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A ‘Decent Cuppa’: Worker Power and Consumer Power in the Sri Lankan Tea Sector

Abstract

Consumers are increasingly seen as playing an important role in global labour governance through the establishment of voluntary certification programmes that promise better economic and social conditions for workers in global value chains. In the Sri Lankan tea sector, however, these private forms of governance (Rainforest Alliance, UTZ Certified and the Ethical Tea Partnership) at best have no effect and at worst are associated with indecent forms of work. Rather, conditions of work are defended by powerful trade unions that exercise structural power via their strategic position in the value chain and associational power through links with political parties and residual ethnic ties within and between nation states. It is evident that through close collaboration between the International Labour Organization (ILO) and the tea sector unions, workers are able to leverage institutional power through both national and international labour standards to reinforce decent work for those at the very bottom of the global value chain.

Word count: 10,061

Keywords: consumers, global value chains, labour governance, trade unions, worker power

1. Introduction

Agriculture is designated by the International Labour Organization (ILO) as ‘one of the most hazardous of all economic sectors’ (ILO 2011: 5), poverty is widespread (ILO 2008: 11), the ratification of agriculture-relevant international labour standards is limited (Lincoln 2010), and workers often lack the leverage and organisation needed to engage in collective bargaining (Riisgaard and Hammer 2011). As a response to a growing awareness of the (in)decent living and working conditions in many agricultural sectors across the globe, consumer groups, civil society organisations (CSOs), and (grudgingly) trans-national corporations (TNCs) have established voluntary certification programmes as a way to provide consumers with some (re)assurance about the social, environmental and economic conditions of agricultural products (Raynolds 2018). In a ‘consumer conscious world’ a certificate ought to signify and distinguish products produced in an ‘ethical’ or ‘socially responsible’ manner.

The emergence of global value chains (GVCs) has corroded the governance capacity of nationally embedded institutions and established international organisations that regulate

labour standards. Whilst trade unions and the state were the traditional driving force of labour governance, nowadays private actors seek to harness ‘consumer power’ to regulate corporate behaviour to promote and protect decent work in their value chains (Donaghey *et al.* 2014; Reinecke and Donaghey 2015). The advent of new institutions, such as certification schemes, designed to regulate work and employment are part of an emerging system of global labour governance that prioritises soft-law over hard-law combined with a shift from the national to the supra-national level (Hassel 2008). Although these multi-stakeholder programmes affirm their commitment to improved labour standards their impact on decent working conditions can best be described as ‘variable’ (Oya *et al.* 2018), especially as workers are typically excluded from their design, enforcement or content (Esbenshade 2016). To be sure, workers in developing countries might appear to be ‘inactive’ lacking as they do the associational power of their counterparts in Western states, but they are never ‘inert’. Workers’ (structural) power in a tightly integrated GVC means they can still disrupt the activities of national as well as trans-national corporations and make gains in their conditions of work (Riisgaard and Hammer 2011; Selwyn 2008).

Given this potential, under what conditions might we expect to see ‘decent work’ in an agricultural sector intimately connected to the global economy? To explore this question the Sri Lankan tea sector was selected for an intensive case study of working conditions in the field. Public governance in Sri Lanka is well developed and the state has ratified all of the ILO’s eight core Conventions as well as 32 other labour standards. At the same time, the tea sector is replete with various certificates that reassure consumers that their ‘cuppa’ has been produced in accordance with key ILO standards.

The case study demonstrated that Sri Lankan tea plantations were in compliance with all ratified ILO Conventions, were predominantly free of forced and child labour and workers had the right to freedom of association and collective bargaining, which they routinely exercised to good effect. National labour rights, upheld through an industry-wide collective agreement, and effective trade union representation, have long been established (Amerasinghe 2009) and these have been maintained despite international competition. Three factors have enabled tea trade unions to preserve labour standards in Sri Lanka. First, the strong associational power of unions – principally their links with political parties, their ethnic identity and cross-border solidarity. Secondly, the structural power of workers – based on the ‘non-substitutability’ of labour, immediacy of impact of any withdrawal of labour, and workers’ strategic location within the GVC. Finally, trade unions mobilised institutional power through the invocation of not only the national legal institutional framework but crucially international

standards such as ILO Conventions, building on the capacity building programmes by the ILO's Regional Office in Colombo that have improved the 'strategic capabilities' of union leaders in the sector. Whilst the ILO's 'standard-setting' role is typically dismissed as ineffective and its 'development agency' role frequently overlooked by critics (Standing 2008), ILO intervention in Sri Lanka provided an additional source of complementary (institutional) power that the unions have leveraged to promote and protect decent work.

At the same time, a proliferation of certification programmes are present in the Sri Lanka tea sector, namely Rainforest Alliance (RA), UTZ Certified and the Ethical Tea Partnership (ETP). However, these were simply used by plantation owners to increase the market value of their tea and by TNCs to mollify the concerns of consumers. Not only did certification schemes add nothing to working conditions, the overwhelming majority of cases of child labour were to be found on certified plantations. For workers, certification programmes brought no additional leverage at either the national or international level, and certainly failed to 'complement' existing trade union strategies (c.f. Donaghey *et al.* 2014) or government legislation.

The rise of consumer power and erosion in worker power in GVCs is elaborated in more detail in the following section, where the focus is on the impact of market-driven governance interventions and the ways in which workers and their representatives can exercise structural, associational and institutional power. Next the methods used, and the context of Sri Lanka is explored. This is followed by the results of a multi-method case study and an examination of the role of both consumer and worker power in the Sri Lankan tea sector. While consumer and worker power are demonstrably 'high' in the production of Ceylon tea, workers' bargaining power is not enhanced by 'conscientious consumers' but is grounded in the product market, leveraged through structural and associational power and mobilised through institutional power by invoking the formal and informal rules of the employment relationship.

2. Consumer power, worker power and the governance of labour

GVCs, which now account for 80 per cent of world trade (UNCTAD 2013), are a defining feature of globalisation. Within these chains persistent human and labour rights violations by TNCs have been represented as products of a 'governance gap' whereby the capacity of traditional forms of labour governance to steer and constrain transnational business activity has diminished and the power and capabilities of TNCs has expanded (Meardi and Marginson 2014). The parlous state of global labour governance has led to private, voluntary, self-

regulatory and market-orientated forms of international regulation taking centre stage. These initiatives seek to ‘bridge the gap’ left by ineffective national labour regulation, the declining power of unions and weak enforcement of ILO Conventions (Raynolds 2018: 193).

In the agricultural sector, multi-stakeholder voluntary certification schemes are the most common forms of private governance with a clear distinction between those with an environmental focus (Organic), social focus (Fairtrade), eco-labels with a social provision (e.g. RA, UTZ Certified)¹ or more traditional corporate social responsibility programmes established by TNCs (ETP). A common theme of these initiatives is that private actors (CSOs or TNCs), rather than the state or international organisations such as the ILO, set the ‘institutionalised rules and procedures’ (Auld *et al.* 2015: 110). These programmes attempt to exercise and mobilise ‘consumer power’ (Donaghey *et al.* 2014; Reinecke and Donaghey 2015) however their effectiveness has been mixed. Whereas Fairtrade certification has been found to complement (but not negate) national labour legislation (Raynolds 2018) others, which focus primarily on a compliance-based approach (Locke 2013), have had a limited impact on decent work (LeBaron 2018; Oya *et al.* 2018). Power through these labels resides in consumers ability to ‘exit’ the purchasing relationship or ‘*buycott*’ by choosing between a certified or non-certified product. Consumers attention, however, can be selective (Lange and Washburn 2012), labels only extend to consumer facing sectors, and information on the ‘veritable maze’ of labels is not easily available (Bair *et al.* 2013). Nevertheless, even though certification programmes are decidedly soft law, promoting self-regulation and declarations of general principles over detailed regulatory norms that demand compliance, their adoption by TNCs signal a willingness to meet certain labour standards in their value chains (typically core ILO Conventions) which, when violated, can prompt workers to pressure TNCs and their suppliers into compliance (Merk 2009: 609) through a strategy of ‘accountability politics’ (Keck and Sikkink 1998).

The emergence of GVCs has had a deleterious impact on trade unions’ ability to represent and bargain for their members. The ‘law’ of industrial relations states that if capital goes global, union organisation and collective bargaining must follow if labour costs and other (in)decent conditions of work are to be ‘taken out of competition’ (Sisson and Marginson 2002). As Tilly (1995: 5) points out: ‘if workers are to enjoy collective rights in the new world order, they will have to invent new strategies at the scale of international capital’. However, existing theoretical approaches to employment relations and GVCs have often viewed workers as a ‘static’ category (Lakhani *et al.* 2013) with inter-firm governance relationships as a key determinant (Gereffi and Lee 2016). Instead of conceptualising labour as an ‘active participant’

in the global economy, all too often workers are cast in the role of ‘passive victims’ of value chains and restructuring processes (Cumbers *et al.* 2008: 369). There is little doubt that many workers in GVCs are weakly organised, replaceable and are not covered by any sort of local or national legislation (Levi *et al.* 2013; Reinecke and Donaghey 2015: 722). However, GVCs offer opportunities for workers to advance their position through their strategic location in the value chain, their ability to organise collectively into trade unions and political parties, and through the leveraging of laws, regulations, procedures, practices, and the other formal and informal ‘rules of the game’, established as a result of past and ongoing struggle.

Structural power refers to workers’ position in the production and/or distribution process and the ability to disrupt it (Silver 2003: 13-16; Wright 2000: 962). Three factors shape labour’s structural power in GVCs. First, when workers are non-substitutable or possess scarce skills or competences the union has ‘[labour] marketplace bargaining power’ (Silver 2003: 13). Second, when the value chain is tightly integrated, such that any disruption has an ‘immediate’ effect on other inter-connected parts of the chain, even localised action by workers can have serious ‘knock on effects’ (Selwyn 2008). Third, workers gain leverage when the value chain is ‘highly driven’, i.e. when a strong lead firm governs the production network in a hands-on manner (e.g. long-term contracts, explicit control of suppliers and regular engagement between suppliers and buyers), most closely associated with relational and hierarchical forms of GVC governance (Lakhani *et al.* 2013; Riisgaard and Hammer 2011). Structural power is a necessary condition for workers to realise decent work but is not sufficient to actuate employment rights (e.g. a living wage and equal opportunities). The agency of workers, via associational power, is needed to leverage the structural.

Associational power comprises ‘the various forms of power that result from the formation of collective organization of workers’ (Wright 2000: 962), such as through national trade unions and representation by global union federations (GUFs). Three factors, in particular, constitute strong associational power. First, the degree of unity, collectivism and solidarity within trade union ranks and between unions and employers can augment workers’ structural power. For example, is there single-union or multi-union representation, and if the latter do trade unions work in concert? Is bargaining company-based or sector-wide? If the latter, how well (counter) organised are employers? Second, workers gain associational power through institutional links with political parties. As Murillo and Schrank (2005) detail in the case of Latin America, unions’ links with a partisan political party has ensured the continued support of the party’s core constituencies. Historically, associational power was embedded in national legislation, drafted in conformance with international norms such as the ILO’s

international labour standards, even (in many cases) when the nation state in question has not ratified a particular Convention, which guaranteed freedom of association and collective bargaining. However, the erosion of public governance by TNCs – playing one country off against another – has undermined the associational power of workers. In such circumstances, labour might turn to GUFs to organise cross-border solidaristic actions particularly when TNCs try to exploit international differences in conditions of work. However, as Niforou (2012) demonstrates, affiliation of a local union to a GUF does not necessarily translate into action; associational power might merely involve passive membership, in other words a ‘willingness to pay’ but not a ‘willingness to act’ (Offe and Wiesenthal 1985).

Only so much about workers’ power in GVCs can be explained by analysing their location in the economic system and the particulars of their associational makeup. As a supplementary source of power, workers can exercise institutional power by leveraging the old or new ‘rules of the game’, class compromises or institutionalised forms of industrial relations (Brooks 2013: 187). Institutions are often established as a result of past conflicts and struggles and thus structure actors’ incentives, channelling their interests, and creating expectations of one another’s behaviour (Streeck and Thelen 2005). With the emergence of cross-border governance gaps, existing international institutions such as the ILO are typically dismissed as ineffective (Standing 2008). However, the ILO has increasingly rendered support and funding for trade union leadership through its development agency role, working with its Field and Regional Offices to help build ‘strategic capabilities’ (Zajak 2017: 1012). This is particularly important as possessing the necessary knowledge, awareness and skills to frame collective awareness is a prerequisite for mobilisation (Kelly 1998). Indeed, these skills are essential for union leaders to develop, leverage and transform existing forms of (structural and associational) power (Lévesque and Murray 2013).

The standard-setting role of the ILO is also an important element of institutional power. Although hard law is a rare occurrence at the international level, the ILO’s system of setting standards that become binding once ratified by a member State, combined with the extensive case law through the ILO’s supervisory mechanisms, is about as close as the international community comes to a ‘hard law regime’ (Baccaro and Mele 2012: 202; cf. Lakhani *et al.* 2013: 466). In addition, it is well established that international normative agreements such as ILO Conventions create political opportunities for domestic actors and ‘the influence of [these standards] on these societies encourages domestic groups to adapt their norms, model their behaviors, and frame their own claims around issues that are domesticated from international politics’ (Tarrow 2001: 14). As the International Organisation of Employers (IOE 2006) notes,

even when labour standards are not ratified or transposed in national law they can frame and inspire the conduct and contents of collective bargaining.

The ‘layering’ of new institutions such as certification programmes should offer up an opportunity for worker power via transnational coalitions and in some cases the leveraging of soft law to effect hard law (Amengual and Chirot 2016). For example, the establishment of the Accord on Fire and Building Safety, following the Rana Plaza disaster, has become an important source of institutional power for trade unions in Bangladesh (Zajak 2017: 1020). However, when private and public governance coexist and interact another possible outcome is displacement – i.e., ‘when one type of governance can pre-empt, displace, or crowd out other forms’ (Gereffi and Lee 2016: 34). For instance, private governance may ‘displace’ public governance and weaken local labour unions (Bartley and Egels-Zandén 2016). More importantly with regard to global labour governance, the ILO now finds itself in competition with an increasing number of private governance institutions pursuing independent, and sometimes conflicting, agendas and objectives (Rittich 2015: 85) whereby some voluntary programmes even contain language that could be interpreted as undermining the ILO’s international labour standards.

Reinecke and Donaghey (2015: 737) highlight the power relations at the bottom (organised labour) and at the very top (TNCs and consumers) of the value chain. However, short shrift has been played to the impact of certification programmes on worker power and the contested nature of labour governance whereby the agency of workers is a potential and possibly potent factor in determining labour standards in GVCs. The case of the Sri Lankan tea sector demonstrates that certification schemes fail to complement worker power and make no marked difference to workers’ ability to facilitate collective action. More importantly, in contrast to studies that deride the ILO as a “toothless tiger,” whose only tools of influence are the sunshine of public scrutiny and the shame of public censure, and whose feeble enforcement mechanisms render all but nugatory its efforts to improve global labor conditions’ (Helfer 2006: 652), in Sri Lanka the ILO’s standards offer political reinforcement for trade unions and training programmes established through Regional and Field Offices that create the necessary leadership skills to frame collective action.

3. Research in the field

Case overview

After China, Sri Lanka is the largest tea exporter in the world (OEC 2016) and employs an estimated 210,000 workers with up to one million residing on plantations (Chandrabose 2015). Sri Lanka has a long history of producing tea and the ‘Ceylon’ brand is world renowned for its high quality, which is guaranteed by the labour-intensive process of hand plucking the tea leaves. Tea plantations were first established in 1867 under British colonial rule and workers were brought over from the state of Tamil Nadu (India) to provide cheap and unskilled labour to pluck the tea. Following independence, the tea plantations were nationalised in 1971. Under state sponsorship, tea plantation workers were paid higher wages on the basis of political expediency rather than the viability of the plantations as a source of export revenues. Despite privatisation in 1992, the ‘visible hand’ of the state in setting wages and resolving disputes continues today as a result of the plantation unions affiliation to major political parties (Herath and Weersink 2009).

Figure 1 illustrates the tea value chain. The chain is best characterised as a ‘quasi-market configuration’ with low task complexity and high supplier capability and a combination of national institutional influences on employment relations as well as lead firm influence through the adoption of certification programmes (cf. Lakhani *et al.* 2013: 449). Similar to the GVC for coffee, tea is differentiated by product sub-type (e.g. green or black tea), institutional configuration (e.g. the degree to which tea is bought and sold through an auction house), and end-market segmentation (e.g. mass market blends or single origins) (cf. Gibbon *et al.* 2008: 321). Unlike the coffee auction house, the price of tea fluctuates on a day-to-day basis dependent upon supply and demand, taste, rarity and the ‘grades’ of the leaf. It is a common refrain in the sector that tea is more akin to wine than it is to coffee in terms of the variability of quality parameters (Neilson and Pritchard 2009). Under this analogy, Ceylon tea is the Champagne of the sector commanding the highest price on the international market. Whilst the auction system is typically used for the rarer and more expensive teas, many TNCs are forging relational ties with individual plantations particularly in Kenya and Malawi (depicted by the dotted line in the bottom part of Figure 1). In Sri Lanka, in contrast, 98.3 per cent of tea is sold through the auction house, which provides a degree of protection against the predatory activities of TNCs seeking to drive down costs (Riisgaard and Gibbon 2014: 275).

FIGURE 1 HERE

Plucking data from the field

During a period of participant observation at the ILO's headquarters in Geneva, between January 2013 and December 2014, the ILO renewed its focus on the agricultural sector in the context of GVCs following the election of a new Director-General (Author A 2018: 74-5). Sri Lanka was selected as an obvious case given the number of ratifications of ILO Conventions, including the country's 'standout' position as the only tea producing nation to ratify the Plantations Convention (C.110), and the power of the social partners. 'Atypical cases' invariably reveal more information 'because they activate more actors and more basic mechanisms in the situation studied' (Flyvbjerg 2006: 229). This certainly proved to be the case in the tea plantations of Sri Lanka.

A questionnaire for workers was developed based on C.110 to determine whether plantations were in compliance and to establish a base line of 'decent work'. The local ILO Regional Office in Colombo, through their contacts with the social partners, identified six large-scale plantations (100-500 workers) to be surveyed, which generated 640 responses to the questionnaire (out of a total of approximately 2,000 workers). Students recruited from a local university administered the questionnaires using Android tablets following a 2-day training workshop run by the author. As the plantation selection process was agreed with the employers and workers, and most importantly was reliant on employers granting access to their plantation workers, it can reasonably be assumed that permission was only granted in a 'better case scenario'. In addition, since the questionnaire focussed on relatively large, unionised, formal sector plantations it no doubt underestimates labour rights violations in the sector as a whole considering a significant quantity of tea in Sri Lanka is produced by smallholders, where child (family) labour remains part and parcel of the employment landscape. However, it is an appropriate sample for examining the impact of certification programmes (which rarely apply to the smallholder sector) since it allows the comparison of plantations that were subject to certificates (four of the six plantations, covering 65 per cent of the workers in the sample) to those that were not.

In addition to the questionnaire survey, 26 focus group discussions² were undertaken. In total, 45 trade union representatives, 37 employer representatives and 82 government representatives (predominantly labour inspectors) participated in the focus group discussions. Issues were raised initially using vignettes that described a fictitious worker, employer or labour inspector in the lead role (dependent on the participants) with a common 'story-line'

with minor differences of detail to fit the specific context. These vignettes proved to be a less personal and therefore less threatening way of exploring sensitive topics, particularly as ‘hypothetical third parties ha[ve] the effect of distancing the issues from the respondent and his or her own relationships’ (Finch 1987: 110). The conversations quickly turned from fiction to fact, with respondents openly reporting their experiences of (in)decent work. The focus group discussions were not recorded or fully transcribed due to the language barrier, but notes were typed based on real-time interpretation (interpreters were present at all the focus groups) and later reviewed, elaborated and reflected upon. Follow up interviews/correspondence with key informants were conducted at a later date via Skype and email.

4. Is Ceylon tea a ‘decent’ cuppa?

Table 1 details selected descriptive statistics on the conditions of work in the Sri Lankan tea sector. In summary, tea workers on the six large plantations experienced very few cases of indecent work. Whilst tea production in Sri Lanka remains highly labour-intensive, physically harsh and repetitive, and is performed predominantly by women, over 70 per cent of workers were members of a trade union, and there were very few instances of forced and child labour. Over three-quarters of the workers in the sample had permanent contracts and there were no significant differences in decent work indicators associated with contractual status (permanent or casual). Similarly, whilst women typically pluck and prune tea bushes (men predominantly processed the tea), and women constituted the majority in the sample (71 per cent), gender was not significantly associated with any forms of indecent work. One very positive indicator of decent work provided in the collective agreement was maternity provision: for women who become pregnant, 95 per cent had received (or expected to receive) 12 weeks paid maternity leave. Workers typically worked 8 hours per day and 6 days a week and wages on the six plantations were above the Sri Lankan statutory minimum wage and well above other low-skilled sectors such as the garment sector.

****TABLE 1 HERE****

The interests of tea plantation workers in Sri Lanka are represented and defended by powerful and well coordinated trade unions, namely the Ceylon Workers’ Congress (CWC), Lanka Jathika Estate Workers’ Union (LJEWU) and the Joint Plantation Trade Union Centre (JPTUC). Wages are set through a collective bargaining agreement negotiated every 2 years

and signed by the Planters' Association (represented by the Employers' Federation of Ceylon) and the three major trade unions. Whilst these unions compete for members and representation on the plantations, when the collective bargaining agreement comes up for renewal they coordinate their power resources. Although sectoral level collective bargaining has largely disappeared in Sri Lanka the collective bargaining agreement in the tea sector is still conducted on a multi-employer basis, is binding on the signatories and is gazetted and extended to the entire plantation sector, including those not employed by the 23 regional plantation companies. Over 87 per cent of workers in the sample, whether a member or not of a trade union, argued that trade unions had improved their conditions of work. In sum, conditions of work are consistent with ILO Conventions and trade unions have been effective in securing decent work.

5. Taste the difference?

The questionnaire data also facilitated analysis of the impact of certification programmes (RA, UTZ Certified and ETP)³ on (in)decent work. As Table 2 demonstrates, workers covered by RA and ETP certification were significantly *more likely* to have seen children less than 17 years old working on the plantation (UTZ Certification did not have a significant effect on the sighting of child labour), controlling for a range of other potentially relevant plantation level⁴ and individual characteristics: size of the plantation (>150, 151-300 or <301 workers), plantation ownership (by a national or transnational corporation),⁵ gender of the participant, whether they were a member of a trade union, their employment contract (permanent or casual), age, educational attainment, number of years working in the sector and number of days worked on average during the peak season⁶ (of the control variables workers on smaller plantations were more likely to have seen children). In addition, respondents on the certified plantations (RA, ETP and UTZ Certified) were *less likely* to have seen a labour inspector in the past 6 months (among the control variables, workers on larger plantations and those who work more hours per week were more likely to have seen a labour inspector). One interpretation of Table 2 is a rather benign effect of certification programmes, with neither a positive nor negative effect on many aspects of (in)decent work (cf. LeBaron 2018). Another interpretation is that certification might distract attention from labour inspection and the enforcement of decent work standards. For example, one plantation had exactly half of the cases of child labour in the sample and was certified by both the RA and ETP. Workers on this plantation were significantly less likely to have seen a labour inspector in the past 6 months compared to the other plantations in the sample. Several members of the local labour inspectorate were

cognisant of the certificates (but not their specific provisions) and saw them as a ‘complement’ to their (increasingly stretched) role. As one labour inspector explained, ‘there are more than 375 estates [plantations] in this region ... only 10 labour officers [and] only one vehicle ... [so] we can only inspect a plantation once every 6 months ... agricultural labels [e.g. Rainforest Alliance] help monitor the large estates’ (Field Notes). Considering the homogenous nature of the tea plantations in the sample (see note 4), this view, echoed by other labour inspectors in the focus groups, is indicative of a more ‘relaxed’ approach to the inspection of certified plantations.

****TABLE 2 HERE****

Voluntary programmes are widespread in the Sri Lankan tea sector and the plantation employers were eager to ‘show off’ their certificates to the author and ILO officials during the focus group discussions. In general, however, their perception of these certificates was mixed. Some employers coupled product market access and the ‘signalling’ effect of certification with respect to the labour market: ‘Everyone knows Ceylon tea is the best quality tea in the world ... these labels are a good way to identify good employers and export to the West’ (Field Notes). The majority, however, approached certification schemes with considerable pessimism:

Certain buyers won’t buy tea from an estate if it’s not certified, so we are forced really ... these certificates haven’t changed the practices here ... to be honest the frog [Rainforest Alliance] is more about selling tea than protecting workers’ rights (Field Notes).

Indeed, the plantation employers honestly reported the ease to which Rainforest Alliance certification could be achieved, noting only the difficulty in complying with some environmental provisions (Field Notes). While the auditing process included in the certification programmes in Sri Lanka are typical for the sector as a whole (annual audits by a third-party), in reality: ‘They let us know when they’re coming, we have a whole schedule mapped out for the next 6 months’ (Plantation owner, Field Notes). The fact that these certification schemes achieve little or nothing with respect to decent work was highlighted by one plantation owner who wryly remarked that: ‘This certificate [Rainforest Alliance] means nothing when Kenyan plantations are also compliant with it’ (Field Notes). ‘Compliant’ Kenyan plantations are known to hire children (van der Wal 2008) and purposely employ casual workers to circumvent

national labour laws that guarantee freedom of association (War on Want 2010). Whereas private forms of governance have been found to grant leverage to workers in some countries (Zajak 2017), most trade unionists in Sri Lanka were either unaware or indifferent to the prevalence of these certificates or felt threatened by new forms of labour regulation that did not have a well-defined role for their organisations or an effective avenue for remedy for if/when labour rights were breached (Field Notes). As one union representative frankly noted, when asked about the certification schemes: ‘trade unions are the only protectors of labour rights on the estates [plantations]’ (Field Notes).

The certification programmes in the Sri Lankan tea sector were not just deficient in practice, but also in prose. Whilst they principally draw their social legitimacy from the ILO’s eight core Conventions,⁷ the ILO is not a partner, neither in its local (development agency) or global (standard-setting) role, to these private mechanisms and takes no responsibility in ensuring that these principles are enforced or even the propriety of the text (i.e. whether or not the text is [in]consistent with ILO standards).⁸ Instead of relying on organised labour, national governments or indeed the ILO, these schemes put their faith in ‘the power of the market to drive positive social, environmental, and economic change’.⁹ When the ‘power of the market’ fails to reward compliance the certification programmes are the first to admit that ‘standards alone cannot address most labour issues’.¹⁰

Where expectations about institutional conformity are high (a ‘decent cuppa’, free from child labour) but the actual capacity to enforce this is limited (e.g. collective bargaining, government regulation and ILO enforcement) it creates a breeding ground for what Mahoney and Thelen (2010: 24) term ‘parasitic symbionts’ that rely on organisations not of their own making (such as the ILO) whilst exploiting and carrying out actions that undermine the purpose of the institutions (equalisation of labour cost competition). To be sure, certification programmes would not thrive (or, in some cases, survive) if institutions such as the ILO were able to effectively close the multitude of ‘governance gaps’, but as is well documented, GVCs have undermined the traditional nation-state approach of global labour governance (Author A and Author B: 537). Above all, by putting Ceylon tea on a ‘level playing field’ with other tea producers that are known to practice the worst forms of labour exploitation (LeBaron 2018; van der Wal 2008; War on Want 2010) certification programmes failed to create any additional leverage for the exercise of institutional power. The standards included in the certification schemes were far below those established in Sri Lankan law, as well as the collective bargaining agreement, which left little space for unions to activate these soft law instruments to effect hard law (Field Notes). Thus, while Ceylon tea does not compete ‘head on’ in the

product market with other countries, consumer certificates create competition in the labour market, not only within Sri Lanka but also internationally. In Sri Lanka at least, unions have been able to resist such competition by leveraging structural, associational and institutional power in order to maintain decent working conditions.

6. No tea-break for trade unions

If certificates are clearly not a form of (institutional) worker power, what is the source and sustenance of decent work on Sri Lankan tea plantations? Table 3 summarises a (generic) framework for worker power, with specific examples from the case study. Workers' associational power in Sri Lanka is deeply rooted in the struggles on the tea plantations, as 'the historical context of Sri Lanka has played a major role in the current behaviour of management and labour' (Amerasinghe 2009: 1), leading one employer to claim that: 'trade unions are kingmakers in the sector' (Field Notes), referring to their collective organisations and alliances with major political parties. As up to one million Sri Lankans live on tea plantations (5 per cent of the total population) the trade unions wield significant political (voting) power well beyond their paid membership. As the former Sri Lankan President Mahinda Rajapaksa indicated: 'there are few countries in the world where an ethnic group, trade union, political party and a specific industry are so closely intertwined, as in the case of tea plantation labour in Sri Lanka' (quoted in Sukthanker and Kolben 2007:75). This is exemplified by the state's continued involvement in wage-setting in the sector whenever an impasse is reached between unions and employers (Amerasinghe 2009). For example, in February 2019, following the signing of the collective bargaining agreement (chaired by the Prime Minister) the government agreed to invest Rs. 1.2 billion (USD 6.7 million) as a budgetary allocation outside of the collective agreement to increase tea plantations workers' wages by an additional 10 per cent for one year to end the deadlock between the social partners.

****TABLE 3 HERE****

Workers also possess strong structural power. Although the plucking of tea is a low-skilled task, the considerable out-migration of youth to urban areas makes the existing workforce less easily substituted. In addition, workers live on the plantations and thus employers would have to evict and not just replace workers. These factors have increased workers' leverage with employers. As one trade union representative stated:

now they have to listen to the workers as otherwise they will not be able to find workers. No machine can pluck tea [in Sri Lanka]; therefore, the labourers are ahead of the management. If they do not listen to grievances we stage demonstrations (Field Notes).

Structural power is also exercised through workers' position and impact on the value chain as they are located in a key industrial sector where localised work stoppages compel employers to meet their demands, where even the shortest delay can substantially reduce the tea quality and leave plantations with below-export quality produce. The production of tea has very tight schedules and often tea bushes will only have a one-week window to pluck leaves of optimal maturity. The tea leaf must then be processed (involving withering, maceration, oxidation, fixation, sweltering, rolling and drying) within 24 hours. Not surprisingly, trade unions have employed 'go-slow' and *Satyagraha*¹¹ strategies when the collective bargaining agreement comes up for renegotiation. This has been largely successful, and the collective agreement has produced significant increases in (nominal) wage levels in the sector. The power of the unions to apply pressure on employers to grant wage increases was not lost on the Director of the Employers Federation of Ceylon (EFC):

This is not just an employer-employee relationship, it is an employer-community relationship and the employers have to think of wage negotiations under this highly politicised set up (quoted in Sirimanna 2011).

The three major trade unions are also affiliated to the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and have mobilised associational power when TNCs have attempted to exploit international differences in labour conditions. In 1998, Sri Lankan tea workers organised a determined strike that led to a new collective agreement with the EFC and an increase in wages for all workers in the sector. Unilever Ceylon, citing the India-Sri Lanka Free Trade agreement (that reduced tariffs on tea) tried to instigate a strategy of 'divide-and-conquer', pitting Indian and Sri Lanka tea workers against each other – 'blaming cheap imports from the other for a drop in prices that would not only render wage increases impossible but require actual reductions' (Sukthankar and Kolben 2007: 74). Unilever went one step further and threatened to stop all tea sourcing from Sri Lanka as a direct result of the establishment of the collective bargaining agreement, and instead sell Indian tea in Sri Lanka. Unions in South India and Sri Lanka, drawing on long-standing ethnic ties, cooperated under IUF to call Unilever's bluff. The unions became the nucleus of an international campaign that demanded the end to 'unethical and unhealthy

competition’. Thus, ethnic ties represent a particular form of associational power that has been exploited in both an international and national arena.

Trade unions also leverage institutional power through the mobilisation of ILO involvement in the sector. Building on the long-standing foundations of the Plantations Convention (C.110), ratified in 1995, national unions have been supported through the ILO’s Decent Work Country Programme (DWCP) – the main vehicle for delivery of ILO support to countries. Since the first DWCP was established in Sri Lanka in 2004, each successive iteration has included projects aimed at strengthening ‘the institutional capacity of workers’ organisations to engage in collective bargaining’ (Field Notes; ILO 2018). During focus group discussions, when asked ‘how could the ILO support your country in promoting decent working conditions in the plantations?’, the trade unions and employers both argued for ‘capacity building seminars and workshops to promote social dialogue’ (Field Notes). One trade union representative spoke of the value of previous ‘leadership development projects’, via the ILO’s Regional Office, whilst another indicated that the ‘ILO needed to continue supporting trade unions to increase youth participation in trade union activities as well as further conflict resolution activities’ (Field Notes). Institutional power thus acts as a supplementary source of power that can be leveraged on the back of structural power and actuated through associational power. In other words, it does not compensate for the absence of structural and/or associational power but provides strategic capabilities for trade unions and workers who then have the skills to activate other forms of power resources and mobilise them more effectively.

Institutional power also rests on the capacity of workers to influence the behaviour of an employer by invoking the formal or informal rules that structure their employment relationship (Brooks 2013: 188). In Sri Lanka, workers were well aware of their rights under national legislation and regularly referenced ratified ILO Conventions and the ILO’s core labour standards when compelling the employers to meet their demands at the national level. As one trade union member argued, the ILO’s role is ‘essential... [in the] formulation of rules and regulations, implementation of laws and regulations and conducting awareness seminars’ (Field Notes). Unions have also leveraged institutional power at the international level through the ILO’s supervisory mechanisms. For example, via the ILO’s Committee on the Application of Standards, the LJEWU complained that the ratified Maternity Protection Convention (C.103) was incorrectly applied in the Sri Lankan plantations sector, which garnered active support from the EFC and resulted in the government changing national labour legislation.¹² Sri Lankan unions have a long history of utilising the ILO’s supervisory mechanisms, with the

first complaint by the CWC in 1952 drawing attention to the discrimination of Indian-origin Tamils working on tea plantations.¹³

The Sri Lankan case counters the frequent criticism of international labour standards in general and the ILO in particular. Such criticism is often misplaced when focussing on the low ratification of ILO Conventions (Baccaro and Mele 2012), the Organization's enforcement mechanisms that 'lack teeth' (Standing 2008) and workers as passive recipients of labour governance (Lakhani *et al.* 2013), which ignores how national actors (e.g. tea trade unions) actively leverage international standards (e.g. Plantations Convention, C.110) in their construction of domestic institutions. In other words, the ILO can strengthen institutional power for workers in that it has established global standards that can create affinities – even to some extent synergies – that shape the employment relationship. To be clear, this is only possible if workers have the capacity to invoke these formal and informal rules that structure their interactions. In this respect, the ILO through its development agency role, whereby Field and Regional Offices regularly undertake training sessions, information, and discussion forums to help increase the strategic capabilities of unions, is key to mobilising institutional power. It is a common refrain that the ILO's role in GVCs is most effective where it is needed least. However, a hierarchical (top-down) approach overlooks how international institutions can provide a source of authority, normative legitimacy and political opportunity, which can be mobilised by domestic social actors (from the bottom-up) in pursuit of their own goals.

7. Conclusion: Conned Consumers and Concerted Action

Although the work is intense, and the tropical climate needed to produce tea means it can be very hot, Sri Lankan tea plantation workers have decent jobs, the result of progressive labour laws, strong unions and a multi-employer collective bargaining agreement. Whilst the sample relied on employers granting access to the plantations and therefore probably underestimates labour rights violations in the Sri Lankan tea sector, it is clear that workers are neither at the mercy of GVC governance by TNCs nor are they reliant on Western consumers and the certificates promoted by CSOs and TNCs. In short, the tea plantation workers of Sri Lanka would appear to debunk the idea that workers at the bottom of the value chain must endure indecent work, that private, voluntary and self-regulatory solutions to labour governance deficits are therefore needed, and that the asymmetry of power inherent in all GVCs, cannot be 'rebalanced' in favour of workers.

Whilst tea is a global commodity, the immobility of capital creates some leverage for unions. Clearly, Ceylon tea can only be sourced from Sri Lanka – the product market for Ceylon tea is delineated by an internationally recognised, distinctive, high-quality product (and familiar ‘trademark’) that commands the highest price on the auction house floor – and this immobility in the product (producer) market is reinforced by labour market conditions, particularly as the labour that the unions organise is increasingly scarce in the face of urban migration. To be sure, trade unions must do battle on a field demarcated by the employers’ product market, but Sri Lankan tea workers have been successful in leveraging their structural power (immediate and interdependent action) through collective organisation to compel all plantation producers to meet their demands. Thus, structural power is evidently necessary but ultimately not a sufficient condition for decent work in GVCs.

Sri Lankan tea plantation workers are able to exploit their structural power through associational power. All workers, to a greater or lesser extent, have some structural and/or associational power in GVCs. This will depend on the integration and interdependency between suppliers in different value chain configurations (Lakhani *et al.* 2013), but workers are clearly not ‘passive victims’ of governance relationships. One might expect an ethnic minority persecuted at home (in Sri Lanka), and ‘whipsawed’ by Unilever on the international market (the threat to source all tea from India), to be particularly vulnerable in a GVC increasingly dominated by TNCs. In fact, instead of ethnicity being a source of exploitation and disadvantage, it constituted a key determinant of associational power. Workers were able to defend decent work due to their associational power – principally their union organisation, particular political dynamics and the multi-employer collective bargaining agreement – with the ‘guarantee’ that the state would step in if disputes continued. However, associational power counts for naught without strong structural foundations in the labour market and production process.

Certification programmes, in contrast, were marginal if not meaningless for trade unions. Instead of being a source of institutional power for workers they were used for marketing by employers and to mollify the concerns of TNC’s customers. Whilst from a legal perspective, soft law may offer a stepping-stone to hard law or may influence the discussions and negotiations of hard law, the three certificates present in the sample were more akin to ‘parasitic symbionts’ (Mahoney and Thelen 2010: 24) that ‘piggyback off’ existing institutions such as the ILO for private gain (market share and access) whilst depending on the existence of the ILO and its standards to thrive. The trade unions were either unaware of, or indifferent to, the certification programmes arguably because there is no space for the mobilisation of

consumer concerns or the institutional rules and procedures of certification schemes. In other words, consumer power remains a rather ineffective instrument for the pursuit of social justice whereas developing independent union organisation at the local and national level coupled with comprehensive employment law, is the more effective path towards decent work in GVCs. Unfortunately, for the majority of workers engaged in GVCs this path is blocked by the exploitation that is emblematic of value chain participation. Here the role of the ILO, as the only international organisation with the constitutional mandate to bring capital, labour and the state together, is paramount.

It is difficult to ‘disentangle’ the impact of ILO Conventions and its involvement in trade union development from national employment law, the collective bargaining agreement and trade union organisation and activity as these relationships are thoroughly embedded in long standing socio-economic, legal and political institutions. However, it was evident that workers and employers had intimate knowledge of the Conventions that had been ratified as well as the numerous projects that the ILO Regional Office in Colombo had implemented. This knowledge was used to great effect, enhancing the capacity of unions to leverage different power sources. This has clear implications for other countries and sectors that lack ‘traditional’ forms of worker power. Whilst the realisation of institutional power may not compensate for the absence of other forms of structural and associational power, new sources of institutional power have the potential to enhance workers’ associational capacities. For example, the ratification of ‘up-to-date’ ILO Conventions (e.g. the Plantations Convention C.110) provides access to ‘remedy’ for workers and their representatives (e.g. through the ILO’s supervisory mechanisms) and in doing so strengthens their position in relation to (inter)national actors. The recent call for a new ILO ‘standard’ on ‘decent work in global supply chains’ has the potential to bolster institutional power further by providing additional leverage to embed TNCs in national labour regulation (Author A and Author B 2018). In other words, although some have criticised the ‘faltering’ standard-setting role of the ILO and its ‘over-stretched’ development agency role (Standing 2008: 380) the Sri Lanka tea sector demonstrates the effectiveness of the ILO as a global rule setter whilst providing technical (institutional) support to workers.

To conclude, the lack of enforceability of ILO standards will no doubt mean that some states with poor human rights performance will continue to ratify particular labour standards as a form of “social camouflage” in order to avoid or blunt criticism from the international community’ (Levi *et al.* 2013: 15), and exploitative plantation owners will continue to employ children whilst hiding behind ineffective certification programmes. However, ILO Conventions can act as a source of worker power compared to certificates established by TNCs,

and via technical programmes the ILO is able to bolster and (re)establish trade union capabilities and power resource repertoires.

Notes

¹ In January 2018 the Rainforest Alliance and UTZ Certified officially merged. They plan to release a new standard in 2019. There are worrying signs that the new standard will combine the weaker parts of each of their standards. Go to: <https://theecologist.org/2018/jul/23/open-letter-utz-and-rainforest-alliance>

² Data from the focus group discussions as well as follow-up interviews/correspondence are reported as ‘Field Notes’ in the text.

³ Although Fairtrade is also a commonplace certification scheme in the tea sector none of the surveyed plantations in Sri Lanka had this certificate. Three plantations had both RA and ETP certification and one had secured all three certificates.

⁴ The sample of plantations was comparatively homogenous. All six plantations were relatively large, domestically owned, situated in remote rural economy areas of the same region, were members of the employers’ association, subject to the collective bargaining agreement and produced high quality tea for export via the auction house.

⁵ None of the plantations were owned by a foreign company. One plantation was owned by a local organisation rather than a large Sri Lankan conglomerate.

⁶ Given that work is by and large decent, instances of child labour were extremely rare, with only 36 of 640 respondents saying that they had seen children working on the plantations, but 94 per cent of cases were reported on certified plantations.

⁷ Certification programmes often revise their standards and, with respect to labour standards, they differ significantly. An analysis comparing the three certification programmes present in the sample, as well as Fairtrade, is provided in the supplementary material appended this to paper online.

⁸ For example, the ETP notes that: “There *should* be no forced, bonded labour (ILO Conventions Nos. 29 and 105)” (emphasis added).

⁹ Go to: <https://www.rainforest-alliance.org/approach>

¹⁰ Joint statement by Rainforest Alliance and UTZ Certified following the publication of LeBaron (2018). Go to: <https://utz.org/corporate-news/strengthening-our-engagement-in-indias-challenging-tea-sector/>

¹¹ *Satyagraha* is a particular form of non-violent resistance whilst defying state authority by open organised infraction of the law.

¹² Go to: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2556571

¹³ Go to: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898078

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Figures and Tables

FIGURE 1
The Tea Global Value Chain

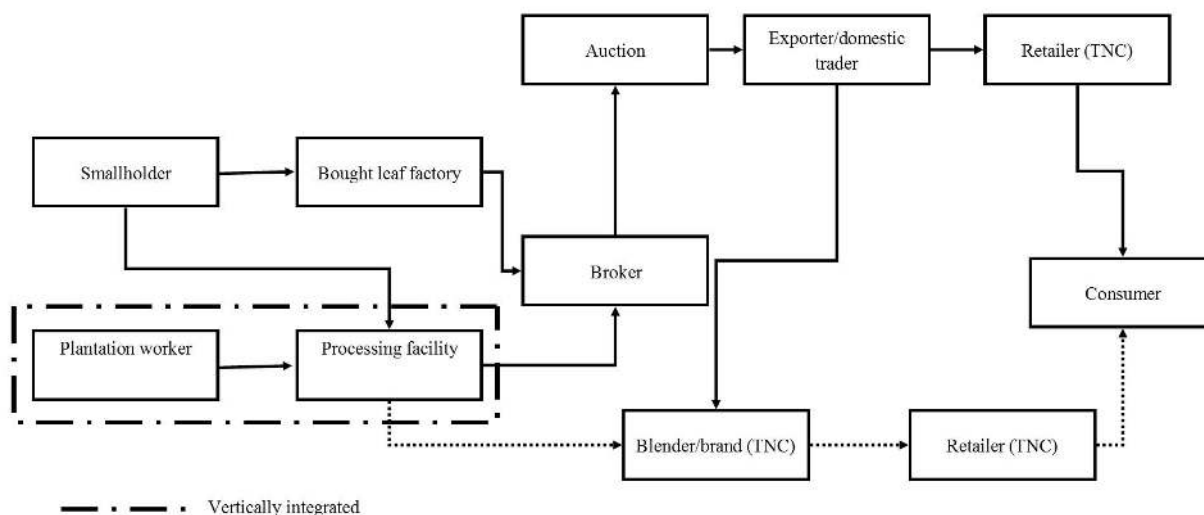


TABLE 1
Descriptive statistics of conditions of work in Sri Lankan tea sector

| <i>Selected (in)decent work indicators</i> | <i>Frequency</i> | <i>% of total observations</i> |
|---|------------------|--------------------------------|
| Knowledge of existence of children under the age of 17 working on the plantations | 36 | 5.6 |
| Trade union membership | 465 | 72.7 |
| Suffered discrimination at the workplace | 22 | 3.4 |
| Paid maternity leave for 12 weeks | 432 | 95.2 ^a |
| Forced to do anything that they did not want to do at work | 13 | 2.0 |
| Permanent employment contract | 505 | 78.9 |
| Had seen a labour inspector in the past 6 months | 198 | 30.9 |

^aTotal number of women in the sample was 454

Source: Author's calculations based on ILO diagnostic mission data in Sri Lanka and follow up analysis

TABLE 2

Regression analyses of certification schemes and (in)decent work indicators in the Sri Lankan tea sector

| | <i>Child Labour</i> † | <i>Forced Labour</i> † | <i>Discrimination</i> † | <i>Labour Inspection</i> † | <i>Wage</i> ‡ |
|-----------------------------------|-----------------------|------------------------|-------------------------|----------------------------|--------------------------|
| <u>Plantation characteristics</u> | | | | | |
| RA and ETP certified ^a | 2.918** (1.057) | -1.061 (1.256) | -0.295 (1.435) | -1.349*** (0.325) | 41.968 (801.556) |
| UTZ certified | 0.521 (0.567) | 0.831 (0.729) | -0.126 (0.586) | -0.885** (0.314) | 125.366 (644.724) |
| Size of the plantation | -1.294** (0.462) | 1.135 (1.157) | 2.051 (1.063) | 0.706* (0.290) | 639.057 (673.151) |
| Owned by a TNC | 1.820 (1.510) | -0.697 (1.747) | -2.538 (1.653) | 0.066 (0.439) | -2333.011* (1065.874) |
| <u>Individual characteristics</u> | | | | | |
| Gender | 0.596 (0.402) | 0.973 (0.628) | 0.145 (0.546) | 0.106 (0.221) | -633.355 (527.249) |
| Trade union membership | -0.742 (0.433) | 1.444 (1.115) | -0.192 (0.522) | 0.297 (0.220) | 891.339 (513.185) |
| Employment contract | -0.519 (0.507) | 0.878 (1.166) | -0.348 (0.673) | 0.509 (0.300) | 494.049 (669.211) |
| Age | 0.215 (0.221) | 0.465 (0.391) | -0.351 (0.274) | 0.081 (0.111) | -60.551 (257.255) |
| Education | -0.202 (0.325) | 0.025 (0.500) | -0.019 (0.393) | 0.335 (0.156) | 210.681 (381.271) |
| Working years | 0.127 (0.143) | -0.252 (0.221) | 0.180 (0.171) | -0.050 (0.064) | 1.556 (153.992) |
| Days worked per week | 0.315 (0.217) | 0.561 (0.402) | 0.084 (0.237) | 0.377*** (0.102) | 515.576* (204.467) |

Note: Standard errors in parenthesis

^a All the certified plantations in the sample had both Ethical Tea Partnership (ETP) and Rainforest Alliance (RA) certification. One plantation had ETP, RA and UTZ certification.

† binary logistic regression, ‡ multiple regression

P-values (1-tailed tests): * $P < 0.05$ ** $P < 0.01$ *** $P < 0.001$.

Source: Author's calculations based on ILO diagnostic mission data in Sri Lanka and follow up analysis

TABLE 3
Worker Power in the Sri Lankan Tea Sector

| Type of power | Leverage | Description | Sri Lankan tea sector |
|----------------------|-----------------------------|---|--|
| Structural | <i>Immediacy</i> | Workers have an immediate impact on the functioning of the value chain | Tea bushes have a 2-3-day window when they must be plucked. |
| | <i>Non-substitutability</i> | Workers are not easily replaced because of supply or competences. | Ageing workforce with many younger workers deciding to migrate to the cities. |
| | <i>Interdependency</i> | When the rest of the value chain is dependent upon the activities of those workers. | Tea must be plucked and then processed within a short period to ensure its quality. |
| Associational | <i>Ethnic</i> | When workers can draw upon residual ethnic ties to share information and leverage other actors. | Mainly Tamil workforce where unions are the conduit between rural and urban economy. Managers typically do not speak the same language as workers. |
| | <i>Political</i> | Political expediency and institutional links with political parties. | Trade unions have established institutional links with major political parties. History of government intervention in the sector |
| | <i>Cross-border</i> | Organisation of cross-border solidaristic actions through GUFs | Actions by IUF to coordinate Indian and Sri Lankan trade unions across borders. |
| Institutional | <i>ILO intervention</i> | Invocation of the legal institutional framework, training through Field and Regional Offices. | ILO Conventions as political reinforcement for trade unions. Capacity building for trade union officers. |
| | <i>Corporatism</i> | Employer solidarity, social partnership and tripartite consultation. | Long-term and trusting relationship between workers and employers. |
| | <i>Certification</i> | The leveraging of private regulations to pressure TNCs into compliance through ‘accountability politics’. | Certifications act as ‘parasitic symbionts’. Existing institutions more effective than the ‘new’. |