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Globalising Gender Justice?

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**Abstract**

This paper focuses on the impact of the global market on gender relations. It argues that there is insufficient emphasis within contemporary feminist legal analyses on the inequalities associated with globalisation. While there has been major developments around the human rights of women at an international level, there has been much less focus on the economic aspects of the development of global trading. This paper considers the regulatory frameworks associated with three forms of trading chains: in vegetables and flowers, in care and in sex. It seeks to develop a framework through which to consider the ways in which different forms of legal interventions impact on gender relations. The aim is to open debate on the utility of feminist analytical 'tools' and action oriented strategies. The paper begins with a brief discussion of the extent to which feminist legal analysis provides a suitable framework for tackling global economic inequalities. It then sets out the contexts for each of the three trading chains, using the UK to concentrate on the relationships at the consumer end of the chain and African contexts for the various sites of production. Thereafter the paper explores the various ways in which the relationships between the consumer and producer sites are constructed legally. The paper concludes by exploring the ways in which a relational approach to gender justice, using the feminist concept of the ethic of care, can be developed in the context of a global economy.

**Keywords:**

Care, East and West Africa, Feminism, Gender, Globalisation, Labour Markets, Legality, Regulation, Trading Chains.

**Editors Note:**

Substantive sections of this paper will appear in an article by the same author in a forthcoming special edition of the Northern Ireland Legal Quarterly and this paper is published herein by the kind permission of the Northern Ireland Legal Quarterly.

## 1. Legal Feminism and Global Justice

Feminist discussions relating to law have developed their own internal dynamics in recent years as they have come of age. There is a rich literature stretching from detailed discussions of a particular doctrinal issue to gender critiques of international humanitarian law. There is also a substantial and varied body of analytical literature discussing the relationship between gender and law. Postmodernist insights into the construction of meaning have challenged the early, rather limited, understanding of legal rights and in the process, legal feminism has largely moved beyond dichotomous debates such as those relating to universalism and relativism. We now have a much greater understanding of the way in which legal discourses contribute to the construction of identities. There have been anxieties about the corollary to these developments: the first is the disjuncture between political action and the academy; the second is the neglect of issues of the distributional aspects of gender justice.

The international women's rights movement best represents the first tension. The actions of activists in the last couple of decades have brought the issue of women's rights across the globe into the political spotlight. Much of this action has been institutionalised within the international human rights framework but activists continue to develop further their approaches in a wide range of contexts, from localised grassroots activism to regional and international networks. Organisations have entered into creative partnerships with state politicians to develop specific gender based documents such as the African Protocol on Women's Rights<sup>1</sup>. The policy oriented approach of the rights movement often seems a long way from academic discussions not only in terms of the way in which issues are understood but also spatially. Much of the impetus for the rights movement is now located in the developing world, despite the continuing discourse on and distrust of the perceived western philosophical bias of prioritising individualised, political and civil rights over economic and social entitlement, while academic legal feminism is primarily (although of course not entirely) located within develop world institutions.

Within development discourse, rights approaches have been used as an antidote to the imperatives of neo liberal economics, largely due to the influence of scholars such as Amartya Sen (1999) who argue that human development is the goal of economic activity rather than simply a possible side effect. Nussbaum (2002) has attempted to by pass many of the conceptual limitations of rights within this framework through the development of the capabilities approach to gender and development. While she makes the case for the capabilities approach using Aristotelian philosophy, the adoption of a rights approach to development by the broader policy community is less well grounded and focused (Cornwall and Nyamu 2005). One of the advantages of this type of approach is that the entitlements of individuals are recognised and inform policy development and there is often a focus on gender sensitive development. It offers an outcome oriented approach, the pursuit of gender justice. However this framework does not necessarily prioritise or even tackle distributional issues such as economic impoverishment or the specific effects of globalisation on gender relations. Substantiating economic and social rights may be part of the rhetoric of this approach to gender justice but implementation is less easy to achieve.

Analytically feminism shares the unease of analyses which prioritise economic relations, focusing more on the need to understand the impact of a far wider range of factors on the construction of gendered identities although Fraser (2000) offers a way of rebalancing recognition and redistribution issues. Global north feminism's focus on what could be broadly defined civil and political issues rather than economic is mirrored in the global institutional context. This is not to deny the activities of some elements of the international women's movement, most notably those associated with labour rights, which have been struggling to gain recognition and interventions around these issues within institutional contexts such as the International Labour Organisation and others who have targeted the trade bodies. However they have faced formidable obstacles, particularly in the latter arenas. Yet, the economic impact of present forms of globalisation is having profound effects on gender relations which call for more analytical attention.

Another strand of feminism, also associated with an ethical approach, which has been particularly influential within welfare debates but perhaps less so within wider legal discussions (but see Drakapoulou 2000) is the ethic of care. This concept, which has its origins in the work of Carol Gilligan (1982), arose out of the perceived differences in the way in which masculine and feminine moral reasoning developed. Tronto (1993) developed it in relation to political philosophy and Sevenhuijsen (1998) to European family and welfare policy<sup>2</sup>. Care is contrasted with rights thinking in that it is based on relational and contextual rather than abstract individualised norms, of the type associated with 'private' family relations rather than 'public' life. The proposition is that the ethic of care has been lost in the development of the public realm, to the latter's detriment, and that the concept of interdependence and the values associated with care thinking<sup>3</sup> are necessary for a gender justice (and wider humane) society. To what extent can a rights discourse encompass aspects of a relational approach<sup>4</sup>?

## **2. The Relational Framework: Overview**

I will now set out the framework through which I will explore the three different chains. In each case the UK is the setting for one end of the chain. The demand for pre prepared vegetables and flowers, care and sexual services is located within this jurisdiction. Here, vegetables and flowers are bought in supermarkets by consumers many of whom engage in paid work; service workers provide care in a range of contexts including hospitals, nursing homes and private homes; and sex workers sell their services in bars, brothels, over the internet and on the streets. The paper sets out the background for the development of the demand for these services with a particular emphasis on the changes in the socio economic position of women in the labour market and within the family. It will consider the interactions between the market, the state and the family/community on gender relations in particular the ways in which the legal discourse on 'work/life' balance is constructed.

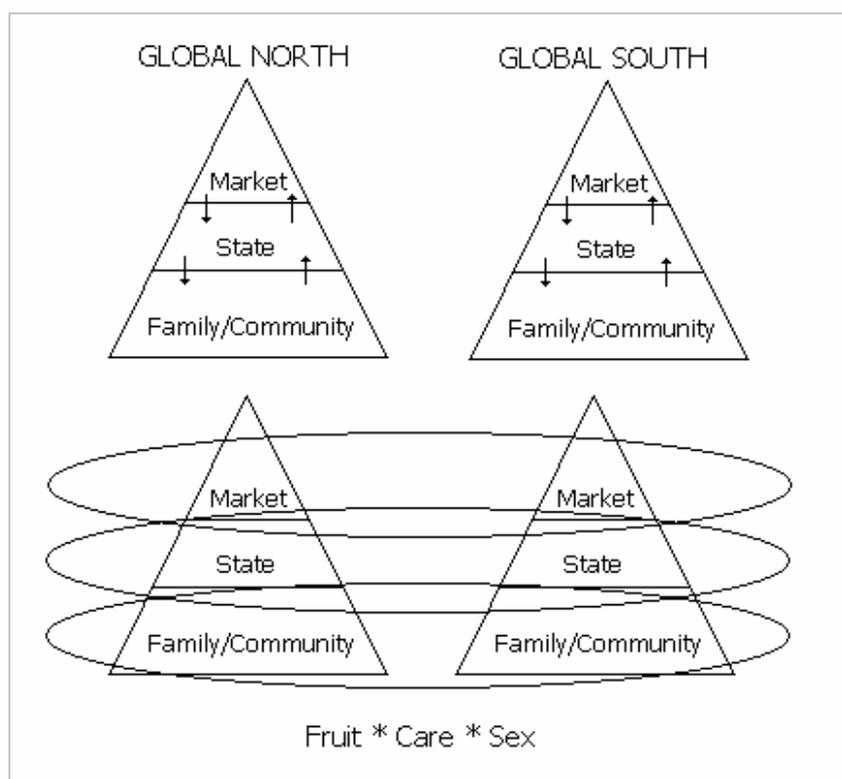
The goods and services under discussion in this paper are 'produced' in different jurisdictions originally. The vegetables and flowers are grown in East Africa. Value is added through preparation and packaging which is undertaken primarily by women workers. The providers of the care services are generally women who migrate from West Africa to the UK. The sex workers are women who migrate (sometimes through coercion) from East and West Africa. In each jurisdiction there are interactions

between the market, the state and the family/community which impact on gender relations. In each jurisdiction there are specific regulatory contexts (the ‘vertical’).

Thereafter the aim is to explore the commodity, care and sex chains which link these women workers with women worker/consumers in the UK and secondly, to explore the regulatory contexts which structure these relationships. This involves a consideration of the ways in which the global market is regulated, the relationship between the respective states within wider international and regional contexts and an exploration of the ways in which family and community based networking operate. This, conceptually, is a ‘horizontal’ regulatory framework which impacts on the specific ‘vertical’ state specific frameworks in a variety of ways depending on location.

The development of each context will be relatively schematic in this paper due to the necessary word limitations<sup>5</sup>. The aim here is to set out the framework for analysis and to explore the implications for the development of feminist legal studies. I will argue that the market is dominated by a discourse of trade agreements (contract); state relations by a discourse of rights and family/community relations by a discourse of care. Within each of the discourses there are a range of constructions of worker and carer, all of which are gendered. I will further argue that while it is important to understand the construction of these various identities it is equally important to develop regulatory concepts which attempt to challenge the economic injustices which differentially affect women due to their location within the chains.

**Framework for discussion of the regulatory contexts within jurisdictions and within the three global chains.**



### 3. The UK context: State, Market and Family

We have seen significant demographic developments in Britain (and many European countries) in recent decades. These include a decline in rates of fertility, deferral of parenthood, increase in cohabitation, many more births taking place outside marriage, high divorce rates and an increase in the proportion of families headed by a lone parent (Irwin 2000, p 2).

Employment patterns have also changed, away from the dominance of manufacturing to the service sector which now accounts for 75percent of employment reflecting the UK's position within the global market. There has been a marked increase in female employment<sup>6</sup>. Women with partners are now more likely to work when their children are young. There is a 'growing concentration of employment in 'work-rich', two earner households and a decline in single earner households' (Irwin, 2000, p 2; Desai et al 1999, pp 168-175).

The interaction between these family and market changes has been analysed as a move towards individualisation (defamiliarisation) in the transition to late modernity (Beck, 1992; Giddens, 1991; Bauman, 1995; quoted in Irwin, 2000). Some argue that these developments reduce the social ties and obligations which previously bound people together and in particular, as women's labour becomes commodified, family relationships loosen. This leads to a growing contradiction between reproduction and production, between family and work (Irwin, 2000)<sup>7</sup>.

On the other hand there has been continuity in these changes in respect to gender inequalities. While there has been a significant change in rates of employment amongst women, they continue to have a disadvantaged position in the labour market. The majority of women have not been able to transform their employment opportunities because they remain bound by family responsibilities: a recent report identifies women who have children and 5.5 million informal carers as the groups which experience the greatest employment penalty (Phillips, 2006). While women with small children across the social spectrum now work, the majority remain in low paid part time jobs. The model of the breadwinner/homemaker household is giving way to other forms, in particular the dual wage (or one and half wage) household. There is also a change from a family wage that could support a household to two secondary wages neither of which on its own can so do.

The female labour market is differentiated. A 'small, relatively advantaged group of women manage to maintain their employment in high paying high status work because they have sufficient resources to protect themselves from the standard labour market consequences of motherhood (Ginn et al., 1996)' (Irwin, 2000, p 5). It can be argued that these women have been amongst the main beneficiaries of social and economic change over recent decades (Rubery et al., 1999) although many of these female 'gainers' are still attached to 'advantaged' men. Minority group women fare differently: those with family origins in Pakistan and Bangladesh experience the harshest wage penalty, Indian and Chinese the least (Botcherby and Hurrell, 2004).

For some analysts life course perspectives offer insights particularly into the ways in which family, employment and welfare provision interrelate. Life courses are a product of modern systems of welfare with extended compulsory education and

retirement and pension provisioning. The welfare state is therefore most heavily involved with childhood and old age in 'normal circumstances'. Generational issues, in particular equity between generations, have become the subject of considerable welfare policy debate and analysis. Questions arise as to the extent to which welfare policies do or should redistribute across generations. Hills estimates that three quarters of welfare state benefits are self financed (through taxation) over people's lifetimes rather than paid for by others (Hills, 1997). However Arbur and Attias-Donfut argue that 'generational contracts rely on an implicit gender contract expressed through the gender division of paid and unpaid labour especially in the home' and that 'generational equity should not be achieved at the price of greater inequalities between men and women' (2000, p 10).

A gender perspective on the welfare state considers the extent to which the state reinforces or ameliorates existing gender inequalities (Sainsbury, 1999; Daly and Rake, 2003). Is welfare provision predicated upon a 'housewife' contract (a male breadwinner and female homemaker who receive benefits as a carer); an equality contract (all adults are economically independent and earn entitlements through the labour market); or an equal status contract (state responsibility to equalize the roles of men and women) (Daly 2000)? Gender specialists argue that most welfare state analyses focus on the relationship between the market and the state and leave out the family and that by so doing they ignore the gender issues involved. They, on the other hand, link the market, state and family through the concept of caring (Waerness, 1984; Graham, 1991; Thomas, 1993; Lewis, 1998; Daly, 2000; Ellis, 2004).

'The workforce of paid and unpaid carers for dependants, whether old or young, is disproportionately female, and in the case of elder care, women form the majority of care recipients because of their greater longevity. ... women's relationship to the modern welfare state has tended to be more complicated than that of men... Women interact with the state as clients, unpaid and paid workers and care is a concept with the potential to capture and integrate these different types of relations.' (Lewis, 1998, p 2)

Over the last decade state policy in relation to employment has been re-oriented around New Labour's 'third way'. The main aim is to improve competitiveness:

'To survive and prosper in the new context of a global economy, businesses constantly have to improve the quality and design of their products, invest in new technologies, and reduce costs. A key ingredient of competitiveness is to use the workforce efficiently and effectively. For this purpose the workforce has to be properly trained and prepared to work flexibly and to co-operate with all innovations'. (Collins, 2002, pp 450-1)

Thus the welfare state is not seen as a mechanism through which to redistribute wealth and promote egalitarianism. Rather the objective is to create the 'conditions for equality of opportunity by opening up the market mechanism for the production of wealth for everyone' (Collins, 2002, p 452). Those who are denied the opportunity suffer from 'social exclusion'. Poverty is tackled through ensuring access to the market. Individuals are expected to avail themselves of these opportunities. If they do not, the welfare state (through the social security and welfare systems) limits its responsibilities to subsistence support. Thus a single parent is expected to work: if

she chooses to care at home she cannot expect the state to fund her 'lifestyle' beyond the bare minimum (Collins, 2002, p 452).

The UK government's aversion to the European Union Working Time Directive 93/104 1993 OJ L307 (limiting working hours to 48 hours a week in normal circumstances) is a reflection on the long working hours culture which prevails. Strikingly men work their longest hours when their children are young. There is much discussion within popular culture about 'cash rich/time poor' households which is reflected in the development of convenience food: packaged ingredients or meals which add value to the raw material for retailers. Ready prepared vegetables available throughout the year are one manifestation.

Women are now expected to be within the labour market, contributing to this economy irrespective of their wider roles. The state has supported this development through 'family friendly' policies, investing substantially in policy initiatives with employers to encourage positive attitudes to work/life balance. It has also taken a 'radically new approach to the provision of childcare, reconceiving it as a public policy issue requiring a nationally co-ordinated strategy and enhancing both public and private provision' (Conaghan, 2002, p 59) including free nursery care for all three year olds. The National Childcare Strategy is no longer a worthy marginal activity but one which involves a wide range of government departments. It is coupled with a substantial legislative programme which has strengthened employment rights: maternity leave is longer, with slightly better income replacement measures<sup>8</sup>; dismissal when pregnant is now automatically unfair<sup>9</sup>; new rights to leave and time off for parents (unpaid) and (to a lesser extent) other carers<sup>10</sup>; time off (unpaid and reasonable) to deal with family emergencies<sup>11</sup>; rights for part time workers<sup>12</sup> and the National Minimum Wage<sup>13</sup>. All of these measures are constructed as ways of enabling workers, particularly parents and, to a much less extent carers, to balance their caring responsibilities with paid work or more realistically maintain a relationship with the work place.

They are complemented by reforms in tax and social security provisions which encourage paid work participation (Conaghan, 2002, pp 66-69). The government faces difficulties with lone parents, encouraging (with an increasingly forceful array of measures) them into the labour market, while trying to ensure that children are not impoverished by withdrawal of state benefits. If families work they are rewarded with Working Families Tax Credits.

The other group which pose problems for this policy and are the subject of our second chain case study are those with care responsibilities in addition to or apart from children. It is estimated that 5.5 million people are 'informal' carers, caring for vulnerable adults including the elderly. One in five households contains someone caring for the sick, disabled or elderly (ONS, 2002). The number of people over 65 is expected to rise over the next five decades from 9.3 million to 16.8 million and 'the number of people over 85, the age group most likely to need nursing, residential or home care, is now expected to rise from 1.1 million in 2000 to 4 million in 2051' (Department of Health, 2005, pp 22). The proportion of people who live alone is likely to increase in the next 20 years because of increased longevity and changes in family structure (Department of Health, 2005; p 21) '21 percent of people over 65 see

their family or friends less than once a week or not at all' (Office of National Statistics, 2001). Greater mobility is cutting the 'invisible strings that have traditionally bound families and communities' making mutual support more difficult (Department of Health, 2005, p 21).

The area of social care for vulnerable adults has also undergone substantial policy changes in recent years<sup>14</sup> The 1970 Local Authority (Social Services) Act established local government social services departments to provide an organisational focus for a range of duties and responsibilities owed to among others, children, the disabled and the elderly. The National Health Service (NHS) continued to provide health as opposed to social care<sup>15</sup>. Although the activity of caring for the elderly is contained within a policy framework of 'social care', the legal framework is widely recognised as fragmented even chaotic<sup>16</sup> (Mandelstam, 2001; McDonald, 2001; Clements, 2004). In contrast to the care of children, there is no single originating statute to provide legal clarity or to encapsulate the values which might inform any policy or procedures (Clements, 2004). Since 1948 the politics of the welfare state has created a palimpsest of three approaches: post war state collectivist paternalism; neo liberal marketized provision; and the 'third way' positive welfare approach (Williams, 2002). In 1990 social services were required to change their collectivist 'culture' to facilitate the mixed market of care provision<sup>17</sup> and from 2000 onwards public service providers have been required to operate within a human rights culture.<sup>18</sup> Recent policy requires yet another shift. Those in receipt of care will purchase their care directly with funds either provided by the state if they meet means tested criteria or by themselves:

'services should be 'person-centred, seamless and proactive. They should support independence, not dependence and allow everyone to enjoy a good quality of life, including the ability to contribute fully to our communities' (Department of Health, 2005, p 16)

Services will be 'of high quality and delivered by a well-trained workforce or by informal and family carers who are themselves supported' (Department of Health, 2005, p 17). The report stresses the need for carers to have access to training and support. 'Not only would this improve the quality of the experience for the person receiving care, it might also offer the carer who has left employment a longer-term route into education and training, and into more formal paid employment once their immediate caring responsibilities cease (Department of Health, 2005, p 38)'.

Thus the aim is to create citizen purchasers of services in a social care market which will be stimulated to develop innovative and cost efficient care products. A well trained social care work force will provide the bulk of the care but will be supported by 'informal' carers who will be encouraged to remain in the paid labour market or to return as soon as possible. This is to be achieved over the next 10-15 years without additional public funding.

The present reality is far from this vision. Unpaid family carers provide the majority of care. They have little recognition within the present welfare state system because they are 'family' and therefore deemed ineligible for state funding to support this role<sup>19</sup> although they do have access to general social security payments<sup>20</sup>. There has been some recognition of the role in the last 5 years with an independent right to have care

needs assessed and access to very modest funds to provide for needs.<sup>21</sup> The third way approach is also evident here with incentives for carers to continue with paid work because of the financial penalties of withdrawal including loss of pensions.

However there is a chronic shortage of labour to provide social care via the market. The present work force, primarily constituted by female low paid workers is often poorly trained with a very high turnover of staff. The quality of the services provided either in the residential sector or home based is as a result very variable. There is a growing body of evidence of abuse and negligence in a poorly regulated sector.

The tensions between the need to care and to be in paid employment are managed via gendered family relations. Women who still bear the majority of the care responsibilities are increasingly expected to use the market to tackle the issues either via paid child or social care. It may seem a big leap to our third chain which relates to sexual services but understanding why this is the case hopefully contributes depth to the analysis. How do the interactions between family, state and market operate here?

There are many, contested, constructions of prostitution involving: a freely entered into contract of employment or for the provision of a bodily service; the creation of a public or neighbourhood nuisance; acts of violence and discrimination against women. The discourse of human rights is increasingly invoked but for different ends. Are women exercising a human right to contract or do they have a human right not be degraded and sexually violated. Does the right to act as an independent economic agent take priority over a right to physical integrity?

Although the feminist movement has seen pornography and prostitution as highly problematic for women (Barnett, 1998, chapter 12), the heated debates which took place at the end of twentieth century over how to understand these issues have, to a large extent, been refocused on the issues of trafficking (Kelly, 2003). Otherwise, the highly lucrative and diverse market in sexual services has been to an extent 'normalised' into the majority culture which recognises women as active sexual beings. Nonetheless the primary consumers of these commodified sexual services remain men from all backgrounds, while the primary providers are still women, the majority of whom are poor and from vulnerable groups.

There is a huge market in licensed brothels, escort agencies, massage parlours and various 'gentlemen's clubs' as well as on street prostitution. Such activities are often associated with organised crime (in drugs and as we shall see later in trading bodies). The market in sexualised desire has expanded exponentially with the development of new communications and information technologies. These innovations facilitate the sexual exploitation of women (and children) because they enable people to easily buy, sell and exchange millions of images and videos (see Hughes, 2002, p 129). They are also anonymous and affordable to a mass audience. The internet can be used publicly - 55 percent of the access to online pornography is estimated to occur in working time or privately within the domestic environment.

Research studies relating to sex working, particularly on street prostitution, show a clear link with family problems. The vast majority of sex workers on the streets are young people who have left deeply troubled homes or institutional care. Many have experienced sexual abuse and now have drug addictions. (Home Office, 2004)

State regulation of prostitution has been via the criminal justice system. The transaction itself is not illegal but all the activities associated with it are subject to criminal sanctions. Women who solicit are still described as ‘common prostitutes’ and fined. It is an offence to live off immoral earnings or run a brothel. Kerb crawling, soliciting sex from a car, can be an offence. However the link between troubled childhoods and entry in prostitution is now recognised by police and policy makers so that there is more attempt to use welfare policies in relation to child abuse rather than criminal sanctions when dealing with young women (and men). Recently there has been a government review of policies with the aim of ‘modernising’ the regulatory framework.<sup>22</sup>

### **3.1. Implications**

We have seen the way in which the market, state and family interact to provide the context for our three chains. The quest for a globally competitive economy is having profound effects on core notions associated with the labour market, in particular the concepts of ‘work, worker’ and ‘employment’. The changes ‘cast doubt on regulatory provisions premised on sharp distinctions between paid and unpaid work, between ‘employed’ and ‘self employed’ workers, between employment and unemployment, and between ‘work’ and other life –activities.’ (Conaghan, Fischl and Klare, 2002, p xxvi)

The interactions between market and welfare state constructions of work and care reflected in labour and welfare law seem to both undermine and also reinforce the work/family dichotomy (Conaghan, 2002, p 72). Economic value is attributed to paid work for the market while it is denied to unpaid family/caring work. Thus a woman can work unpaid as a carer for a family member but cannot work and be paid as a carer for a family member. She can be paid to provide care services for other people’s family members. Similarly, family provision of child care is not valued in the market. The way in which these distinctions are constructed legally can be seen in the EU case law on equal treatment in relation to state social security which requires a relationship with the labour market for eligibility, thus excluding ‘housewives’.<sup>23</sup> Those that provide such care are non earners and as Conaghan points out are seen as dependents, consuming resources they have not created (2002, p 72). The construction of adults in receipt of care is also in terms of independence. The policy aim is to encourage independence via the ability to purchase care via the market rather than through ‘dependence’ on the state or the family. While care services provided via the market are work, the status of workers providing paid sexual services is not clear although the European Court of Justice seems to consider prostitutes as workers.<sup>24</sup> Generally there is a strong association with illegality and immorality constructed through the discourse of criminal law.

The interactions between market, criminal justice and welfare constructions of work, particularly the provision of bodily services, differ depending on the service offered. A worker providing emotional and physical services to a vulnerable adult is treated very differently to one providing sexual services. The construction of care is one based on particular legally recognised markets.

## **4. East African Horticultural Workers: State, Market and Family**

The pre prepared and packaged vegetables and cut flowers available to affluent consumers in the UK are produced in a number of countries but for present purposes I am using Kenya as an illustration.

Kenya is very differently placed to the UK in the global market. Like much of sub Saharan Africa has faced huge economic and political difficulties in the last decades and has been subject to the interventions of the International Financial Institutions as well as various forms of international development assistance. Stabilisation and structural adjustment policies were used to tackle hyper-inflation in the 1980s at the expense of incomes, wages and employment levels. When the harshness of this regime proved unacceptable, the policies were toned down by both Washington based financial institutions and governments. However trade and financial liberalization policies designed to 'open up' developing countries to world markets remain the dominant ideological approach.

Diversification into export horticulture has become a promising strategy for generating increased employment and foreign trade in many Sub Saharan African countries. In Kenya horticulture is the fastest growing sector of the economy, accounting for 22 percent of all agricultural exports in 2000 (Barrientos, Dolan and Tallontire, 2003, p 1513), largely attributable to cut flowers. The country relies heavily on European markets and therefore very dependent on changes in European agricultural policies but also in consumer trends towards ethical trade (94 percent of Kenyan flowers in 1998-99 supplied to the European Union).

Generally in Kenya, the vast majority of women eke out an existence as farm workers and within the informal sector selling what they can or in the provision of low paid services. They move 'flexibly' between productive and reproductive sectors.

'About 85 percent of the population live in rural areas and small holding farms account for about 75percent of total output...Agricultural production accounts for about 30 percent of Kenya's GDP; 80 percent of Kenya's agricultural labor force is female: 96 percent of rural women work on family farms in addition to performing their household tasks such as cooking, cleaning, caring for children and other family members, and fetching water and fuel wood.' (Dwasi, 1999 quoted in Bowman and Kuenyehia 2003, pp 523-4)

Small holder agriculture in the 1990s was transformed into feminised agriculture in entire districts or provinces of many African countries as men took up non farm employment near or away from villages and the size of family landholdings decreased. Women not only produce Kenya's own food but also much of the country's horticultural exports; about 75 percent of the sector. 'They are concentrated in the segments of the production process that hold the most significance for the quality of the final product such as picking and packing, and value added processing activities. Companies see women as more productive, with nimble fingers and a capacity to perform the delicate and tedious work to fulfill the quality imperatives of overseas buyers' (Barrientos, Dolan and Tallontire, 2003, pp 1514).

Women are the core of the temporary, seasonal and casual work force, while men generally undertake the fewer permanent jobs. Women work in the seasonal

occupations characterized by long hours. Their workload increased from 60 hours a week in the 1960s and 1970s to 96 hours a week in 1980, and to 103 hours a week in 1993 (Dwasi, 1999 quoted in Bowman and Kuenyehia, 2003, p 524). Their work is constructed as informal and accompanied by job insecurity, risk and lack of employment or social protection, often with the poorest conditions of employment amongst horticultural workers. There are few opportunities for meeting domestic responsibilities (due to insufficient childcare, social provision and maternity leave).

Family power structures and gender segregation mediate women's access to markets. The broader social norms, including women's productive and reproductive responsibilities structure women's position within the labour force. Women therefore undertake a disproportionate amount of temporary and casual employment because they occupy socially subordinated positions relative to men in wider society. In addition women because of their social roles absorb most of the cut backs in state provision which have resulted from the wider economic policies of liberalisation. The impact of these policies is disputed although many would agree with Molyneux and Razavi that:

‘rising income inequalities, coupled with widespread poverty in many countries, have been accompanied by record levels of crime and violence. Meanwhile states have downsized, abdicating former responsibilities in the domains of economic and social policy, just at the moment when they most needed to play a coordinated function between public and private provision. Where not starkly inadequate, welfare delivery under the new schemes has been patchy’ (Molyneux, M and Razavi, S, 2002, p 3).

African states are a product of their colonial histories. ‘The African state is notoriously weak in most places. In those places where it is strong as in the deployment of its police and law and order powers, the strength of the African state is mostly negative and repressive’ (Molyneux, M and Razavi, S, 2002, p 3). The state offers little by way of a welfare function. The interaction between market, state and family in Kenya and sub Saharan Africa more generally is constructed through the plural legal system which recognises customary, religious and state laws. Customary law regulates family and allied property relations including inheritance while general state laws cover commerce, crime and public relations including labour laws. For the majority of women access to resources is structured via customary law which is based upon communal rather than individual values.<sup>25</sup> Land ownership has been a highly politicised issue since the colonial era with post colonial regimes reflecting various ideological positions (Manji, 2006). The World Bank and the International Monetary Fund have exerted considerable pressure on African states to create free markets in land. However customarily women rarely own land outright: their right to use is tied to their status as wives and typically terminates upon divorce or death of their husband. Yet they are the primary source of agricultural labour. The separation of unpaid labour and ownership makes women extremely vulnerable economically.

State based labour market regulation and norms reinforce gender division of labour because they are constructed upon the male permanent employee model. Kenyan labour law is not well developed particularly in relation to equal opportunities. The government has not enacted measures that recognise equal pay for equal work, nor

any specific legal protections against discrimination on the basis of sex. Wages are therefore low. Women can be exposed to serious health risks because of the chemicals used and Kenya lacks an appropriate protective environment including safety laws. The Workmen's Compensation Act applies to workers who can prove that they are 'permanent' rather than 'casual' employees (Dwasi, 1999).

As in the UK in the opening up of the market in land and also horticultural exports to encourage competitiveness in a global context we see the reconstruction of concepts. Informal working allows producers to shift the risks of production onto worker: elasticity of labour is seen as a competitive asset (Barrientos, Dolan and Tallontire, 2003, p 1515). Formal and informal forms of working are no longer denoted by distinct sectors; rather they are situated within these broader flexible production strategies. However these forms are gendered. Men tend to hold permanent jobs with higher wages while women are concentrated in the 'twilight' zone between the two types of work, increasingly engaged in 'informal' types of employment moving 'flexibly' between productive and reproductive economy as required by the dictates of work and the wider societal values reflected within family structures. The plural legal framework reinforce divisions between gendered access to family based resources and formal employment. The regulatory frameworks which are based more broadly on gendered concepts relating to work are being reconstructed by global markets.

#### **4.1. The Horticultural Global Value Chain**

The concept of the global value chain (Gereffi and Korzeniewicz, 1994) explores how the linkages between the production, distribution and consumption of products, distribution and consumption of products are globally interconnected along value chains which embody a network of activities and actors.<sup>26</sup> I now turn to the ways in which regulatory contexts affect this chain in vegetables and flowers.

The global market for high value and processed foods has grown substantially in recent years. These foods, including cut flowers and prepared vegetables now account for two thirds of all agricultural trade (Oxfam, 2004, p 66). The competition to export fresh produce has grown dramatically. At the supply end of the chain, state agricultural marketing boards have been replaced by individual exporters. Importers and international traders no longer negotiate with a handful of large national exporters but with a multitude of local producers. At the retail end, there has been global consolidation, supermarkets dominate food sales in Europe and the US and have huge power.

This market has been facilitated by the regulatory framework for trade which is organised through the World Trade Organisation's multilateral trading system (GATT). This system is based upon agreements negotiated and signed by a large majority of the world's trading nations, and ratified by member states. These contracts guarantee member states trade rights on the basis of national treatment and most favoured nation treatment. While the agreements were negotiated and signed by governments, their purpose is to help producers of goods and services, exporters, and importers conduct their business. The 15 agreements of the Uruguay Round were drawn up at the height of the enthusiasm for free market economics with its attachment to liberalisation and deregulation. The food market has benefited from the

lower tariff barriers but the Agreement on Agriculture committed governments to reduce subsidies to farmers. The pressures on developing world countries from the combination of International Financial Institutions (IFIs) and World Trade Organisation has led to liberalisation of agriculture but resistance within the EU has not led to significant reduction in subsidies. The Doha Development round in principle addresses the difficulties faced by developing countries in implementing these agreements but the practice seems very different.

The WTO system is multilateral with each member state having a vote.<sup>27</sup> However the realities of global power result in block negotiations and bargaining among groups of states. The EU negotiates on behalf of its members states including the UK. The dominant discourse is based on contract in a context of reciprocal trade offs. Attempts to introduce a rights based discourse on labour standards have largely failed. Advocates of GATT enforcement of minimum labour standards (reduced in any case to cover only the core International Labour Organisation [ILO] standards now contained in the 1998 ILO Declaration) were opposed by the majority of states, particularly in the developing world, and business lobbies (Braithwaite and Drahos, 2000, p 235).<sup>28</sup> Proposals for a 'social clause' gain little leverage.<sup>29</sup> A specifically gender based discourse gains none at all.

States are also key actors in the globalisation of labour standards via the ILO. Until the 1950s the ILO worked within a 'social democratic cooperatively tripartite Keynesian welfare statism' (Braithwaite and Drahos, 2000, p 233) and concentrated on international standard setting. This consensus was disrupted by the membership of the Soviet Union and the newly independent developing nations which could not meet the prevailing standards and therefore did not ratify them. Standards in the area of worker's rights have not been ratcheted up subsequently. Indeed the adoption of liberalised economic policies within the West, reflected in those of the IFIs, have led to further erosion in the legitimacy of labour rights in an era of deregulation. As we have seen the discourse is now one of flexibility for competitiveness not economic solidarity.

The international labour regulatory framework has had limited resonance for women. The premise for many of the developments has been the work patterns of men - full time permanent employment, located within defined workplaces, and associated with trade unions. Women have not worked in this way generally and have not figured strongly in domestic or international trade union movements. They have directed their energies internationally to bodies more associated with social and political rights rather than the economic. The specific women's rights framework<sup>30</sup> is far more sensitive to the context of gender based discrimination and does range widely across economic, social, civil and political issues but contains only general non discriminatory articles relating to employment and offers little by way of effective enforcement.

Early ILO Conventions relating to women were protective in nature, in recent years as women have featured more among Trade Union representatives, rights relating to women workers have started to appear in Conventions.<sup>31</sup> While these standards are now recognised by most of the world they are not ratified by many states and not

enforced by those that do ratify. The Equal Pay Convention 1950 (no. 100) is ratified by 126 states but effectively implemented by few.

Both Kenya and the UK are members of the ILO. Women workers in both countries experience the limitations of rights based upon masculine work patterns and assumptions. However their legal positions are very different in that women within the UK have the benefit of the European Union labour protections as well as domestic labour law which is far more extensive than the minimum offered by Kenya.

This brings me to the third sphere of discussion which is the regulatory discourse associated with family and community networks. In this paper I do not have the space to develop issues relating to the family.<sup>32</sup> I concentrate on the discourse relating to the regulation of business conduct which is emerging within civil society which seeks to ensure ethical behaviour such as the fair trade movement.<sup>33</sup> It also encompasses the UK based Ethical Trading Initiative and the use of corporate codes of conduct.<sup>34</sup>

However we must start by also locating these initiatives within the debate relating to the regulation of the activities of transnational corporations (TNCs). Their importance and dominance in the world economy has resulted in an approach based on exhortation and voluntary accountability. So for example the UN has drafted Norms on the Responsibility of TNCs and other Business Enterprises in relation to Human Rights for use by TNCs and states as models and has constructed a voluntary Global Compact which encourages TNCs and others to comply with ILO minimum labour standards and basic human rights.<sup>35</sup> States encourage, in an age of deregulation, TNCs to adopt corporate codes which mirror to some extent international and national labour laws. These codes can also cover environmental issues and, of particular interest here, gender sensitive work related measures.

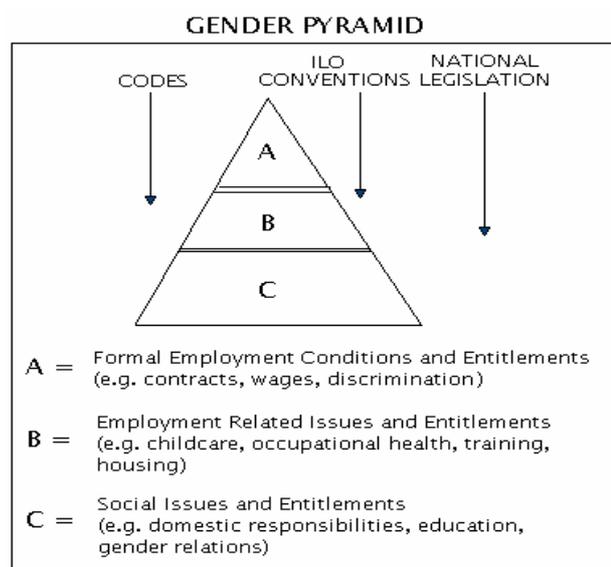
This self regulatory approach has been the subject of considerable criticism from labour lawyers and others for being discretionary, unenforceable and specific rather than universal.<sup>36</sup> Nonetheless there is recognition that they are emerging as a significant feature in transnational labour market regulation (Arthurs, 2002, p 487). They mushroomed in relation to the horticultural sector linking the UK to Southern producers (Barrientos, Dolan and Tallontire, 2003, p 1511). Most supermarkets implement their own as well as sector wide codes to cover their supply chains.

Do they have the potential to recognise gender issues which are not covered by trade and rights discourses? Food retailing is a highly competitive business; supermarkets are very sensitive to the wishes of their consumers and vulnerable to loss of reputation. Women's organisations networking between Kenya and the UK have been able to publicise the impact of spraying on women's health in greenhouses in Kenya. This has led to rapid responses by supermarket managers to tackle the problems to involve loss of a lucrative market.<sup>37</sup> Consumer boycotts can be effective in high value areas or where a brand is under attack.

Barrientos and her colleagues researched the impact of such codes on women's work conditions in our chain. They asked firstly whether the gender sensitivity of codes is sufficient to give women in employment the same coverage as men and secondly whether the codes are sufficiently broad in their scope to cover related non-

employment issues that affect the different forms and conditions of employment of men and women (2001, p 9). Reproduced below is the gender pyramid created by Barrientos, Dolan and Tallontire (2001) which contains their gender framework for codes of conduct.

**Source: Barrientos, Dolan and Tallontire (2001: 11)**



The key issues relating to the conditions of employment are divided into three inter-related levels to assess the codes, the linked national legislation and international (ILO) conventions. The tip (Segment A) covers the formal issues that both men and women face in employment (freedom of association, collective bargaining, safety and hygiene, equal and living wages, work hours, contracts and discrimination). Segment B covers employment related issues which the authors argue are more important to women than men given their social reproduction roles (provision of housing, training, workplace childcare, reproductive rights, maternity and paternity leave, transport and occupational health). Segment C covers the broader socio-economic circumstances that affect women's ability to access particular types of employment (social norms and practice, education, domestic responsibilities and gender relations). In capabilities analysis the state and the market would need to ensure that women had combined capabilities throughout the pyramid.

How are the entitlements to these three segments achieved? Most codes of conduct are based on ILO conventions which form the foundation of segment A. However as the authors point out, ILO conventions require ratification by national governments to be enforceable. Within the study countries, South Africa has ratified all, Zambia and Kenya far fewer. Even if ratified, the conventions are voluntary agreements with no direct mechanism of enforcement. Enforcement depends on moral pressure on governments. Conventions presume full time and permanent employment (men's work) and their coverage of temporary employment (women's work) is limited. The conventions also presume that employees are represented in a collective bargaining agreement. If women are working on a permanent basis with collective bargaining they will be well covered by codes based on these conventions. Women however constitute the seasonal and temporary workers. To cover them the codes need to

extend beyond the formal convention 'rights' and include the employment related issues covered in segments B and C.

National laws are needed to fill the gaps in protection for vulnerable workers left by the international labour conventions. Many codes require adherence to national legislation. As the authors point out where national legislation is good this can give codes more extensive coverage than the specific clauses in the code. National legislation can tackle the employment related issues in segment B and the wider legal and social framework within the country can influence segment C. So the codes interact with national legislation and can mutually reinforce each other. However within the study the extent of gender supportive laws at state level varied considerably. The authors conclude that where there is good legislation but poor enforcement codes of conduct can become an important mechanism of enforcement. Where legislation is weak it is the code and relevant international conventions that sets the standard for Segment A and the provisions of the code alone which set the standards for Segment B; few cover Segment C.

The codes have emerged through different routes: internationally independent codes; supermarkets and their agents; and sectorally via trade associations. They also have two different origins: independent codes (SA8000 and ETI Base Codes) which are free standing social codes and company/sectoral codes which tend to extend existing standards that have been established to cover management and environmental issues. The authors conclude that the social codes which have been developed through multi-stakeholder approaches tend to be most comprehensive in their coverage of core UN and ILO conventions relating to minimum labour standards. Many company codes are good at covering Segment A if workers are permanent and full time, and less so at covering temporary or insecure workers (women). The sectoral codes were patchy and none extended into Segment C.

## **5. West African Care Workers: Market, state and family**

Many of the interactions described above broadly apply to Ghana which forms the setting for the care chain. I am using Ghana because the problem of the skills drain in health workers is particularly acute and well documented. However this literature primarily relates to the chain in health care worker migration in particular doctors and nurses. It does not cover those more associated with the literature on the care chains: maids, nannies and carers (Ehrenreich and Hochschild, 2003). The long established female labour exporting countries, in particular the Philippines, figure much more. Poland is a newer source of social care labour for the UK; South Africa and the Philippines are providing social workers. However I know from personal experience that large numbers of migrant African women work within the social care sector in nursing homes and home care.

What is the Ghanaian context? In many ways it is similar to the situation set out above in relation to Kenya. Ghana has roughly twice the per capita output of the poorer countries in West Africa. Having experienced structural adjustment programmes between 1987 and 1997 Ghana remains heavily dependent on the IFIs for assistance and opted for debt relief under the Heavily Indebted Poor Country (HIPC) program in 2002. These measures initially brought cut backs in the health, education and social

services which had a severe effect on women because of their responsibilities for the welfare of the family (Kuenyehia, 1994). Subsistence agriculture accounts for about 35 percent of gross domestic product (GDP) and employs 60 percent of the work force, in particular women. Economic conditions have improved for some since with the opening up of the markets.

Women have traditionally been market traders in West Africa and have high rates of economic activity. 'For practical purposes it can be assumed that all but a minority of women in Ghana participate in productive activity other than housework' (Blanc and Lloyd, 1994 quoted in Bowman and Kuenyehia, 2003, p 545). They combine these activities with their wider roles as carers. Ghanaian women have high rates of child bearing. They use extended kin networks and child fostering arrangement to manage the tensions between productive and reproductive roles. The majority of mothers appear to be able to care for young children while working in the informal sector. Market trading appears to be compatible with child care. However women working as teachers, nurses, secretaries and factory workers face stress and conflict between caring and working roles because urbanisation has led to kin dispersal and increased housing costs. Women with better paid jobs can employ other women to perform domestic services. Domestic workers are often poorly paid for very long hours and can face abuse (Bowman and Kuenyehia, 2003, pp 551-552). The cultural assumption that women will work and also manage care responsibilities with the assistance of kin networks, through child fostering and where financially possible, domestic support potentially enables women to contemplate migration.

Women with access to education can work in the formal service sector as nurses. The incentives for those with skills to migrate are substantial: low wages, bad working conditions, discrimination, poor facilities and a wish to save and invest including in education for children (Mensah, Mackintosh and Henry, 2005, p 20). However there has to be a labour market into which to fit. We have seen that there is a growing market for social care workers in the UK. There is also a huge demand for health care workers as a result of an undersupply of nurses (and doctors) in the UK due in part to the reluctance of UK nationals to enter into the nursing profession. The Labour governments since 1997 have invested substantially in the NHS but training takes time so much of the demand has been met via overseas recruitment. The additional factor needed for migration to take place is an integrated international health/care services market.

### **5.1. A Global Care Chain**

Hochschild used the concept of a global care chain to capture the relationship between globalisation, migration and care. It refers to the 'series of personal links between people across the globe based on the paid or unpaid work of caring' (2000, p 131 quoted in Yeates 2004, pp 369-370). Yeates (2004) broadens the scope of the analysis to include, like here, a wider definition of care services than that adopted by Hochschild. As we have seen there are also different elements to caring;<sup>38</sup> physical labour is more commodifiable than emotional labour for instance (Guillari and Lewis 2005).

The international health care labour market is integrating and commercialising. The Internet has increased international knowledge, governments actively recruit overseas, and commercial recruitment agencies have been established and publicly recruit.

Agencies also manage the processes involved in exchange for fees and some migrants can also obtain loans. The cost of migration has increased but the costs are more affordable. The international job seeking process is less dependent on informal contacts, more overt and impersonal (Mensah, Mackintosh and Henry, 2005, p 13). Ghanaian nurse qualification is accepted but they must undertake a 3 months supervised practice in the UK. If successful the nurse can register with the Nursing and Midwifery Council (NMC) for a fee of GBP 117. Private recruitment agencies assist nurses to move to the UK for a fee of GBP 2500-3000. There has been huge acceleration of nurses leaving; 354 Ghanaian nurses joined the UK register in 2003/4 (and 293 doctors) and a similar number the following year. It is clear that there is substantial integration in this market although this level of integration does not exist in other forms of care work. Local authorities seeking social workers and social care workers are beginning to seek out overseas workers and use commercial recruitment agencies in a similar way although these are less well developed at the moment. Those seeking to migrate to undertake more domestic based care seem to rely far more on informal contacts including networks of nationals who have migrated previously. However some domestic workers from countries such as the Philippines can be involved in established international markets.

The regulatory discourse associated with this market relates to recognition of professional skills for nurses and social workers but not domestic workers by the relevant regulatory bodies. Some developing countries are considering the use of General Agreement on Trade in Services (GATS) mode 4 to bargain for their nationals to migrate to provide services in the developed world. India is particularly keen to develop this approach in relation to its highly skilled IT service sector. There is considerable resistance to this development within the developed world. In addition developed states are not keen to include their health care sectors in GATS at the moment. In this discourse care workers would be reconstructed as service trade providers involved in the 'movement of natural persons' (Mode 4) as corollaries to the commercial presence of service provision (Mode 3). They would not be migrant workers with access to labour markets.

The overarching context is that of specific state immigration laws. Visas and work permits will be issued to those who meet requirements. Immigration policies are highly politically sensitive areas for governments and are kept very separate from trade negotiations.<sup>39</sup> A 'GATS' visa is unlikely in the near future although we perhaps are seeing an attempt to shift the discourse in the UK<sup>40</sup> to one that ties immigration to investment capacities and skills. In this area as well New Labour is focused on market competitiveness. There will be open access and quick routes to citizenship for those with money to invest or who are highly skilled while there will be provision for a very limited number of temporary low skilled workers from the developing world who will only be able to come for a maximum of twelve months without their families. Unskilled social care workers would probably fall within this last category which bears similarities to Mode 4 GATS status.

States on the losing end of the chain face great difficulties in discouraging migration in this integrated market despite the dreadful effect on their own care services. (Ghana has 64 nurses per 100,000 persons, the UK, 497; Ghana has an under 5 mortality rate per 1,000 of 106 for boys and 99 for girls, the UK, 7 and 6 respectively). In any case

the benefits to Ghana are substantial because of remittances back although these do not compensate for the losses to the health service.

The net effect of this care based migration is a perverse subsidy: a net flow of benefits from a poor country to a rich one. However attempts to block emigration by states are highly problematic. It is in this area where we see the problems associated with rights. The right to individual freedom of movement is pitted against another Ghanaian citizen's right to health although the former tends to 'trump' the latter. There are increasing attempts to find ways of addressing the inequalities produced by this migration through the discourse of rights.<sup>41</sup>

Within the discourse of rights, women are constructed as migrant workers. When they enter employment in the UK they share similar rights to other workers. However they face additional problems including discrimination on grounds of race and sex. Their status within the country also renders them vulnerable to potential exploitation<sup>42</sup>. This is particularly so for women entering the social care sector where we have seen there is a chronic shortage of labour, poor working conditions, high turnover of staff and an underdeveloped regulatory framework. The potential for abuse of a migrant worker is substantial particularly if her original entry or continued residence was in any way problematic.<sup>43</sup>

We see again in this chain the development of concepts of 'self regulation' based on ethical precepts which recognise the gross inequalities created by this chain. The pressure is on state actors, the NHS and Local Government social services departments. It has come from professionals within the health sector primarily and their professional organisations but also the wider development community. The response of the NHS has been to adopt a code of conduct on ethical recruitment which prevents active recruitment by the NHS in specified countries unless there is an explicit agreement between both states. However individuals are not prevented from applying for posts. This code is the first in the world but Mensah, Mackintosh and Henry (2005) in their careful and detailed review of this area argue that while it is a welcome recognition of the impact on developing countries it is generally ineffective and misdirected. In a robust market it will not stop migration but simply add to the costs. It is also implicitly discriminatory - African nurses cannot access well paid labour markets, Australians can. It is not therefore ethically satisfactory. They argue instead for the need for the UK government (and therefore tax payers) to redistribute resources by paying compensation for the subsidies provided by Ghana. However the code is perhaps the first glimpse of an ethical approach stimulated by concerns of citizens who benefit which would attempt to redistribute collectively.

The political sensitivities associated with the NHS with its huge workforce ensure that there is some public concern about these issues. There is less leverage for migrant social care and domestic workers who are either working in the private social care sector or in private homes

## **6. Eastern and West African Sex Workers: Market, State and Family**

For the purposes of this paper I am discussing women who originate from Africa but who are involved in the sex industry in the UK.<sup>44</sup> This enables me to draw on the contexts, set out in the previous examples, rather than introduce new ones. I start by

discussing the interactions between the local market for sex working<sup>45</sup>, state regulation, family relations and community values.

Prostitution was constructed in particular ways in colonial Sub-Saharan Africa (White, 1987; Mblyini, 1988; Bujra, 1982; McClintock, 1993). Men were enlisted into the colonial labour force, into formal labour relationships which often necessitated them working in settlements or in urban areas. Women were expected to stay in the rural areas to maintain the households and to provide for subsistence in the 'homeland'. There were restrictions on movements particularly into urban areas. However women found ways of escaping the particular rigours of the traditional rural patriarchal systems by providing services to men in mining, settlement and urban areas. These services would include beer brewing and those normally associated with household reproduction, now provided via the market. Sexual services were often included. Some women managed to create a degree of financial independence for themselves which was looked upon with some alarm by the colonial cadres who would use authoritarian public order measures to 'round up' and send women 'home'. These measures have been used by post colonial states for the same ends. It remains the case that single women in urban areas are vulnerable to these constructions despite the huge growth in urbanisation in recent years which are a response to economic and, particularly for women, social deprivations of rural life.

We have seen that there is a small formal labour market in most African countries and women, due to discrimination, find it difficult to access permanent paid employment. The implementation of the IFIs structural adjustment and liberalisation policies have reduced the state sector, including sectors such as health and education, where women have previously found employment. Studies show that the greatest impact of these measures has been on poor women (Kuenyehia, 1994); additionally, civil strife and the HIV/AIDs pandemic have caused severe disruptions to families.<sup>46</sup>

Prostitution may in any case offer more funds than 'official' jobs such as domestic work (where they are in cases subject to potential abuse by their employers) or if there is access to a lucrative market, more than some professional jobs (Songue in Bowman and Kuenyehia, 2003, p 553). The development of an international tourist market, as in Kenya, offers a wider potential for earnings and the possible aspiration of a longer term liaison with an overseas man. Once again the internet is opening up a wider range of possibilities such as mail order brides. There are substantial numbers of women working as and in various forms of prostitution in both countries.<sup>47</sup>

The state law in Kenya does not define prostitution but procuring and living off the earnings of prostitution are criminal offences.<sup>48</sup> In Ghana prostitution itself is not illegal, but soliciting in a public place incurs a small fine on first offence, and is a misdemeanour on subsequent occasions. Brothel-keeping is an offence. Interestingly, sex workers were included in former President Nkrumah's promotion of workers' associations in the 1960s, and their national association, the Ghana Widows' Association, is still affiliated to the national women's movement. However, the national association is inactive, and the Government never legally recognised its members as workers nor repealed the section of the Criminal Code on soliciting (Bindman, 1997). In both countries women are subject to harassment by police and,

more generally, corruption. There is evidence of the existence of organised crime in the sex trade in both Ghana and Kenya which includes involvement with trafficking.

### **6.1. The Global Sex Chain – Trading in Bodies or a Service Industry?**

We have seen that there is a very significant global market in sex services. We are considering one element which involves the migration of women to the UK. The issues are complex. The first point to make is that the women who migrate may not be those already within the sex industry in their home countries. Their situation may relate to the way in which the migration takes place. Does the woman organise the move herself and does she intend to work in the sex industry? She may hope through her liaisons with overseas sex tourists to secure entry through him (Brennan, 2003). Does she make use of the services of a smuggler to gain entry? Or is she coerced into the activity by a trafficker? ‘Whilst human smuggling can be understood as a form of assisted migration in contexts where legal migration channels are increasingly restricted, trafficking involves human rights violations ranging through kidnapping, deception to forms of debt bondage’ (Kelly, 2003, p 139). Research in this area finds evidence of links between trafficking and the existence of well established sex industries in the country of origin and destination although the former is characterised by poverty and the latter by relative affluence (Kelly and Regan, 2000, p 5).

Trafficking in human beings is now very profitable (about USD seven billion) annually, probably equivalent in financial terms to drug trafficking. Figures for the number of women trafficked into the EU vary from 500,000 in 1995 to 300,000 in 1998 to 120,000 in 2001 (Kelly, 2002, p 19). However, figures for the UK are very hard to come by due to lack of empirical evidence (Kelly and Regan, 2000, p 16). Police and immigration authorities identified East and West African countries<sup>49</sup> as sources countries.<sup>50</sup>

The regulatory context for this market unlike our other two examples is not constructed through a publicly available discourse on trade agreements because it is illicit. Within the regulatory context of states the dominant discourse is being constructed through international criminal law. Interestingly we see this legal construction of the meaning of trafficking reshaping understandings in the highly contested area of whether there is a distinction between forced and free prostitution. The definition of trafficking in human beings is contained in the Optional Protocol to the UN Convention on Transnational Organized Crime 2000 (the Palermo Agreement):

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of sexual exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution or others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in paragraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

Trafficking is constructed as sexual exploitation and the boundaries between free and forced forms are dissolved. This avoids an 'over inclusive definition which encompasses all foreign women involved in prostitution' which 'legitimizes heavy handed law enforcement 'clean up' campaigns that result in mass deportations, while ignoring both the traffickers' (Kelly, 2003, p 140). It also avoids an under inclusive one which 'excludes anyone where there is no evidence of 'force' at the initial recruitment stage' which 'result in women being denied access to redress and support' (Kelly, 2003, p 14).

This international policy construction has not been translated into the domestic laws of the countries who have signed. Kenya does not have comprehensive anti trafficking legislation although it has some offences relating to child labour, forced detention for prostitution and the commercial exploitation of children. No traffic related offences have been prosecuted. The police continue to deny that trafficking is a problem and the government provides no assistance to trafficking victims. Ghana in contrast is introducing legislation specifically in relation to trafficking and also has a range of laws which it can use. It has a national plan to combat trafficking and has a range of proactive policies. Within the UK the Protocol was implemented via the Nationality, Immigration and Asylum Act 2002 and the 2003 Sexual Offences Act.

The contest over meaning continues in the UK. A raid by police and immigration officials in Soho London in 2002 resulted in the arrest of over 60 women who were held in detention and some were deported. Adams describes them as asylum seekers and immigrant sex workers. 'All the women were working independently of pimps - many had small children to support and some were sending money back to their family in other countries.' She argues that now 'any immigrant women can be labelled as a victim of trafficking and deported. The police notoriously exaggerate the extent of trafficking to justify increased powers and resources' (Adams, 2003, p 136). She sees the trafficking offences as part of increasingly repressive immigration measures. Within the wider European Union context, there is an attempt to introduce an element of rights for the women involved which would temporarily construct them as cooperative victims rather than illegal immigrants subject to deportation. A draft Convention proposes that 'victims' would be entitled to a degree of state based social support while they decide whether they will give evidence against traffickers. If they agree to do this they will be provided with more support for the period of the prosecution. They will be granted up to 6 months leave to remain. These provisions have been criticised for their linkage between the 'rights' of victims and the willingness to take part in prosecutions. As Adams argues 'If a woman's safety and welfare were really the priority why shouldn't a woman who has escaped from a situation where she faced threats, violence and/or rape and fears reprisals have the right to stay in the UK?' (2003, p 136).

International non governmental organisations are very involved in the construction of identities in this area although it is as these are heavily contested between those who understand prostitution and trafficking as coerced sexual exploitation and violence

against women while organisations such as the English Collective of Prostitutes argues forcibly for recognition of the rights of sex workers. There is almost no discussion of the position of users of the services although just recently the suggestion has been raised that men who buy the services from a migrant woman who has been trafficked might be charged with rape. In other words does the purchaser have some sort of duty of care towards the provider of this service?

## 7. Conclusions

This paper has considered the three chains which involve gender relations in a global economy. It has argued that it is necessary to understand two contexts. The first of these is 'domestic' regulatory framework which constructs gender relations. In particular it is necessary to consider the relationship between the market, the state and the family. In the UK state measures to ensure maximum competitiveness in the economy are reconstructing welfare provisions and labour market measures to ensure that women remain within the labour market irrespective of their wider caring roles. Care as a result is being commodified and opened up to a social market. Women undertake paid care and therefore work. Welfare law is being reshaped to support this 'independence' both for women with caring responsibilities but also for those who are in need of care.

Women in Africa are being incorporated into the liberalised labour markets associated with horticulture in ways which reflect their wider position within society. In particular under wider norms, which are reflected through the plural legal systems, women struggle to gain access to familial and community based economic resources in particular land. They face difficulties in joining the small formal labour markets which are in themselves being restructured to produce greater competitiveness in a free market environment. However their assumed gendered characteristics make them attractive to employers who wish to externalise as much of the risk, imposed on them by the commodity chain, on to the workforce. Women work as casual and seasonal labour and as such tend to fall outside the relatively meagre state labour law regimes.

The impact of the interactions between family state and market are context specific with the very limited contribution of a welfare state in Africa. The general point is that the impact of family and community relations particularly on the ways in which care and work are constructed must be factored into each context. Women in Africa care primarily within family contexts with limited support from states which have few resources. States, partly as a result of IFI requirements, have been obliged to reorganise their health and education systems. Health provision is under enormous pressure because of poverty, conflict and the HIV/AIDS epidemic. Conditions are poor for not only those in need of health care but also for those who provide it. Doctors and nurses seek to utilise their skills in the UK health sector. In addition women with the necessary social and language skills migrate to utilise their caring ability in the expanded UK market for social care. Migration is being feminised. However their ability to migrate to provide these services depends not only on general state based immigration regimes but also on the way in which their labour is valued: those seeking to work in social care, which is still associated with female unpaid family labour, are often treated differently to nurses.

There are heavily contested constructions of work (and care) in the domestic contexts for the provision of paid sex services. While women work and are paid they are generally denied recognition of this within state laws. Although providing an intimate bodily service this is not seen as caring although if provided in the context of the family it might be. Women who migrate to provide these services do so because of poverty and abuse. They generally do this illegally because they have been smuggled or trafficked and therefore constructed as illegal immigrants.

The three global chains bind these domestic contexts together. We have seen that the dominant discourse of the global market is trade which is underpinned by concepts of contract and reciprocity. UK food retailers and Kenyan farmers operate within the context of WTO/GATT agreements. The UK and Kenya have equal status in contract and through these agreements provide each other with reciprocal trade terms. The market in services is emerging on similar terms through GATS. Labour becomes trade within Mode 4's movement of natural persons. States negotiate reciprocal terms for access to service markets not access to labour markets. Health services if privatised may become subject to GATS but reciprocity of care/health worker skills will not. This contractual/trade construction belies the profoundly unequal power relations and seems impervious to gender constructions. The sex trade generally is not regulated by this trade discourse but through the illegality associated with the international criminal justice discourse.

The international labour movement and state actors have used labour rights to regulate the effects of markets on workers and to some extent effect a degree of redistribution between capital and labour. However these attempts to set universal standards have faltered in an era of free markets and deregulation. States seek competitive advantage and resist the perceived restrictions on flexibility. It is states in the weakest economic position in the global market which offer workers the least rights. From a gender perspective the labour rights approach has not catered well for women because they are based upon male models of work and do not recognise the inter relationship between work and care, between productive and reproductive roles. Women working informally via seasonal, temporary or homework, in providing care in domestic contexts or within complex relationships with no clearly identifiable employer face particular problems. Migrant care workers are particularly vulnerable and women working in the sex industry struggle to have any recognisable rights related to the employment. It is necessary in an era of globalisation, with its dramatic increase in labour mobility and new forms of working, to move beyond the present construction of the 'universal worker' towards one which recognises the whole identity of a person (Ontiveros, 2003).

The ideology of free trade and deregulation has encouraged the development of self regulation within global business. We have seen the operation of codes of conduct in relation to the horticultural industry and also in relation to NHS recruitment of health workers. However these initiatives originated in pressure from consumers, civil society organisations and non governmental organisations primarily in the developed world concerned about the impact of global business on the developing world. They are based to a greater or lesser extent on ethical precepts. The corporate codes offer some limited potential to recognise the wider roles of women as workers and to fill

some of the limitations of the present constructions of labour law. More awareness of the domestic contexts of Africa described in this paper but achieved in practice through global networking, could offer a way forward. The NHS code is probably misdirected but again with more understanding of the domestic contexts could be refashioned to enable both rights to migrate but also investment in health and care in Africa. At their best, take for example the Fair Trade movement, these initiatives are based broadly on a concept of care which recognises global injustice and seeks in a small way to tackle these.

Finally, I would argue that feminist legal thinking in an era of globalisation must focus on redistribution issues. However, in order to do this we must explore the relationships that are being created across as well as within borders and understand the ways in which new gendered identities are being shaped by regulatory frameworks and discourses. The discourses of trade, based on reciprocal contracts and rights approaches, based on abstract universal individuals have no conceptions of interdependence and therefore no conception of power. The feminist concept of care, based as it is on an understanding of interdependence, offers us a way of rethinking.

### Endnotes

<sup>1</sup> A product of the collaboration between the non governmental organisation, Women, Law and Development, Africa and the African Union (Banda, 2005).

<sup>2</sup> More recently the analysis has been utilised in relation to South Africa (Sevenhuijsen et al., 2003).

<sup>3</sup> Care has four elements each with an associated norm: caring about (attentiveness); taking care of (responsibility); care-giving (competence); and care receiving (responsiveness) (Tronto, 1993)

<sup>4</sup> See Lacey (2004), building on the work of Nedelsky (1993) and Guillari and Lewis (2005) developing Nussbaum's capabilities approach.

<sup>5</sup> This paper is based on chapters of a book which I am preparing. The various chains are explored in more detail, not necessarily restricted to the jurisdictions used in this paper. The book also considers another 'chain' – diasporic identities which cannot be covered here.

<sup>6</sup> The gender gap in employment rates fell from almost 33 to 12 percent between 1975-1998. There has been no change in rates for single women, lone parents and women with unemployed partners. Pay gaps have followed the same pattern. (Desai et al., 1999, p 168)

<sup>7</sup> Both the Royal Commission on Long Term Care (Sutherland, 1999) and the Carers National Strategy (Department of Health, 1999) see problems in these social trends for the 'supply of care' although they disagree on their impact. The former sees 'no evidence of working women being less willing to provide unpaid care' while the latter claims that '[a]cross all age groups, women are less likely to be a carer if they are in paid work'. Both see problems with the future impact of changes in household type, growth of lone parents, people living alone and increased mobility of family members.

<sup>8</sup> Employment Relations Act 1999 and Maternity and Parental Leave etc Regulations 1999 SI 1999/3312 amending the Employment Rights Act 1996 Part VIII. The 2006 Work and Families Act enhances rights on maternity and paternity leave and pay.

<sup>9</sup> Employment Relations Act 1999 s.34 (4)

<sup>10</sup> Parental Leave Directive 96/34 [1996] OJ L145/4. The Work and Families Act 2006 section 12 will extend the right to request flexible working to those with wider caring responsibilities in 2007.

<sup>11</sup> Employees are entitled to take reasonable unpaid time off to deal the unanticipated needs of a dependent. Employment Rights Act 1996 (as amended) S 57A.

<sup>12</sup> The majority of whom are women. The Part Time Workers (Prevention of Less Favourable Treatment) Regulations SI 2000/1551 implementing EC Council Directive 97/81 [1998] OJ L14/9.

<sup>13</sup> Of particular significance for women workers who form the majority of the low paid. See the National Minimum Wage Act 1998.

<sup>14</sup> I look at this issue in more detail in Stewart (2005 and 2007 forthcoming).

<sup>15</sup> The distinction between health and social care is very unclear and the subject of increasing litigation (R v North and East Devon Health Authority ex p Coughlan [2000] 3 All ER 850.)

because the NHS is free at the point of delivery, provision via local authority social services is subject to means testing.

<sup>16</sup> The relevant legal provisions are spread out in legislation dating back as far as 1948.

<sup>17</sup> The National Health Service and Community Care Act (NHSCCA) 1990.

<sup>18</sup> The implementation of the Human Rights Act 1998.

<sup>19</sup> Except for a tiny carers allowance of around GBP 41 per week

<sup>20</sup> If they are unable to work due to the amount of care provided and are within the means test.

<sup>21</sup> For instance to fund a short period of respite care or a holiday or a training course, the Carers and Disabled Children Act 2000 and the Carers (Equal Opportunities) Act 2004.

<sup>22</sup> The updated and far more extensive provisions relating to child pornography and sexual abuse are contained in the Sexual Offences Act 2003. For adults, the Prostitution Strategy launched in Jan 2006 suggests that up to three women will be able to share premises without criminal sanction. Formal tolerance zones were rejected. There will be 'tougher rules' for clients.

<sup>23</sup> EC Directive 79/7; Case C-31/90 Johnson v Chief Adjudication Officer [1991] ECR I-3723, Case 150/85 Drake v Chief Adjudication Officer [1986] ECR 1995; Case 77/95 Zuchner v Handels (Erstzkasse) Bremen [1996] ECR I-5689. Work does not necessarily require a wage but it must constitute an occupational activity and housework is not such. (See Kraamwinkel 2002, pp 332-333).

<sup>24</sup> Cases 115 and 116/81 Adoui and Cornuaille v Belgium [1982] ECR 1665. The case upheld the right to freedom of movement for two french prostitutes working in Belgium. Although the issue of whether they were workers was not addressed explicitly they successfully invoked rights associated with work (See Kraamwinkel 2002: 327-328).

<sup>25</sup> There is now a substantial body of literature which demonstrates the impact of pluralism on gender relations (Bentzon et al., 1998; Bowman and Kuenyehia 2003; Stewart 1998).

<sup>26</sup> Gereffi identifies four elements of the chain: an input-output structure (value added sequence in the production and consumption of the product); a territorial configuration (the geographical concentration and/or dispersion of production and marketing); a governance structure (the power relations that determine how financial, material and human resources are distributed within the chain; and an institutional framework that identifies how local, national, and international contexts influence activities within the chain. (Barrientos, Dolan and Tallontine 2003, p 1512).

<sup>27</sup> Powerful economies such as the US also use bilateral agreements to circumvent some the complexities of the multilateral system. The EU is presently negotiating Economic Partnership Agreements with 79 countries including all but one of Africa's sub-Saharan states. EPAs will replace the preferential trading arrangements which European Countries had with former colonies. The basis for EPAs will be reciprocity – opening up of both markets equally.

<sup>28</sup> The US, France, Norway and the International Trade Union Movement wanted freedom of association and right to collective bargaining; elimination of forced labour; abolition of child labour; elimination of discrimination in the workplace.

<sup>29</sup> There is a 'glimmer' of a social clause in the North American Free Trade Agreement 1992 (Braithwaite and Drahos, 2000, p 236). Section 301 of the United States Trade Act 1974 permits trade sanctions against states that fail to observe workers rights. This used rarely and selectively. (Steiner and Alston, 2000, p 1360).

<sup>30</sup> Convention on the Elimination of All Forms of Discrimination Against Women 1981.

<sup>31</sup> For example on Homework Convention no. 177 1996; Part time work no. 175 1994, Workers with family responsibilities no.156 1981.

<sup>32</sup> Elsewhere I will discuss issues relating to the gendered responsibility for food and the consumer market in luxury goods.

<sup>33</sup> Other initiatives include the Clean Clothes Campaign, SA8000 and the Fair Labour Association.

<sup>34</sup> Ethical principles and standards that attempt to guide a firm's environmental and social performance (see Jenkins, R, 2001; Utting, P, 2005).

<sup>35</sup> The Organisation for Economic Co-operation and Development (OECD) established guidelines for Multinational Enterprises in 1976 and the ILO adopted a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977.

<sup>36</sup> See Arthurs (2002) for wider discussion.

<sup>37</sup> See Women Working Worldwide website, <<http://www.poptel.org.uk/women-ww/>>, for more details on the campaign.

<sup>38</sup> See supra note 3.

<sup>39</sup> For the effects of 'blurring' the two in the USA see Wallach and Tucker (2006). For discussion of labour mobility within regional trade agreements see Nielson (2002).

<sup>40</sup> Immigration, Asylum and Nationality Act 2006 preceded by the White Paper: Controlling Our Borders: Making Migration Work for Britain 2005.

<sup>41</sup> See Bueno de Mesquita and Gordon (2005) and Physicians for Human Rights (2004).

<sup>42</sup> The ILO has recently turned its attention to migrant workers position and recommended greater protections for migrant workers via standard setting (2004).

<sup>43</sup> Caruso (2002) discusses the relationship between immigration and the 'shadow economy' in the Italian labour market. Women are providing domestic and personal services via this economy which provides an unskilled, low cost labour endowed with a flexibility that the official market cannot provide. Thus it is tolerated although individual workers are denied access to welfare provision and protection.

<sup>44</sup> Research studies and empirical evidence such as it is now concentrates on the influx of women from Eastern Europe into the European Union as a whole.

<sup>45</sup> Terminology is highly contested in this area, by using the term sex work I could be seen as allying myself to the voluntarist approach – suggesting that it is desirable to distinguish between consensual and coerced forms of prostitution. However I am not entering this debate at the moment.

<sup>46</sup> It is estimated that there are almost 900,000 orphaned children in Kenya including 60,000 on the streets of Nairobi who are vulnerable to sexual exploitation.

<sup>47</sup> In Ghana two forms are 'seated' and 'roaming'.

<sup>48</sup> Sections 147, 153, 154 Penal Code, Cap 63, Laws of Kenya.

<sup>49</sup> Nigeria and Uganda as well as Kenya and Ghana.

<sup>50</sup> See Adepoju (2005) for a review of research and data on human trafficking in Sub Saharan Africa.

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