework, poor enforcement means that many farmworkers do not enjoy the protection of the rights they have on the statute book.

3.3.2. Fairtrade and the two local codes

Fairtrade is a well-established, international certification scheme, started by Max Havelaar and Solidaridad in 1988. Its code has benefited from years of experience and continuous refinement. It has, as a result, become something of a gold standard for private social codes. This makes it a good benchmark against which to assess the two local codes. The paper compares key standards in the WIETA and SIZA codes with Fairtrade's Hired Labour Standard (hereafter referred to as the Fairtrade code),³³ in particular the Labour Conditions section, and, to a lesser extent, the Trade section (which is concerned with issues such as the traceability of Fairtrade products and ensuring sustainable trade).³⁴

The three codes have all been shaped by South African legislation, as well as the conventions and recommendations of the ILO. The components of the three codes dealing with labour conditions comprise six areas that prescribe rights and standards in the workplace: the right to freedom of association and collective bargaining; freedom from discrimination; freedom from forced and compulsory labour; protection against child labour; minimum conditions of employment (such as maximum working hours, the right to overtime pay, statutory leave, and termination of employment); and health and safety. At a minimum the codes replicate rights contained in South African labour legislation,³⁵ but they also improve on some of those rights and provide certain rights not in legislation.

3.3.3. Standards that improve on statutory rights

Certain standards in the codes improve on the equivalent rights in national legislation. These standards include the payment of a living wage; the requirement to have a rainy day policy; having a job grading system in place to prevent discrimination; providing breaks to nursing mothers; providing a pension scheme to permanent workers; and paying for the transportation of migrant workers.

³³ Fairtrade has two separate codes: one for small farmers, and one for farmers making use of hired labour. A farm making use of hired labour is defined as one that is not membership-based and at which the main share of the work is carried out by hired labour. See: FLOCERT Glossary at: <http://www.flocert.net/glossary/>

³⁴ The Fairtrade Hired Labour Standard has four main sections: Social Development (which largely regulates the management of Fairtrade premiums that workers receive from the sale of Fairtrade-certified products); Labour Conditions (which include health and safety in the workplace); Trade; and Environmental Development. The Social Development and Environmental Development sections are not relevant to the comparison we make and are therefore omitted.

³⁵ These include: BCEA; LRA; Employment Equity Act (Act 55 of 1989); Unemployment Insurance Act (Act 63 of 2001); Compensation for Occupational Injuries and Diseases Act (Act 61 of 1997); Occupational Health and Safety (Act of 1993); Children's Act (38 of 2005); and SD13.

A living wage

The history of extremely low wages in the agricultural sector and the demand for a daily wage of R150 in the 2012 De Doorns protests makes the references to a living wage in the Fairtrade and WIETA codes significant. Determining a living wage, however, is difficult and an amount is seldom prescribed in social codes.

In 2013, Fairtrade for the first time identified living wage benchmarks: the living wage for the Western Cape wine industry was set at R144 per day (that is, slightly lower than the 2012 De Doorns demand of R150 per day). This amount included free in-kind benefits, such as accommodation and transportation; a 13th month annual bonus, and employer contributions to the Unemployment Insurance Fund (UIF). The Fairtrade *cash* living wage was calculated at R111 per day (see Anker & Anker, 2013). The Fairtrade cash wage was, therefore, only slightly higher than the minimum wage of R104.94 prescribed in SD13 in March 2013, following the De Doorns protest. In contrast, a report by the Bureau for Food and Agricultural Policy (BFAP) found that, even if a husband and wife each received a cash wage of R150 per day, their combined income would be insufficient to feed a four-person household to nutritionally acceptable standards (Meyer et al, 2012).

If producers are paying below the Fairtrade living wage benchmark, the code requires them to increase wages annually to close the gap, that is, a farmer must negotiate 'incremental steps and [a] timeline toward the applicable living wage...with trade union/elected worker representatives'(FTC: 3.5.4). The rider that producers take 'incremental steps' potentially gives farmers some breathing space but could also invite procrastination, although the requirement that these steps are negotiated and that there must be a timeline should restrict delaying tactics.

The Fairtrade code also provides a safety valve for farmers who cannot afford to pay a living wage by providing that '[i]f the company is in a financial crisis or if Fairtrade sales are not sufficient to justify an increase toward a living wage, wage increases will, at least, cover inflation until the situation is resolved (FTC: 3.5.4). Given the doldrums in which the South African wine industry finds itself, many producers would probably qualify to invoke this escape clause.

The WIETA code has a much vaguer definition of a living wage, which states that the wage must be: '*enough* to allow employees and their households to secure an adequate livelihood. This should be *sufficient* to meet basic needs such as food, clothing, shelter and education, and to have money left over for discretionary spending' (WC: 8, own italics). The qualifiers 'enough' and 'sufficient' are open to wide interpretation, which frustrates enforcement. Moreover, the WIETA code states that producers should 'strive' to pay workers a living wage (WC: 8), a qualifier that effectively allows producers to postpone the payment of a living wage indefinitely.

The SIZA code does not refer to a living wage at all. It stipulates only that members must pay the statutory minimum wage for the agricultural sector (which would be the wage prescribed in SD13).

Rainy days

With regard to payment to workers on days they cannot work because of rain, the Fairtrade code provides only that if the principle of 'no work; no pay' applies, it should be clearly recorded in workers' employment contracts. In the context of extremely low wages and the negligible bargaining power of farmworkers this standard in the Fairtrade code is not adequate. When one factors in that many farmworkers are seasonal (that is, employed and earning wages for only parts of the year), non-payment for work stoppages that are not the fault of the worker is unconscionable.

The WIETA and SIZA codes both require that management should have a written policy in place in respect of payment for workers on rainy days, which policy must be communicated to workers. This is not much of an improvement on the Fairtrade code because policy provisions are left to the employer to determine, which could mean a principle of 'no work; no pay' is applied. The WIETA code, however, contains best practice *guidelines* for rainy days, stating that workers should a) be paid on rainy days, even if they do not work; or b) be provided alternative work that can be performed under cover; or c) receive training on rainy days, but these are guidelines only and are not enforced (See WC: 07.02(f); SC: 9.1.6). The SIZA code does not have any similar guidelines as to best practice for rainy days.

Nursing breaks

The Fairtrade code requires that mothers with babies are allowed nursing breaks. It calls for at least one daily nursing break (or a reduction in working hours) during 'paid working time' (FTC: 3.5.18). The WIETA code makes provision for nursing breaks, but it leaves much room for interpretation: breastfeeding is allowed 'where practical', which leaves the granting of such breaks to management's discretion. It also does not state whether time off for nursing should be paid or unpaid (WC: 07.03.h). The SIZA code does not deal with breastfeeding breaks.

Regular work, temporary work and labour brokers

All three codes aim to promote regular work (WC: 09.01: c-e; SC: 8.3.2.1,2,4; FTC: 3.5.7, 3.5.21, 3.5.22, 3.5.26). The WIETA code, for instance, stipulates that temporary workers who have worked for an employer on a regular basis must be given preference when the employer recruits at the start of a new season.

To ensure that workers on fixed-term contracts get pro-rata benefits, as prescribed by SD13, the WIETA and SIZA codes require that employers keep records of employment of temporary workers so that the accrual of leave benefits can be monitored.

Fairtrade aims to avoid the abuse of fixed-term contracts by requiring that employers provide 'equivalent benefits' to fixed-term workers. For instance, if permanent workers have access to a pension fund, it is expected that workers on fixed-term contracts who work for part of the year also have access to the fund. Fairtrade also requires that producers pay the travel costs of migrant workers if their contracts are for a fixed term of less than a year.

A major potential leverage point for worker organisations of all three codes is the controls the codes put in place to protect workers employed by labour brokers. The Fairtrade code requires producers to phase out the use of labour brokers, unless exceptional conditions apply that are sanctioned by the certification body. Hence, it expects that all temporary work be conducted by workers directly employed by producers.

The WIETA and SIZA codes allow for the use of workers supplied by labour brokers, but both codes have strict conditions to ensure that such workers are not exploited. Furthermore, both codes aim to extend their standards to labour brokers. The codes therefore provide for the accreditation of labour brokers and require that certified producers use only certified brokers. To this end WIETA and SIZA have jointly developed an audit readiness methodology for labour brokers and have trained 47 labour brokers in audit readiness workshops. WIETA and SIZA have also created an audit process and methodology and an auditing costing structure for labour brokers, so as to prevent labour brokers from charging rates that do not allow for the payment of minimum wages.³⁶

Housing conditions

The Fairtrade code's housing prescriptions are fairly vague. It states only that housing should 'ensure structural safety and *reasonable* levels of decency, privacy, security and hygiene, and include *regular* upkeep and improvement of housing and related communal facilities. If sanitary facilities are shared, a *reasonable* number of toilets and bathing facilities with clean water, per number of users, and according to regional practice, are available' (FTC: 3.5.28; own italics). The terms 'reasonable' and 'regular' are open to interpretation.

Fairtrade prefers that workers do not stay on the farm, unless farms are located far from the nearest town/settlement; if housing is not available in sufficient quantity (in such settlement); or where the nature of the employment requires that the worker should be available at short notice (FTC: 3.5.28). The Fairtrade code under certain conditions provides a disincentive for housing workers on farms by requiring farmers, if the majority of workers live on the farm, to pay the workers who live off the farm a housing allowance. In other words, farmers can reduce costs by ensuring that the

³⁶ WIETA newsletter, Quarter 4, October 2015

majority of workers live off the farm, therefore eliminating the need to pay the allowance. Fairtrade's approach is controversial in the South African context, where both the state and workers put a high premium on the continued provision of on-farm housing.

With regard to housing, the standards of the two local codes, especially those of WIETA, are higher than the Fairtrade code and also exceed those prescribed in SD13.³⁷ The latter regulate housing conditions only if the farmer makes a deduction (up to 10%) from the workers' wages for housing (see section 5 of SD13). The WIETA code requires that if workers are housed on the farm, the employer must have a housing policy and plan in place. The SIZA code requires only a maintenance plan. Both codes require that employers enter a housing agreement with the heads of households. The WIETA code also has detailed requirements regarding the quality of housing. These include that housing be structurally sound, wind- and waterproof; adequately insulated and ventilated; that it should be kept in good repair; and that it is free from rubbish. Significantly, it also requires that farmers install electricity in workers' houses, stating that wood is an inadequate source of energy. It also calls for the provision of drinking water that meets public health standards (WC: 10.01: h-m). These more detailed provisions provide significant leverage for workers to demand specific improvements in cases where housing is suboptimal.

Importantly, if producers do not comply with WIETA's standards on housing infrastructure, sanitation and water quality, they are penalised: audits are conducted annually rather than once every three years, which pushes up their certification costs significantly. The SIZA code is much less prescriptive about housing conditions. It states only that accommodation must meet the standards stipulated by the National Building Regulations Act (SC: 7.5.3).

As indicated above, whether farmworkers live on the farm or off it is a contentious issue in South Africa. This means that standards with regard to housing need to strike a balance between ensuring decent housing and providing a disincentive for farmers to continue to employ workers who live on the farm. It seems at this point, however, that housing tends to be below standard, at least on wine farms. According to Lipparoni,³⁸ housing is one of the biggest stumbling blocks to getting full certification and the main reason why producers are issued with conditional certification.³⁹ Only about a quarter of the sites they audit would receive certification if they were to certify only those that were fully compliant with housing standards.

³⁷ SD13 sets very basic housing standards that producers have to comply with in the case where workers live on the farm *and* where the producer deducts 10% from their wages for housing.

³⁸ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

³⁹ Conditional certificates are issued on an annual basis, instead of every three years, which means that the farm has to be audited annually, at increased cost to the producer.

Enabling rights

The Fairtrade, WIETA and SIZA codes all include standards to make workers more aware of their labour rights. For instance, they each require that workers receive training on their rights as workers and on the code itself, so that they can monitor code implementation (see FTC: 2.2.1; WB: 00.01(e), SC: 2.5). Additionally, the WIETA and SIZA codes require that such training be provided in a language that workers understand. Both SIZA and WIETA have developed a training DVD for workers and have delivered training to farmworkers on various aspects of their rights, including health and safety in the workplace and the safe handling of agrochemicals.⁴⁰

The three codes attempt to give workers some measure of voice by stipulating that employers implement a grievance procedure. But for trade unions the most important sections of the codes are arguably those dealing with freedom of association and collective bargaining. All three codes require producers to respect the fundamental rights of freedom of association; collective bargaining; and non-discrimination against trade union members.⁴¹ They also require that management should make an effort to make workers aware of their rights to freedom of association and collective bargaining (FTC: 3.4.4; SC: 5.6; WC: 04.01a).

The Fairtrade code is significantly better than the two local codes when it comes to promoting enabling rights. The background to this is provided in 'A New Workers Rights Strategy for Fairtrade', which accompanied the release of its revised Hired Labour code in 2014. The new strategy signals an intention for Fairtrade to 'move beyond the traditional [corporate social responsibility] paradigm of social compliance based on standard-setting and auditing', and to rather focus on helping to 'build the conditions whereby workers have the tools and ability to negotiate their own wages and terms of work'.⁴² Alistair Smith, Banana Link's International Coordinator and representative on Fairtrade's Workers' Rights Advisory Committee, states that: 'The new standard means that trade unions are now recognised as the best vehicle to empowering workers in the exercise of their rights.'⁴³

The Fairtrade code has several provisions aimed at ensuring that workers are aware of their enabling rights and are free to exercise them without fear of victimisation. First, one of the development criteria of the Fairtrade code is that trade union officials (or, in their absence, elected worker representatives) are trained annually during working hours on labour legislation and negotiation skills.

⁴⁰ The requirements of section 30 of the BCEA, 'Informing employees of their rights', are much less onerous.

⁴¹ Auditors, for instance, monitor compliance with freedom of association by asking workers if they are allowed to join a union if they want to; if a union organiser had ever visited the farm; and whether the farmer has ever threatened them if they would join a union. If there is a trade union presence on the farm, then shop stewards and/or union members must be interviewed. Auditors also check if subscriptions are being deducted from workers' wages. Disciplinary records are checked to see that those disciplined are not predominantly union members.

⁴² From: 'A New Workers Rights Strategy for Fairtrade' (Undated). Available online at: https://www.fairtrade.net/fileadmin/user_upload/content/2009/resources/2012-06-20_Workers_rights.pdf

⁴³ See: Banana Link, 'New Hired Labour Standard for Fairtrade', 27 January 2014. Available online at: <http://www.bananalink.org.uk/new-hired-labour-standard-fairtrade>

Second, while the LRA grants certain organisational rights to trade unions only if they are deemed to be ‘sufficiently representative’, and others are granted only if the trade union represents the majority of workers, the Fairtrade code gives unions organisational rights even in the absence of significant levels of representation. This includes protocols to allow unions and farmworker organisations access to farms to organise workers (see FTC: 3.4.5, 3.4.8).⁴⁴ The Fairtrade code, furthermore, stipulates that trade union officials have access to workers and can meet with them regularly as well as have meetings with senior management every three months (see FTC 3.4.8).⁴⁵ Most importantly, the code places a duty on management to bargain with unionised employees to reach a collective agreement, even if the union does not have a majority in the workplace (see FTC 3.4.2, 3.4.11).

The WIETA code also has protocols with regard to access to farms for trade unions to organise workers and it seeks to promote collective bargaining. It requires that employers ‘ensure that wage increases and benefits of employment or any other change to the terms and conditions of employment are determined through a fair negotiation process in which workers get a genuine opportunity to represent their interests’ (see WC: 04.01(b)). This effectively creates a duty to bargain. However, support for these enabling rights is weak: an NGO board member stated that when he suggested to the accreditation committee that they compile a list of trade unions working in the agricultural sector and that they push for the list of trade unions to be put on employers’ notice boards, there was vehement opposition from producer representatives.⁴⁶

The SIZA code is more limited with regard to enabling rights: it does not prescribe guidelines to facilitate union access to farms. Dialogue is encouraged by the requirement that ‘there is evidence that regular communication takes place between management and the workforce’ (SC: 5.7). Freedom of association is protected only in so far as union members should not be discriminated against, victimised or harassed.

Workers’ committees

In the absence of unionisation on farms, the two local codes promote the creation of farmworker committees. This provision is controversial. Trade unions argue that the committees are often appointed by management, despite the requirement that they be democratically elected, a criticism that is acknowledged by WIETA’s management.⁴⁷

⁴⁴ The LRA does not define the term ‘sufficiently representative’. Moreover, whether a union is sufficiently representative depends on the definition of the workplace, which is open to interpretation.

⁴⁵ The Fairtrade Code (3.4.8) states that an employer must ensure ‘that trade union/elected worker representatives : 1) have access to all workers in the workplace during working time without interference or the presence of management representatives and at agreed times, on average every three months; 2) can meet among themselves during regular working hours, at least once a month for one hour; and 3) meet representatives of senior management during working hours at least once every three months. These meetings are scheduled on a regular basis and are documented.’

⁴⁶ Interview with Mzukisi Mooi, Centre for Rural Legal Studies, Stellenbosch, 15 February 2017

⁴⁷ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

Even if worker committees are elected by workers without any interference by management, unions argue that they are powerless because they cannot compel employers to bargain. The committees therefore create an illusion of worker representation where there is none.

Workers' committees do, however, provide workers with some measure of representation in a context of extremely low levels of unionisation. This is especially relevant with regard to seasonal workers, who are generally reluctant to join unions for fear that their contracts will not be renewed (see FTC: 3.4.11). This suggests that unions could be more strategic about worker committees and engage with them in order to facilitate organisation, rather than rejecting them out of hand.

3.3.4. Gaps and weaknesses in the codes

There are some surprising gaps in the codes. A glaring example is SIZA's silence on evictions from farms, despite the fact that the illegal eviction of workers is one of the more controversial and unethical practices found on farms.

Instead, the focus of the SIZA code is on the right of workers' family members to take up employment off the farm (SC 3.7, 3.8) and on tenancy agreements between farmers and farmworkers. In contrast, the WIETA code (10.1) states that 'employers and farm owners shall comply with the provisions of ESTA in respect of those living on their land. In particular, employers shall respect the occupational rights of farm dwellers, and shall comply with the provisions of the legislation insofar as these regulate the eviction of those living on the farm.'

Given the generic nature of the Fairtrade code, which is applicable internationally, it makes no reference to ESTA. Instead, the code states that farmers have to adhere to country legislation, thereby indirectly requiring compliance with ESTA. However, given that in the past the Fairtrade code had issued specific guidelines for South Africa in respect of Black Economic Empowerment, it is surprising that it does not have an explicit standard on the issue of evictions, especially since it is such a controversial issue.

The employment of migrant labour is another problematic labour practice that is not dealt with in the two local codes. Migrant workers, especially foreign migrant workers, are arguably the most vulnerably category of farmworkers, often finding themselves in circumstances resembling forced or bonded labour. The absence of standards to protect migrant workers could change soon because both SIZA and WIETA are considering incorporating elements of Britain's Modern Slavery Act into their codes.⁴⁸

⁴⁸ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch; interview with Retha Louw, CEO of SIZA 21 February 2017, Somerset West

According to Lipparoni, this will force WIETA to ‘start redefining very closely what is meant by forced and bonded labour...in relation to the transportation of workers out of local areas, and how those contracts are negotiated.’

An absence from the WIETA and SIZA codes is any attempt to govern unfair trade practices further along value chain. Fairtrade attempts to introduce some fairness in the relationship between producers and the first buyer of the product by insisting that such buyers enter contracts with producers; that the buyer commits to the volumes ordered; and that producers are paid a Fairtrade minimum price, which is intended to cover the basic production costs of the producer. However, despite being locally formulated with producer input, the local codes make no attempt to regulate relationships beyond the farm gate.

Lipparoni argued that this limitation is becoming extremely problematic in the wine industry, where some buyers:

...have literally forced compliance on suppliers. But...the wine industry is not a sustainable industry. Half the wine industry is basically in the red, not even breaking even, let alone making a profit...If you get to a wine farm that is only 15 hectares, to meet all the minimum standards is very cost intensive. It is not that the farmer does not want to do it, but [to meet all the requirements of the standard] a lot of things need to happen on a small unit at a time when profitability is a challenge...I’m going to say this outright – are parts of the wine industry sustainable enough to be compliant?⁴⁹

Du Toit (2001: 19; 25) argues that the complicity of retailers in creating an environment that encourages brutal exploitation is conveniently avoided in social codes, which ensures that worker welfare is neatly turned into the suppliers’ problem. Referring to the ETI’s Base Code provision that living wages should be paid, he observes that: ‘Never is the document indiscreet enough to consider the possibility that the payment of a living wage requires a cut in retailers’ own profits. If the ETI’s NGO and trade union members are to make a real impact, this kind of coyness will have to be challenged’.

3.3.5. Duplicating national legislation

A potential advantage of private social codes over national legislation is that they have the scope to go beyond the minimum standards set in statutes, and the standards in codes can be more easily introduced or changed than legislation can. However, except in the case of the standards discussed above, both the WIETA and SIZA codes (especially the latter) largely duplicate national legislation and SD13. The exceptions are the WIETA code’s requirements that producers have a policy in place to facilitate union access to farms and must negotiate changes to wages and conditions of employment, as well as its relatively high standards on housing and the strict conditions placed on farmers who engage labour brokers.

⁴⁹ Interview with Linda Lipparoni, CEO of WIETA 17 February 2017, Techno Park, Stellenbosch

What is the rationale for codes to duplicate national legislation? It seems that the only advantage is better enforcement of statutory rights. A problem with codes having an orientation to national legislation is that they tend to replicate inadequacies in the legislation. This applies particularly to rights for non-permanent farmworkers. The LRA and BCEA were drafted with standard employment in mind, and this is much the same with SD13. Temporary (including seasonal) and part-time workers are not excluded from regulation, but neither are they specifically regulated, other than through requirements that they must receive the same statutory benefits as permanent workers, but on a pro rata basis. Yet, even this right is tenuous, as existing legislation is open to interpretation; for example the payment of pro rata leave is left to the discretion of producers.⁵⁰ The effect is that fixed-term farmworkers often receive no paid annual leave, which is clearly not the intention of the law. By blindly following the letter of the law, rather than its spirit, the codes merely replicate these problems.

3.3.6. Conclusion

The WIETA code is more progressive than the SIZA code, specifically its aim to strengthen workers' enabling rights. This is arguably because it has labour representation on its board. Worker representation on the boards of code-making or certification bodies, therefore, does seem to make a difference.

The Fairtrade code is generally better than the two local codes, WIETA and SIZA, but its emphasis is also different, which probably reflects the process through which it was created. Whereas the main aim of the two local codes seems to be to achieve increased compliance with national legislation, the Fairtrade code is influenced by a global perspective on ethical standards, and is also more focused on promoting enabling rights that allow workers to negotiate a better deal for themselves.

However, the advantage of a locally created code that aims to regulate particular local problems is also evident in WIETA's endeavours to regulate poor farm housing conditions; its inclusion of ESTA stipulations in its code; and both local codes' attempts to regulate labour broking, a contentious issue in the South Africa. Yet, it is also evident that the local codes still do not go far enough to improve workers' rights above the legal minimum standards. Where they do attempt to raise standards above legislated rights (such as WIETA's standards on rainy days, breastfeeding and a living wage) the standards are so vaguely formulated that they leave producers with enough room to wriggle their way out of any regulatory strictures. Most notably, the local codes do not provide additional protection to the growing majority of workers who are on fixed-term contracts, many of whom are migrants.

⁵⁰ The practice of not paying seasonal workers paid leave if they work on a farm for less than a four months' continuous period is widespread and can be attributed to the fact SD13 allows for different interpretations of when paid leave for temporary workers should be paid out. Section 21(1)(b), read together with 29(1)(d)-(e), results in producers only paying fixed-term workers pro-rata leave if they have been continuously employed for more than four months (Visser & Ferrer, 2015).

Borrowing from Nelson and Tallontire's (2014) narrative analysis, SIZA can be firmly located in the Global Sourcing narrative, while the multi-stakeholder WIETA is in the Pragmatic Development narrative. In contrast, the much stronger focus of the Fairtrade code on the promotion of enabling rights places it in the Broader Development narrative.

3.4 Auditing compliance

The three bodies separate the setting of standards from the auditing process to ensure that the latter is impartial. Fairtrade International has created an independently governed subsidiary, FLOCERT, to conduct audits against its standard. FLOCERT uses its own staff as well as independent auditors to conduct audits. Certification decisions are made by FLOCERT staff only. WIETA also contracts independent auditors, which have to be approved by its board, but makes the certification decision itself. SIZA makes use of audit companies to conduct audits against its standard. The audit companies sign off on corrective actions they issued following an audit, which then triggers a computer-generated audit confirmation letter.

The standard operating procedures of the three codes prescribe how audits should be conducted. Each has measures to ensure the confidentiality of the audit process, as well as to check the veracity of information collected to ensure fairness to all parties. Furthermore, the three organisations require a certain level of education and experience on the part of auditors before they are allowed to conduct audits.⁵¹ The standard operating procedures are available on the websites of Fairtrade, WIETA and SIZA, which means that worker organisations are able to scrutinise them.

3.4.1. Audit protocols

The three bodies have detailed protocols in place to ensure the quality and credibility of audits. Key to these protocols is that information gathered during audits should be triangulated through a site inspection, interviews and documentation. The protocols also have procedures to prevent bias, such as prescribing worker sampling, and to ensure confidentiality of all information. However, the requirement for confidentiality makes the inclusion of third party observers (including trade union organisers) during audits problematic.⁵² To counter this, the protocols state that if there are union members on a site, then the auditors must include union members in their sample of interviewees. Further, the protocols attempt to allow some participation by workers in the audit process, other than them being interviewed by the auditor, by suggesting (that is, it is not a requirement) that workers should be present at the opening and closing meetings of the audit.

⁵¹ Social auditors must be familiar with the sector and have a very good understanding of employment legislation and its practical implementation. Both SIZA and WIETA use an Auditor Competency Reference Tool (in line with the procedures described by the Global Social Compliance Programme) to gauge whether auditors are competent enough. Only audit companies that have completed the GSCP equivalence process are allowed to conduct SIZA audits.

⁵² A main criticism by CSAAWU is that union officials are not currently allowed to attend WIETA audits, nor are they even alerted about upcoming audits on particular farms.

Fairtrade insists that management shares the audit results with workers, but this is not required by the other bodies. Fairtrade also requires that management allocates time to workers during regular working hours, as well as provides them with the necessary resources to monitor the implementation of its code (FTC: 1.1.2–3).

3.4.2. The frequency of audits

Fairtrade requires that audits must be conducted annually, but the frequency of WIETA and SIZA audits varies according to the risk profile of the farm. WIETA, for example, determines whether an audit is conducted every one to three years, based on a farm's risk rating, which is obtained from the previous audit, and the quality of corrective actions undertaken by the farm following the previous audit. Instances of non-compliance that trigger annual audits within the WIETA system include poor housing and sanitation, non-payment of the minimum wage, physical or verbal abuse and systemic disrespect of workers, and 'severe non-compliances with the basic conditions of employment' (as laid down by the BCEA and the Occupational Health and Safety Act).⁵³

Similarly, the frequency of SIZA audits is determined by a farm's risk profile plotted along SIZA's Audit Frequency Matrix. The audit matrix distinguishes between four categories of producers, based on their compliance with the SIZA code: those in the platinum category (highest score) are audited every three years; those in the silver and gold categories, every two years; and those in the bronze category, annually. Given the cost of audit fees and the time spent on audit preparation, the variation of frequency of audits acts as an incentive to encourage compliance. The categorisation of producers via the audit matrix can also impact on sourcing decisions: Retha Louw, CEO of SIZA, states that if there is an oversupply of fruit in the market, buyers might be tempted to source from producers in the gold and platinum categories only.⁵⁴

To prevent audit fraud, unannounced audits are conducted by Fairtrade and SIZA. WIETA does not conduct unannounced audits, but does follow-up audits on a 'semi-announced' basis, that is, farmers are given just a few days' notice prior to the audit.⁵⁵

3.4.3. Costs of audits

In 2017 the cost to audit a farm against the Fairtrade standard started at about R25 000 per annum per producer and went up to R85 000 to R100 000 per annum for a so-called multi-estate producer. In contrast, WIETA and SIZA audits cost approximately R7 500.⁵⁶ In addition, audits identify instances of non-compliance that could mean considerable cost for the farmer to rectify.

⁵³ Interview with Linda Lipparoni, CEO of WIETA, 17 February 2017, Techno Park, Stellenbosch

⁵⁴ Interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West

⁵⁵ E-mail communication with Linda Lipparoni, CEO of WIETA, 7 July 2017

⁵⁶ Since the introduction of enforced audits in the wine industry, Vinpro, the industry body for the South African wine industry, provides a once-off audit subsidy of R2 500 to its members.

These could include infrastructural changes, such as improving workers' housing or building showers for sprayers, paying for medical check-ups for sprayers, and arranging for statutory health and safety training for workers.⁵⁷

3.5 Certification and sanctions

The last component of the code process is certification, which can include sanctions for non-compliance. The sanctions applied by the certifiers depend mainly on the severity of type of non-compliance.

All three certifiers define critical thresholds (tied to the ranking of different standards) to decide whether to suspend or decertify producers. Fairtrade distinguishes between so-called 'core' standards, which must be met before a compliance certificate can be issued, and 'development' standards, which refer to continuous improvements that producers are expected to meet over time. While not all development standards have to be met, producers' scores are dependent on the number of development standards with which they comply.

Suspensions and decertifications in the Fairtrade system are triggered by the severity of non-compliance found during the audit, a failure to comply with certification rules and procedures, and the risk to the credibility of the Fairtrade system.⁵⁸ In the Fairtrade system, suspension or decertification disqualifies producers from selling their produce as Fairtrade. Suspension amounts to a temporary disqualification until producers have taken corrective measures to address critical non-compliance. Suspension is a 'stick' that FLOCERT, Fairtrade's certification body, frequently uses. In 2016 a quarter of South African Fairtrade-certified farms were suspended, while 11% were decertified.

Most Fairtrade decertifications were, however, voluntary and not as a result of non-compliance.⁵⁹ Decertification ejects producers from the system and they have to reapply for certification again from scratch. Suspensions and decertifications not only lead to a loss of market access, but are also costly, as producers often have to pay for additional audits before they are allowed back into the system.

The WIETA code distinguishes between three types of standards: 'Immediate', which must be complied with at the initial audit; 'Year 2', which must be in place a year following the initial audit; and 'Better practice principles', which do not have to be adhered to but indicate that the farm is going beyond the minimum requirements prescribed by WIETA.

⁵⁷ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch; interview with Christo Conradie, Manager of Wine Cellars at Vinpro, Paarl, 20 February 2017

⁵⁸ See FLOCERT Standard Operating Procedure: Chapter 9. Available at: <http://www.flocert.net/wp-content/uploads/2014/02/CERT-Certification-SOP-31-en.pdf>.

⁵⁹ In the case of Fairtrade, farmers sometimes voluntarily decertify themselves because the cost of certification outweighs the benefits.

WIETA has, remarkably, never suspended or decertified a farm. Towards the end of 2016, WIETA came under fire for its failure to sanction non-compliant producers. It emerged that on one farm WIETA provided ongoing conditional certification on a three-month basis for an extended period. WIETA's CEO defended its policy by arguing:

There is a huge danger in cutting off a supplier, because then [WIETA does not] have access to the workers and who is going to protect those workers then? What leverage does an organisation like WIETA then have to act in a restorative manner to address [the problems on farms]? That is the reason why in the past there has been an attempt to say: 'Well, we don't necessarily want to take away the certification. We will kind of hold [the certification] as the carrot rather than the stick in some instances.'⁶⁰

The guidance document to the SIZA code, as well as its Audit Process and Methodology (APM) distinguish between minor, major and critical non-compliance. Yet, these distinctions are not made in the code itself, so it is unclear on what basis SIZA suspends producers. Although SIZA's APM defines critical non-compliances, it does not include the words 'suspension' or 'decertification'. Instead, auditors are given the following instruction:

Where a 'critical' non-compliance is identified, the auditor should inform the audit entity immediately of said critical status. The audit entity should formally communicate the critical non-compliance to the audit requestor and submit the alert notification on the SIZA platform within 24 hours so that *agreement* can be reached on the status and action to be taken. Based on this decision, the audit entity, SIZA, the audit requestor and the employment site can then work together to plan an appropriate and *timely resolution* to the issue. (SIZA APM: 4.5, p.27, own italics)

According to Louw (SIZA CEO), corrective actions made by the producer following an audit are signed off by the auditor, rather than by SIZA. If the auditor does not sign off on the corrective actions made by the producer, then no audit confirmation letter is generated by the SIZA online platform. The ultimate sanction applied by SIZA is, therefore, to not issue an audit confirmation letter to a non-compliant producer, which effectively precludes it from exporting and therefore amounts to its suspension.

Asked how many producers have ever been precluded from exporting, Louw (SIZA CEO) replied that the threat of not issuing a certificate is normally sufficient to get producers to correct their non-compliance. An audit confirmation letter is not issued unless all corrective actions are done.⁶¹ SIZA's Monitoring and Evaluation Report for 2016 does not once refer to suspension of members. Given that independent audit companies,

⁶⁰ Interview with Linda Lipparoni, CEO of WIETA, , 17 February 2017, Techno Park, Stellenbosch

⁶¹ E-mail communication with Retha Louw, CEO of SIZA, 25 May 2017

which are profit-driven, make the final decision as to whether a producer receives an audit confirmation letter or not, one can see why there have been no suspensions. Producers choose which audit company they want to use to conduct their SIZA audit. If an audit company develops a reputation for being overly strict and not readily accepting corrective actions, it can be fairly sure it will not be chosen as the preferred auditor by producers.

While WIETA and SIZA are reluctant to decertify or suspend in favour of a remedial approach, FLOCERT argues that such a sanction must be implemented when required:

Otherwise you are really just condoning the minority of extremely poor conditions...Just last week we did an audit on a farm...where the auditor was just shocked...You actually are astounded that people would apply [for certification]: illegal migrants, people without documentation, [management] holding on to ID books, terrible conditions in hostels; just a range of terrible conditions in hostels...What sort of a mismatch is there between that farm management's ideal of what is acceptable and ethical and what they are actually doing?⁶²

4. LEVERAGING THE CODES BY TRADE UNIONS AND NGOs, AND VIA THE MEDIA

In this section we gauge trade unions' and workers' knowledge of and level of engagement with the codes; the extent to which they have contested codes and the process of code-making in order to shape the codes; and the degree to which they have managed to leverage the codes to improve the working and housing conditions on farms.

Surprisingly, only the directors of the NGOs spoke with knowledge about the provisions of the codes. Trade union organisers, in general, did not have detailed knowledge of the codes, and what they knew was limited to the WIETA code. In part, this appeared to be because some interviewees reported that the trade union federation, Agricultural Workers' Empowerment Trade Union Council. (AWETUC had trained them on WIETA's code at one stage.) None of the unionists could identify specific provisions in the codes that they found wanting or beneficial. This limited knowledge was displayed by statements such as 'the codes need to get farmworkers and farmers to be able to sit together and engage'. All three codes, to a greater or lesser extent, aim to facilitate such a process. Even SIZA, the least onerous of the three codes, requires that 'there is evidence that regular communication takes place between management and the workforce' (SC: 5.7).

⁶² Interview with representative of FLOCERT, 16 February 2017, Observatory, Cape Town

The unionists were not aware that Fairtrade and WIETA require that producers pay workers a living wage and that both have provisions that promote freedom of association and collective bargaining; neither did they know about WIETA's standard that farmers must have a protocol in place to allow union access to farms. No mention was made of these enabling standards. An NGO board member of WIETA stated that he had consistently asked trade unionists why they are not 'using this golden opportunity to enhance organisation and unionisation'.⁶³ While he has observed unions' willingness to engage at WIETA board meetings, this has not translated into engagement at farm level, where, he argued, trade union organisers should do more to educate shop stewards on how to leverage the code.

Supporting the above point, it was evident that the interviews had the effect of stimulating trade unionists' thinking about the codes. One interviewee, for example, repeatedly acknowledged that the questions being asked had 'opened up his thinking' and he admitted that the union could have been doing more with regard to the codes and WIETA. Other interviewees also indicated that the interviews had made them think about the codes in a way they had not previously done. Clearly, their unions had never analysed the codes, or identified strengths and weaknesses and ways of addressing weaknesses and leveraging strengths.

Organisers' views of the codes ranged from being vaguely critical to extremely critical. It seems that the better an organiser's knowledge of the codes, the more critical they were. For example, the director of the TCOE had workshopped the strengths and weaknesses of the WIETA code with CSAAWU's shop stewards, and it was notable that CSAAWU organisers had much stronger critical opinions about WIETA than did other trade union officials. It was also significant that CSAAWU, which has not become a member of WIETA, was the most vocal in its criticism of WIETA.

The codes were criticised because they did not address what was seen as the root cause of poor labour conditions on farms: Trevor Christians, the general secretary of CSAAWU, commented that 'codes do not challenge or intervene in the existing power relations on farms and that their impact will always be relatively superficial and will not lead to a transformation of the sector'. He argued that 'these ethical codes mean nothing' as 'the farming community [is still] operating on master and servant relations'. However, criticism of the codes was very general and failed to address specific areas of weakness, which, again, probably stems from a lack of detailed knowledge of the codes.

Apart from one seasoned unionist, who has worked in the industry for decades, unionists were unaware of the context or level of contestation in which the private codes emerged.

⁶³ Interview with Mzukisi Mooi, Centre for Rural Legal Studies, Stellenbosch, 15 February 2017

They argued that codes were established only to promote the export interest of farmers. This view was strongly articulated by a CSAAWU organiser, who commented that:

WIETA is the mouthpiece of the bosses...WIETA is not there for the workers...WIETA do not play a neutral role. WIETA is not supporting the workers...they are not enforcing ethical standards. All that WIETA does is to collaborate with the farmers and to deny that the farmers ever do anything [wrong].⁶⁴

Some unionists, while critical of the codes, acknowledged that they held some benefits for workers and unions. For instance, one compared conditions on the Western Cape's fruit and wine farms with farms in other parts of the country that were not subjected to private social codes, describing the latter as 'the wild west'. Furthermore, some unionists stated that, if a farm is certified, it gives the union additional leverage to push for improved conditions, as infractions can be reported to the certifying body. However, unionists did not consider the sanctioning power of certifying bodies a major deterrent to non-compliance. This was probably because their experience of codes was mostly limited to WIETA, which has so far failed to suspend or decertify a farmer.

Criticisms of the codes' shortcomings led to observations about national legislation and the role of government in relation to the codes. There was generally a sense that government should 'play a bigger role' to protect workers, and should, in some way, take more of a lead with regard to the codes. One trade unionist spoke about the need for codes to 'become more legislative', which reflected the perception that legislation had more 'teeth' than the codes (although, somewhat contradictorily, the same interviewee spoke about the codes and legislation covering much the same areas).

Most unionists believed that ultimately, all the codes do is provide 'the seal' of certification, which they felt was not sufficiently effective; they wanted more explicit sanctions, such as fines. This view contradicts the view that not getting certification or having it taken away would be a much bigger threat to a farmer than a Department of Labour compliance order or a fine. It probably reflects a perception that the remedial side of the codes is too generous; one interviewee was opposed to farmers being given time to address certain instances of non-compliance. There are very few farms on which unions have enough members to enforce organisational rights, and the desire for codes that are more 'legislative' was also linked to the view that this would give unions better access to farms. However, this perception points to a lack of knowledge about provisions in codes – in particular WIETA – requiring that farmers have a protocol in place to allow union access to farms.

⁶⁴ Karel Swarts, quoted on the documentary *Bitter Grapes*

Another union interviewee said something similar: there needs to be government oversight of the codes and compliance with them – this cannot be left to private codes. Unions in the agricultural sector are simply too weak to ensure that codes are enforced properly or beefed up. The fact that the codes have had only a limited impact on farmworkers' social conditions makes it inevitable that they will have to go to government for greater assistance.

The same interviewee made the related point that no synergy exists between labour legislation (which includes SD13) and codes. Nothing in the current labour statutes and SD13 even references the codes. He saw legislation and SD13, as enforced by the Department of Labour, as being more effective than private social codes.

4.1. Using complaints procedures

One of the advantages of the codes is that they enable better enforcement of legislation in a context where the understaffed Department of Labour struggles to police compliance with labour rights in the sector.⁶⁵ All three codes standards have complaints procedures to report non-compliance by their member farms. However, management of WIETA and Fairtrade revealed that their complaints systems were underutilised.⁶⁶ A representative of FLOCERT commented:

I find [the lack of use of our complaints procedure] interesting, because [contacting us about something that is wrong on a farm] would be an easy way to get the job done. If you lay a complaint with us, we'll go and do the audit for you and we'll give a non-compliance and there will be a sanction, so it is much easier...⁶⁷

Lipparoni said they relied on NGOs and trade unions 'to be our eyes and ears out there and to bring...violations or bad labour practices to our attention'. But, a board member noted, unions had largely failed to play such a monitoring role. If NGOs and trade unions did not do, so it undermined the effectiveness of the code.

The lack of complaints could, however, also be ascribed in part to the onerous procedures to be followed to lodge complaints. In addition, these procedures were seemingly drawn up based on the assumptions that workers have internet access and that they are literate in English. Alternatively, the assumption is that workers will first report complaints to unions or NGO officials, who would then engage with the complaints procedures of the certifying bodies. But this assumption is questionable, given that the vast majority of farmworkers are not members of trade unions.

⁶⁵ See: GroundUp: 'Labour department can't protect workers', 9 May 2017, *Daily Maverick*. Available online at <https://www.dailymaverick.co.za/article/2017-05-09-groundup-labour-department-cant-protect-workers/#.WRmhiWdf34i>.

⁶⁶ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park; interview with Mzukisi Mooi, Centre for Rural Legal Studies, Stellenbosch, 15 February 2017

⁶⁷ Interview with representative of FLOCERT, 16 February 2017, Observatory, Cape Town

And even if a complaint does make its way to a NGO or union, the procedure to lodge it is challenging. A staff member of AFIT complained that it took her 'half a day' to lodge a complaint on Fairtrade's complaints platform:

It is such a complicated system that no worker will be able to fill it in. Firstly, you have to make an allegation – and the allegation needs to be linked to a specific standard. Secondly, the whole process is in English. Also the standard [that has to be linked to the complaint] is only available in English...It is not user-friendly for a worker that has a low level of education and that does not have the resources: where will they find a laptop to lodge the complaint? If it took me half a day, how long would it take a worker?⁶⁸

WIETA's complaints system was used more regularly than those of Fairtrade and SIZA. It helped that WIETA displayed the number of a toll-free complaints helpline on the information posters it put up at farms. It also delegated a staff member to answer calls to the helpline. Some unions representing workers on WIETA-certified farms also e-mail through complaints. WIETA now wants to start a WhatsApp line to allow workers to lay complaints after hours and send photographs of their payslips and unsafe equipment and facilities in the workplace. Yet, even those who phoned or e-mailed through complaints eventually had to make use of WIETA's formalised complaints system to trigger further investigations. A producer board member of WIETA explained that the organisation required that a formal complaint be lodged via its system because previously it had been too easy for unions to lay complaints against farms 'because they had nothing to lose'.⁶⁹ When an investigation was launched (at great cost) no wrongdoing could be found. His comment indicates that some unions had, in fact, leveraged the codes and the audit process to 'punish' producers; if only to get back at producers with whom they had an axe to grind. This behaviour of unions indicated that they set more store by the auditing process than they readily admitted.

While a helpline number is also displayed on SIZA's website and on its information poster displayed at farms, the number is not for complaints. On dialling the number, the caller is informed that the helpline was created to assist producers to upload their reports onto SEDEX's web portal.⁷⁰ Furthermore, NGO officials who were interviewed complained that they struggled to get access to the list of certified farms to establish whether they could lodge a complaint with one of the certifying bodies.⁷¹ It was not clear whether unions have even tried to obtain these lists. Although Fairtrade's website contains a list of certified producers, the information is difficult to find.⁷²

⁶⁸ Telephonic interview with Denile Samuels of AFIT, 1 March 2017

⁶⁹ Interview with Christo Conradie, Manager of Wine Cellars at Vinpro, Paarl, 20 February 2017

⁷⁰ Telephone call made by Margareet Visser to SIZA's offices on 27 April 2017

⁷¹ Telephonic interview with Denile Samuels of AFIT, 1 March 2017; telephonic interview with *Lali Naidoo, MD of ECARP*, 1 March 2017

⁷² See: <http://www.fairtradeafrica.net/producers-products/producer-profiles/?submitProfileSearch=Search&producerName=0&flood=&producerSetup%5B%5D=2&Countries%5B%5D=1> (visited 3 May 2017).

At the time the research was conducted if one clicked on the hyperlink 'WIETA members' on the WIETA website, the message 'currently being updated' appears.⁷³ No list of SIZA-certified farms could be found on the SIZA's website. If a certification body wants unions and NGOs to help monitor compliance with their codes, an obvious first step would be to be transparent about which farms are certified.

4.2 Using value chain round tables as a grievance forum

Instead of making use of the complaints procedures, unions have begun to report non-compliant farms directly to value chain round tables (VCRTs). The latter is an initiative of the Department of Agriculture, Forestry and Fisheries (DAFF) to bring together stakeholders in the value chain to coordinate the processes aimed at resolving problems and enhancing competitiveness. Stakeholders on the VCRTs include worker and producer organisations, exporters, relevant government departments and parastatals, such as the CCMA. Besides bringing together industry decision-makers, the VCRTs are statutory bodies, and so have clout.

The fruit and wine VCRTs have created a Worker Welfare Working Group, which provides a forum where unions and NGOs (that are not necessarily board members of either WIETA or SIZA) can come face-to-face with the management of industry organisations, such as Vinpro and Hortgro, as well as the management of WIETA and SIZA. If the nature of the complaint falls outside the WIETA or SIZA code, or if the violation happened on non-WIETA or SIZA farms, a formal complaint is sent to the Department of Agriculture (Western Cape) which investigates the matter and reports back to the WIETA, SIZA and the VCRT.⁷⁴ It is interesting to note that the Department of Agriculture, rather than the Department of Labour, has been approached to play this investigative role. The explanation from stakeholders was that the Department of Labour was not up to the task.

Although the Worker Welfare Working Group is supposed to discuss systemic issues that plague labour relations on farms, the platform has become the main forum to alert WIETA and SIZA about non-compliance with their codes. Two unionists have made extensive use of the Working Group meetings to report non-compliance with the codes.⁷⁵ A WIETA board member said he had suggested to CSAAWU that it does the same, but it had not done anything yet. As a result of these complaints, the wine industry's VCRT started a rapid response task team in 2016 to investigate complaints lodged by unions.⁷⁶

⁷³ See http://www.wieta.org.za/wieta_members.php (visited on 3 May 2017).

⁷⁴ Telephone conversation with Retha Louw, CEO of SIZA, 28 April 2017

⁷⁵ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch; interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West; interview with Mzukisi Mooi, Centre for Rural Legal Studies, Stellenbosch, 15 February 2017

⁷⁶ *Anonymous source (1)*, 1 March 2017

The Grahamstown-based NGO, ECARP, followed a similar process to escalate its complaints, and facilitated the Agrarian Multistakeholder Dialogue Forum (AMDF). However, because the AMDF is not a value chain round table, it has no statutory powers, which means there is no obligation on stakeholders to attend the forum. The AMDF originally consisted of ECARP, its area committees, various government departments, the producer organisation Agri-Eastern Cape, the CCMA and SIZA. Agri-Eastern Cape withdrew from the forum in reaction to ECARP's protests about land reform. Many of the government departments have also left, so the effectiveness of the forum has declined. According to the director of ECARP, the forum discussed non-compliance on farms as well as low legal thresholds. Louw (SIZA CEO), who continues to attend the quarterly forum, said she has received 'stacks of complaints' from ECARP's area committees. She commented: 'I find the forum very useful, because it is a good place to sort things out and to have an open discussion about problems. If they don't put these issues on the table, we will never know about the problems.'⁷⁷

4.3 An example of some leveraging of a code: AFIT

In contrast to the unions and ECARP, which have mostly used the codes as an additional mechanism to enforce compliance with national legislation, AFIT has been more proactive in leveraging codes, specifically the Fairtrade code. AFIT is a network that was established by an NGO, the Environmental Monitoring Group (EMG), to assist small farmers and workers that are part of Fairtrade to leverage benefits from the system. AFIT's interventions to help workers on Fairtrade farms have focused on three areas. First, it has provided extensive rights-based training to workers by hosting an annual spring school for the past five years. It has also hosted a travelling theatre for workers to educate them about concepts, such as solidarity, grievance procedures, bargaining, sexual harassment, xenophobia and racism.

Second, AFIT has created a network of farmworkers who were able to share their experiences of how workers can leverage the code. For example, a FAWU shop steward who attended AFIT training said that, since his farm had become Fairtrade certified, he negotiated directly with the Fairtrade officer who represented the multi-estate to which his farm belonged. By threatening to report the multi-estate's non-compliances with the Fairtrade code directly to FLOCERT he got 'quicker' and more effective results from the Fairtrade officer than he would have done had he worked through union channels. As a result of his intervention, management had changed a piece-rate system that workers had found unfair.

However, another worthwhile AFIT initiative has not achieved success. This initiative involves sharing information about newly certified farms with unions, in order to promote unionisation on Fairtrade-certified farms. According to an AFIT staff member FAWU, BAWUSA, CSAAWU and Sikhula Sonke had attended AFIT meetings.

⁷⁷ Interview with Retha Louw, CEO of SIZA, 21 February 2017, Somerset West

However, AFIT staff became ‘disillusioned, because one month there were five trade unionists, but at the next meeting, there were only three’.⁷⁸ The staff member also complained that unions failed to provide ‘good feedback’ on whether they had visited newly certified farms and whether they were successful in recruiting members. Moreover, when AFIT invited unions to regional workshops that it hosted for workers on its member farms, where unions were given a platform to recruit workers, only two organisers from BAWUSA took up the offer and ‘little came of it’. Recently, AFIT planned to share information about Fairtrade-certified farms with AWETUC again, so that the latter could circulate this information to its affiliated unions, but only on the condition that unions made more effort to visit farms and provide AFIT with feedback about the outcome of their visits.⁷⁹

4.4 Leveraging codes via the media: The documentary *Bitter Grapes*

Leveraging of codes is not restricted to workers, trade unions and NGOs. A good example of how someone external to the industry can engage with a social code in order to further workers’ interests is provided by the documentary *Bitter Grapes*. Made by Danish film-maker Tom Heinemann, the documentary was screened on Danish and Swedish television towards the end of 2016. It alleged labour law violations on Western Cape wine farms and showed workers living in dire housing conditions. It also included interviews with CSAAWU, the director of TCOE, and organisers of Sikhula Sonke and BAWUSA, unions that were generally highly critical of WIETA.

The documentary focuses on working and housing conditions on supplier farms to Robertson Winery. However, it also questions the checks and balances that Systembolaget, the Nordic alcohol monopoly that buys wine from Robertson Winery, put in place to ensure that their wine is ethically sourced. The focus on Robertson Winery was perhaps not coincidental, as CSAAWU was involved in a protracted strike at the company when Heinemann visited South Africa.

Industry sources dismissed the documentary as biased but it nevertheless had potentially serious repercussions,⁸⁰ particularly in Scandinavian countries. Following the documentary, the Danish supermarket chain, Dagrofa, temporarily withdrew Robertson Winery bottles from its shelves.⁸¹ Dagrofa also prompted the Norwegian wine importer, Vinmonopolet, to conduct an inspection tour of South African wine

⁷⁸ Telephonic interview with Denile Samuels of AFIT, 1 March 2017

⁷⁹ Telephonic interview with Denile Samuels of AFIT, 1 March 2017

⁸⁰ See ‘Biased documentary condemned’, Press release issued by Vinpro, 3 November 2016. Available at: <http://vinpro.co.za/biased-documentary-condemned/>; See ‘Response to *Bitter Grapes* documentary’, press release issued by Robertson Winery, 27 October 2016, available at: <https://www.robertsonwinery.co.za/response-bitter-grapes-documentary/>.

⁸¹ ‘Fallout over *Bitter Grapes* documentary deepens’, Lauren Eads, 21 November 2016. Website of The Drinks Business. See: <https://www.thedrinksbusiness.com/2016/11/sa-vineyards-served-after-bitter-grapes-documentary/>.

farms.⁸² In addition, Systembolaget, the Swedish alcohol monopoly that imported Robertson Winery's wine, came under fire for sourcing unethically produced wine. This prompted Systembolaget to employ an additional audit company to verify conditions on Robertson Winery's supplier farms. It was feared that the documentary may lead to a boycott of South African wine by Scandinavian countries. That would have hurt the industry, as imports of South African wine to Denmark alone had risen by 78% in the last ten years and South African wines were outselling French wines in Sweden.⁸³

The documentary put WIETA in the spotlight. Asked why he chose to focus on WIETA, Heinemann replied:

First of all, because the farmers did not want to talk to me. Secondly, because WIETA makes this stamp and code available online, and on the bottleneck label it says 'Certified Fair Labour Practice'. And when you issue a code and statements like that, then I get turned on, because that is exactly what I have been working on for so many years in other contexts. It is about what you promise me: I am a consumer and when I go down to the supermarket and I see that the packet of meat is ecological, then it better be...because if I find that it is not ecological, but a hoax, then it will never be sold in any Danish supermarket again. And that is exactly what WIETA does – they say that by using this label we guarantee you that there will be fair labour practices on our members' farms. But what I can see is that there are not. That is why WIETA became a very important opponent and player in this documentary.⁸⁴

Heinemann's main criticism of WIETA was its failure to apply sanctions to non-compliant producers. In his documentary this point was driven home by Karel Swart of CSAAWU, who commented that 'WIETA is a very toothless organisation'. The documentary had its roots in the activism of Systembolaget's workers, who decided to stand in solidarity with workers on South African wine farms.

In 2013 Systembolaget workers started the Ethical Wine Trade Campaign (EWTC), an international network demanding better working conditions on wine farms in the developing countries from which Nordic alcohol monopolies source. The EWTC wrote to Systembolaget to alert it about alleged worker rights violations on South African wine farms. By that stage, CSAAWU, Sikhula Sonke and BAWUSA had become part of the EWTC and therefore signed a letter to Systembolaget, complaining about conditions on the South African farms from which its wine was sourced.

⁸² See: 'South African farmworkers get Norwegian award' <https://stiffkitten.wordpress.com/2017/03/23/south-african-farmworkers-get-norwegian-award/>.

⁸³ 'SA wines pulled off Danish shelves after doccie on slavery at vineyards', Tanya Farber, 23 October 2016, *Sunday Times*. See: <http://www.timeslive.co.za/sundaytimes/stnews/2016/10/23/SA-wines-pulled-off-Danish-shelves-after-doccie-on-slavery-at-vineyards1>.

⁸⁴ Tom Heinemann, Skype interview, 28 February 2017

The letter was widely distributed to the Swedish media and received substantial media coverage,⁸⁵ piquing the interest of Heinemann, who had previously focused on (un)fair trade issues.⁸⁶ He contacted the solidarity organisation, Afrika Kontakt, which put him in contact with their 'sister organisation', Afrikagrupperna, a member of the EWTC. Afrikagrupperna eventually put Heinemann in touch with the South African members of the EWTC: Sikhula Sonke and CSAAWU.⁸⁷

Hence, the strategy adopted by Systembolaget's workers not only helped South African trade unions to escalate their grievances to Systembolaget, but it effectively catapulted their grievances into the public domain via national television. It gave South African trade unions the opportunity to exercise their symbolic or moral power by contesting the legitimacy and credibility of WIETA as a beacon of ethical correctness. As noted in the introduction to this paper, symbolic power is constituted in the public sphere (for instance, state television) and is elaborated in images and ideas that resonate with community and public consciousness (such as farmworkers being exploited by 'racist' farmers) (Van Holdt & Webster, 2009). *Bitter Grapes* is probably a textbook case of the exercise of symbolic power.

Heinemann, however, told only part of the story of why the concept of ethical or fair trade failed in this instance, by stopping at the farm gate. Unlike the EWTC, which directly linked poor working conditions at farm level to unfair trade conditions along the value chain, Heinemann remained silent about this issue.

According to Lipparoni (WIETA CEO), WIETA has had discussions with Systembolaget about the low prices received by South African producers: 'We've made the point that we are unable to pay a living wage to workers if prices are so low. But they, in turn, blame their government for the low prices.'⁸⁸ Heinemann said he made a decision early on to focus only on the plight of workers and not to include the value chain context which influences workers' livelihoods, because explaining this context would be 'a major complicated story'.

It is a pity that the documentary failed to use an important opportunity to push a potentially transformative narrative. The latter would include making the point that conditions at farm level cannot be separated from fair trade higher up the value chain: as long as unfair trading conditions are imposed on farmers, they are likely to pass on risk to workers.

⁸⁵ See: 'Cape farmworkers get a boost from Swedish wine value chain campaign', Åsa Eriksson, 20 January 2014. <http://www.plaas.org.za/blog/cape-farmworkers-get-boost-swedish-wine-value-chain-campaign>.

⁸⁶ Heinemann's previous documentaries include *A Killer Bargain* about the conditions of cotton workers in developing countries and *The Bitter Taste of Tea*, which questions whether workers labouring on Fairtrade-certified tea plantations are getting a better deal. See Tom Heinemann's website at: <http://tomheinemann.dk/>.

⁸⁷ E-mail correspondence with Agnes Nygren, programme officers at Afrikagrupperna, 11 May 2017

⁸⁸ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

4.5 The impact of the documentary

Heinemann's documentary emphasised labour's charge that WIETA had been captured by producer interests. In the documentary a union member of WIETA's board said: 'We clearly have a case of power imbalances at play here and producers, especially those with deep pockets, seem to think they own WIETA as their marketing tool'.

Since the documentary, WIETA has made more effort to counter charges of producer capture by including the voices of ordinary workers in its policy debates. Towards the end of 2016 it invited unions and NGOs to a workshop to discuss WIETA's policy on freedom of association. It met with the ordinary members of eight unions affiliated with AWETUC to record their various grievances. Two meetings were also held in Stellenbosch and Robertson, the respective recruiting grounds of the NGO, Women on Farms, and the union, CSAAWU, to share information with ordinary workers about the WIETA code and its audit process, but also to allow unions the opportunity to canvas and mobilise workers.⁸⁹ WIETA has now budgeted for a person to organise regular weekend sessions with ordinary farmworkers, in order to have its finger on the pulse of farmworkers' grievances. WIETA believes that these sessions with workers are vital to get a more robust policy debate going within the organisation:

At the moment [because of the weekend sessions] we can actually say these are the issues... we can actually say [to Vinpro]: Listen, the thirty farms that you are raving about [that are allegedly so good], well these are the types of things that are coming through...so my argument is the extent to which producer organisations actually understand the severity of the non-compliances that are happening out there.⁹⁰

The contestation within WIETA between labour and producers, as well as between producers, did not just happen. In a private (but subsequently leaked) e-mail to fellow board members, written at the time Heinemann was filming in South Africa, the manager of Fairview, one of the first wine farms to join WIETA voluntarily, wrote: 'I always thought that WIETA was founded as a vehicle to motivate better living and work conditions for workers, as well as a platform to generate better relationships between farmers and their workers. My concern is that some cellars regard the WIETA seal as a tool to sell wine'.⁹¹ His e-mail also suggested partiality by the board: 'Why then is it acceptable for the employer to communicate with WIETA producer board members, but when a board member representing labour asks for a worker's telephone number then it is wrong?'

⁸⁹ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

⁹⁰ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

⁹¹ E-mail from Donald Mouton to the WIETA board, dated, 6 June 2016. Available online at: <http://www.bittergrapes.net/wp-content/uploads/2016/10/Donald-Mouton-mail-to-the-board.pdf>

The e-mail was indicative of smouldering tensions within WIETA, which can be ascribed to its transition from an organisation that promoted *voluntary* ethical trade practices to one in which it is seen as an industry policeman that conducts compulsory audits.

The power this gives WIETA made it important for producers to get control of the organisation, hence the attempt to ‘capture’ WIETA. Lipparoni explained:

Many of [the producers] don’t necessarily have a choice in going through [the audit] process, but they have to become part of that process by virtue of having some kind of contractual obligation to their buyers...I think the danger is that because these issues are so sensitive, there are vested interests at the level of the board...⁹²

Enforced audits have, therefore, rolled back the original narrative WIETA used, namely that it could enable broader development in the wine farming sector by establishing a core of best practice farms. To prevent too many producers from being vetted out of the supply chain, producer members of WIETA had to guard against standards that are ‘too high’, especially in a context where the local wine industry is facing difficult financial circumstances and many producers are going bankrupt. This saw the Global Sourcing narrative (Nelson and Tallontire, 2014), which views standards primarily as a way to secure supply chains and manage reputational risk, become dominant within WIETA.

Lipparoni argues that to some extent the documentary corrected the power imbalance between producer and labour voices within WIETA: it ‘gave WIETA management clout to actually say “enough, we have to be stricter”’. In the months following the documentary, WIETA decided to begin applying sanctions, as opposed to just threatening to apply sanctions:

- Producers who refuse to give auditors access to their farms to investigate allegations against them within a specific time frame will be immediately suspended.
- WIETA will use a third party auditor to investigate allegations against farmers to guarantee impartiality.
- If producers fail to implement remedial actions following an audit within a prescribed timeline, they will be suspended.⁹³
- The board has accepted the implementation of a new risk matrix that would categorise producers according to their performance against the WIETA code. This categorisation will be displayed on their compliance certificate, with a low ranking reflecting badly on a producer.⁹⁴
- The board is reconsidering the ratio for what it considers to be ‘ethically produced’ wine. Presently, boxed wine can qualify as WIETA-certified if it is

⁹² Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

⁹³ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch

⁹⁴ Interview with Linda Lipparoni, CEO of WIETA, and Amelia Heyns of WIETA, 17 February 2017, Techno Park, Stellenbosch; interview with Christo Conradie, Manager of Wine Cellars at Vinpro, Paarl, 20 February 2017

tapped from a wine tank in which 60% of the wine is from producers that were certified at the point of intake, and 40% of the wine is from producers that are in the process of undertaking corrective actions for certification. The WIETA board has decided to increase this ratio to 100% in 2018.⁹⁵

5. HAS THE STATE PLAYED A ROLE IN FACILITATING THE LEVERAGING OF CODES

Our final question is whether the state influences the capacity of local actors to engage with codes to improve labour standards. Heinemann's use of symbolic power might have elicited stricter enforcement of WIETA's codes, but it has failed to raise the WIETA standards. While producers who fail to meet WIETA's standards will, in future, be prevented from exporting wine to Scandinavia, those who succeed will continue to meet WIETA's existing standards; not any higher standards. Yet, as this study points out, local standards need to go beyond the legal minimum standards set by government, as these currently provide inadequate protection to the majority of fruit and wine farmworkers.

Whether local producers will or even can meet higher standards in future closely hinges on better regulation of the wine and fruit value chains by the state. As already mentioned, labour legislation fails to adequately protect the growing number of fixed-term and migrant workers employed on farms. If the state improves legislation to protect such vulnerable workers, private code makers will in all likelihood follow suit. Yet, for all its rhetoric about wanting to empower farmworkers, the state is aware of the financial pressure on producers, which limits their ability to significantly improve working conditions beyond the current legal minimum standards. The BFAP report – on which the state heavily relied when it set the new minimum wage in 2013 – found that a family of four, with two breadwinners, cannot sustain itself at nutritionally acceptable levels when both breadwinners only receive a daily wage of R150. Yet the same report also found that the majority of South African farmers would go bankrupt if they were to pay their workers R150 per day. BFAP concluded that this is the dilemma facing the agricultural sector.

The state has played a major role in creating this dilemma. In 1997, four years before the establishment of WIETA, government deregulated the agricultural industry. One of its main interventions was to close down statutory marketing boards. Marketing boards were designed to protect farmers from the vicissitudes of an uncertain climate, volatile prices and the inability of foreign and local markets to absorb their output (Williams et al, 1998: 70). These boards could use their monopoly power to keep prices high, a system that became known as the single channel market system.

⁹⁵ E-mail communication with Linda Lipparoni, CEO of WIETA, 11 July 2017

Deregulation destroyed producers' monopoly power and contributed to a switch in the character of the fresh fruit and wine global value chains – from producer to buyer driven chains – in which lead firms now govern value chains. This switch was further hastened by the fact that the closure of agricultural marketing boards happened at a point in time when retail power became increasingly consolidated. Thus, while producers' collective power dwindled following deregulation, retailer power surged. Instead of being forced to negotiate with producers *en bloc* – as was the case prior to deregulation – retailers began to play off producers against each other, putting a lot of pressure on farm gate prices, and affecting producers' abilities to pay higher wages and raise working conditions above legal minimum standards. Various studies have reported on the relatively small share of value that accrues to producers, in comparison to lead firms in the wine and fruit value chain (see Visser & Ferrer, 2015; Greenberg, 2013; Barrientos & Visser, 2012; Barrientos & Barrientos, 2002).

As a result of the increased pressure on their profit margins, producers have casualised and externalised their labour forces to reduce their labour costs. Casualisation and externalisation of labour, in turn, thwart unionisation and impact on the ability of unions to effectively engage with codes, but also to lobby government to improve labour regulations. The state's deregulation of how fruit is marketed therefore also compromised worker organisations' ability to horizontally govern the value chain: in this instance, to shape and change private standards, a primary instrument of vertical governance by lead firms.

6. CONCLUSION

This study explored the context in which two locally made private social codes had emerged; the scope they offer for improving farmworker conditions; to what end farmworker organisations engage with and manage to leverage codes; and, to the extent that worker organisations fail to do so, the reasons for such failure. Finally, the study looked at the role of the state in facilitating the capacity of local value chain actors to engage with and shape codes.

Both codes arose in a context where worker organisations and/or civil society publicly challenged international consumers and lead firms about poor working conditions on local fruit and wine farms. Local producer organisations, under pressure from lead firms smarting from adverse publicity, responded by developing the WIETA and SIZA codes. These both protected their access to foreign markets and were seen to better protect the reputations of lead firms in those markets. Worker contestation, however, has also influenced the codes. The actions of workers and producers can be viewed as an example of horizontal governance of the value chain. The formulation of local codes, especially of the SIZA code, can be viewed as an act of producer resistance to vertical governance in that producers 'took back (some) control' by setting the terms of self-regulation.

This study benchmarked the WIETA and SIZA codes against the Fairtrade code. Borrowing from Nelson and Tallontire's (2014) narrative analysis, we conclude that SIZA fits best into the Global Sourcing narrative and the multi-stakeholder WIETA into the Pragmatic Development narrative, while Fairtrade's much stronger focus on the promotion of enabling rights places it into the Broader Development narrative.

Once this foundation had been laid, the study focused on the knowledge possessed by trade union and worker organisation officials about the WIETA, SIZA and Fairtrade codes. Second, the study investigated whether these organisations have leveraged the codes to further farmworkers' causes. The findings were disappointing. Trade union officials had very limited knowledge of the codes and it seems that little strategic thinking had been done about the codes. Although NGO staff had somewhat better knowledge, organisers and staff of both types of organisation were generally unaware of standards in the codes that are higher than rights in national legislation and therefore offer workers the scope to improve their conditions. Not surprisingly, there are very few examples of trade unions and NGOs leveraging the codes. Significantly, the one instance in which leveraging was successful was rooted in a campaign launched by a trade union overseas and built on by a documentary film-maker. In this case, one sees symbolic power, rather than direct action by local worker organisations, leveraging the codes to effect improvements in implementation and enforcement.

To some extent, worker organisations' lack of engagement with the SIZA and Fairtrade codes is understandable. SIZA is primarily a producer organisation that does not have representatives of worker organisations on its board, so there is no role for worker organisation other than reporting non-compliant producers. The Fairtrade code, on the other hand, is only relevant on a tiny minority of farms. But the lack of engagement with WIETA is surprising, given that worker organisations were instrumental in its creation and that some of them are represented on its board.

There are a number of explanations for the lack of worker organisations' engagement with private social codes. First, they experience severe capacity problems: it is well-known that the manpower of cash-strapped unions and NGOs is thinly spread. Worker organisations complained that they struggled to find the time and resources to attend WIETA meetings and found ethical trade organisations' procedures to lodge complaints onerous.

A second explanation for this lack of engagement could be that local codes largely duplicate South African legislation. As a result, they do not offer much scope to raise standards above the legal minimum standards. It therefore becomes a case of 'why bother?'; especially in a context where the certification bodies do not apply sanctions rigorously. However, while local private social codes may duplicate national legislation, there is evidence that they are more rigorously enforced, especially their health and safety sections (see Alford, 2015; Visser & Ferrer, 2015).

To some extent this was acknowledged by trade unions when they compared labour conditions on Western Cape fruit and wine farms, where codes are routinely enforced, with those in other parts of the country. At a minimum therefore, private standards appear to lead to better enforcement of existing labour legislation. However, there have been other impacts stemming from the codes. Alford (2015) found that employers have started to employ temporary workers directly, instead of through a labour broker, in order to retain control over the contractual arrangements for farmworkers and offset any risks of malpractice.

Despite seemingly higher compliance levels on farms subscribing to private standards, some unions still have more faith in enforcement of regulations by the Department of Labour than in audits carried out in accordance with a private code, even though the consequences of failing an audit are potentially much more severe than is a fine from the Department. The operative word, however, is *potentially*, because in practice certifiers have failed to sanction non-compliant producers. Some union and NGO interviewees even went so far as to complain that WIETA has been 'captured' by producers. While SIZA attracted less criticism than WIETA, this was only because the worker organisations are much more engaged with WIETA than with SIZA, of which they know very little.

Lack of sanctioning by local code certifiers could be viewed as a failure of vertical governance, as one would expect that the lead firms in these value chains would have better checks and balances in place to verify code enforcement. But it seems that lead firms either turn a blind eye or tolerate a certain degree of non-sanctioning of producers. Their behaviour, however, must be understood in the light of the contradictory aims that are entailed in vertical governance. While lead firms exert control down their supply chains in the form of social standards, they also set prices and demand certain quality and delivery standards. Lead firms have to strike a balance between (primarily) maintaining prices as low as possible and demanding that workers get paid better wages and have improved working conditions. If the balance is wrong, they risk the sustainability of their supply chain, because both forms of governance impact on the profit margins of producers. Tolerance of non-compliance arguably provides the flexibility that allows the competing imperatives of vertical governance to stay, more or less, on an even keel.

Horizontal governance of the value chain by the state has the potential to have a major impact on worker organisations' abilities to leverage private social codes. The South African state's policy of deregulation destroyed producers' collective bargaining power in the marketplace, and therefore their ability to demand higher prices and, at least theoretically, pay higher wages. However, having deregulated, the state has failed to make any effort to mediate power relations between lead firms and local producers. This has directly impacted on the bargaining power of farmworkers to demand improved labour conditions.

Increased pressure on producers' profit margins continues to have major consequences for workers. Various studies have reported on a process of labour restructuring involving extensive casualisation and externalisation, following a change in the agricultural policy environment from 1997 to 2003 (Du Toit & Ally, 2003; Greenberg, 2003; Alford, 2015; Visser & Ferrer, 2015). Casualisation and externalisation, in turn, bedevil unionisation as workers on fixed-term contracts fear losing their jobs if they join a union. Without strong unions, workers' ability to challenge the vertical governance of lead firms and leverage standards is compromised.

A main point of this study is that effective leveraging of private codes by workers depends not only on their knowledge of and capacity to 'ride' codes, but also on effective vertical and horizontal governance of the value chain by lead firms and the state. Lead firms have failed to vertically govern value chains through local code-making and certification bodies to ensure decent work in their supply chains. The underlying structural reason is that they are demanding ethical work practices on farms while continuously 'squeezing' the profit margins of producers, to the point that the latter are unable to remain viable commercial entities. Unless these deeper power relations in the value chain are addressed by improved horizontal governance, the efforts of worker organisations to leverage codes remain limited. Unfortunately, neither the South African state nor producers, via WIETA and SIZA, are contesting the power imbalance in the fruit and wine value chains. Neither codes has sought to engage trading conditions beyond the farm gates of producers, while the state's deregulation of the sector undermined producers' bargaining power. The result has been pressure on wages and working conditions, as well as restructuring of work, which has weakened workers' ability to unionise and respond strategically to private social codes.

This study highlights the need for multi-disciplinary research to address a multi-faceted concept, such as food security. While the paper addresses quite a narrow aspect of food security, it must be read in the context of the many papers being produced by the DST-NRF Centre of Excellence that span the spectrum of food security issues. Further, while the focus of the paper is narrow, it speaks to both the local and global scales in relation to the livelihoods of farmworkers and sustainability of fruit and wine farms in the Western Cape. It also highlights how power moves between these scales via value chains in ways that critically impact farm livelihoods and sustainability.

REFERENCES

1. Alford M (2015) Public governance and multi-scalar tensions in global production networks: Crises in South African fruit. PhD thesis submitted to the University of Manchester, School of Environment, Education and Development, Institute of Development Policy and Management.
2. Anker R & Anker M (2013) Living wage for rural South Africa with focus on wine grape growing in Western Cape Province. Report prepared for Fairtrade International.
3. Barrientos A & Barrientos S (2002) Extending social protection to informal workers in the horticulture global value chain. Social Protection Discussion Paper 0216. Washington DC: World Bank.
4. Barrientos S (2006) *The ETI Code of Labour Practice: Do workers really benefit? Report on the ETI Impact Assessment, Part 2c: South Africa*. Institute of Development Studies, University of Sussex.
5. Barrientos S (2009) Pathways of women's empowerment: Women treading the corridors of corporate power: Beyond corporate social responsibility? Available online at: http://www.wide-network.ch/pdf/Aktuell_Veranstaltungen/PWE_GlobalHubBarrientos_Aug09.pdf.
6. Barrientos S (2013) Corporate purchasing practices in global production networks: A socially contested terrain. *Geoforum* 44: 44–51.
7. Barrientos S & Smith S (2007) Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems. *Third World Quarterly*, 28(4): 713–729.
8. Barrientos S & Visser M (2012) South African horticulture: Opportunities and challenges for economic and social upgrading in value chains. Capturing the Gains Working Paper 12.
9. Du Toit A (2001) *Globalising ethics: A case study of the social technologies of private regulation in the South African wine industry*. Land reform and agrarian change in Southern Africa: An occasional paper series. School of Government, University of the Western Cape.
10. Du Toit A & Ewert J (2002) Myths of globalisation: Private regulation and farmworker livelihoods on Western Cape Farms. *Transformation: Critical Perspectives on Southern Africa* 50(1): 77–104
11. Du Toit A & Ally F (2003) The externalisation and casualisation of farm labour in Western Cape horticulture. Research Report 16. Cape Town: PLAAS.
12. ETI (Ethical Trading Initiative) (1998) *Purpose, principles, programme, membership information*. London: ETI.
13. FTC: Fairtrade Standard for Hired Labour, Version 15_01_2014_v1.1. Available online at: https://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/HL_EN.pdf
14. Fine J (2007) A marriage made in heaven? Mismatches and misunderstandings between worker centres and unions. *British Journal of Industrial Relations* 45(2): 335–360.
15. Frundt HJ (2001) The impact of private codes and the union movement. *Reforma laboral y transformaciones sindicales*, Panel SEC41, International Latin America Studies Association's XXXIII Congress, Washington, DC, September 2001.
16. Goodman D & Watts M (1994) Reconfiguring the rural or forging the divide? Capitalist restructuring and the global agro-food system. *Journal of Peasant Studies* 22: 1–49.
17. Greenberg S (2003) Economic restructuring and the impact of women workers in wine and deciduous fruit global value chains. Paper presented at the Effects of Trade Liberalisation

and Labour Market Restructuring on Vulnerable Women Conference, Women on Farms Project and the Labour Research Service, Stellenbosch, 11–12 September.

18. Greenberg S (2013) A gendered analysis of wine export value chains from South Africa to Sweden. *Agrekon* 52(3): 34–62.
19. Meyer F, Davids T, Lombard J et al. (2012) Farm sectoral determination: An analysis of agricultural wages in South Africa. Report. Pretoria: Bureau for Food and Agricultural Policy (BFAP), University of Pretoria.
20. Nadvi K & Waltring F (2004) Making sense of global standards. In H Schmitz (Ed.) *Local enterprises in the global economy: Issues of governance and upgrading*. Cheltenham: Edward Elgar. pp. 53–94.
21. Nelson V & Tallontire A (2014) Battlefield for ideas: Changing narratives and power dynamics in private standards in global agricultural value chains. *Agriculture and Human Values* 31: 481–497.
22. Neilson J, Pritchard B & Yeung HW (2014) Global value chains and global production networks in the changing international political economy: An introduction. *Review of International Political Economy* 21(1): 1–8.
23. Riisgaard L (2009) Global Value Chains, Labor Organization and Private Social Standards: Lessons from East African Cut Flower Industries. *World Development* 37(2): 326–340.
24. SC: SIZA Standard, September 2016, Version 5. Available online at: <https://siza.co.za/wp-content/uploads/2016/11/SIZA-Standard-Sept-2016-V5.0.pdf>
25. Taylor N (2003) *Handleiding vir die lede van die Etiese Handelsvereniging vir die Wynbedryf (WIETA)*. Cape Town: WIETA.
26. Tallontire A, Opondo M, Nelson V & Martin A (2011) Beyond the vertical? Using value chains and governance as a framework to analyse private standards initiatives in agri-food chains. *Agriculture and Human Values* 28(3): 427–441.
27. Van Holdt K & Webster E (2009) Organising on the periphery: New sources of power in the South African workplace. In V Cornell (Ed.) *New Forms of Organisation*. Salt River: ILRIG.
28. Visser M & Ferrer S (2015) *Farm workers' living and working conditions in South Africa: Key trends, emergent issues, and underlying and structural problems*. Report commissioned by the South African office of the ILO.
29. Watts M (1996) Development III: The global agrofood system and late twentieth-century development (or Kautsky *redux*). *Progress in Human Geography*, 20 (20): 230–45.
30. WB: WIETA Benchmark. Available online at: http://www.wieta.org.za/download/WIETA_Code_in_English.pdf
31. WC: The WIETA Ethical Code of Best Practice, Version 3.0 (2016). Available online at: http://www.wieta.org.za/download/WIETA_Code_in_English.pdf
32. Williams, G, Ewert J, Hamann J, Vink N (1998) Liberalising markets and reforming land in South Africa. *Journal of Contemporary African Studies* 16(1): 65–94.
33. Wright EO (2000) Working-class power, capitalist-class interests, and class compromise. *American Journal of Sociology*, 104(4): 957–1002.