

## Introduction

Ela Bhat, reflecting on four decades of organizing with the Self Employed Women's Association in India, argues that

the tyranny of having to belong to a well defined 'category' has condemned women to having no identity. The livelihoods of millions of people are [] not perceived as work, and, therefore, remain uncounted, unrecorded, unprotected, unaddressed by the nation, conveniently 'invisible' to policy makers, statisticians and theoreticians. .... If you ever come to official attention, it is only as an obstacle.<sup>1</sup>

This chapter considers the extent to which and in what ways the approach adopted by the International Labour Organisation (ILO) to protecting the interests of domestic workers contributes to the reproduction of this tyranny by categorisation. The Domestic Workers Convention 2011 (No. 189) (henceforth Convention) and Recommendation (No. 201), (henceforth Recommendation) 2011<sup>2</sup> undoubtedly represent much needed international recognition of the importance of improving the lives of such workers. The Convention addresses the key issues which domestic workers face: its Articles and the Recommendations provide a comprehensive package of measures which are mindful of the particular socio economic context in which such work is carried out whether this is within the worker's home or host country. It is also the case that care has been taken to embed the Convention within the more recent 'soft law' approaches adopted by the ILO including the Decent Work initiative which addresses the limits to adoption and enforcement of 'hard law' Conventions by member States. The ILO framework as a whole can in many ways be seen as tackling head on the problems identified by Ela Bhatt. It firmly establishes domestic labour as work which must be counted, recorded, protected and addressed by nation states. The ILO and the many domestic worker campaigners can claim that coming to official attention is a solution rather than an obstacle.

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<sup>1</sup> Ela Bhat, 'Looking Back on Four Decades of Organizing. The Experience of SEWA' in Naila Kabeer and others, (eds), *Organizing Women Workers in the Informal Economy* (Zed Press 2013) 3.

<sup>2</sup> The texts of Convention No. 189 and Recommendation No. 201 can be found at: [www.ilo.org/ilolex/english/index.htm](http://www.ilo.org/ilolex/english/index.htm)

However the ILO also argues that domestic work is both ‘work like any other, work like no other’<sup>3</sup>. This is perhaps the first iteration of the problem identified by Ela Bhatt. The problem of categorisation remains. This chapter argues that the relationship under consideration which involves activities carried out within or for a household is most commonly discussed within conceptual frameworks based upon binaries: production: social reproduction; public: private; formal: informal; work: care; labour rights: human rights; free: forced and so on. It will suggest that it is preferable to place such labour within frameworks which favour analysis based upon relationships, both personal and structural, and which seek to dissipate these binaries.

The ILO Convention for a variety of cogent reasons defined domestic work narrowly<sup>4</sup>. It is paid work carried out in a domestic context. The focus is on how to extend labour law protections to these workers and by so doing bring them within the domain of the formal labour market. The aim is first to separate this work from association with relationships of care. Yet the rise in the demand for such labour in recent years is directly linked to the lack of recognition of the way in which social reproduction which encompasses nurturing and caring underpins productive activities. Who is responsible for caring and broader social reproduction, and how is it to be provided, when the economic imperative seems to be that all adults must be gainfully incorporated into the global market? The increasing number of domestic workers in the last two decades is one response, set within a wider marketisation and commodification of caring relations which has led to the rise in body work more generally<sup>5</sup>. It is important therefore to understand caring work, where ever located as part of these processes and consider the ways in which it addresses the perceived crises in social reproduction<sup>6</sup>. Arguably the ILO approach, which seeks to establish a framework to enable policy makers to count, record and protect domestic work, is essential for its incorporation within the dominant neo liberal global economy. It is less able to address the wider issues relating to the lack of political will to tackle the consequences for individuals and

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<sup>3</sup> International Labour Conference, 99<sup>th</sup> Session, *Decent Work for Domestic Workers: Report IV(1)* (International Labour Office 2009) 12.

<sup>4</sup> International Labour Office, *Domestic Workers Across the World: Global and regional statistics and the extent of legal protection* (ILO 2013); Recommendation 201

<sup>5</sup> Carol Wolkowitz, *Bodies at Work* (Sage 2006); Carol Wolkowitz and others, *Body/Sex/Work: Intimate, embodies and sexualized labour* (Palgrave Macmillan 2013)

<sup>6</sup> Catherine Hoskyns and Shirin M Rai, ‘Recasting the International Political Economy; Counting Women’s Unpaid Work’ (2007) *New Political Economy* 12 (3) 297; Shirin M Rai and others, ‘Depletion’ (2013) *International Feminist Journal of Politics* 1

communities of the loss of socially reproductive capacity which accompanies commodification.

Secondly and relatedly, the ILO objective is to separate this type of work from other forms of informal working including sex work. Yet it shares important characteristics and continuities. Such work is often associated with shame and stigma, undertaken by marginalised groups including internal and international migrants, and is understood as a livelihood or survival strategy. Economically, these services are difficult to ‘scale up’ and therefore do not easily attract mainstream investment to improve productivity. They are more likely to be associated with exploitation and criminality. By seeking to extend a framework originally designed to protect organised, predominately male, workers making things in factories may miss the lessons to be learned from how informal workers perceive their needs and organise their demands to achieve them. There is much to learn by recognising the role played by informality in contemporary socio economic contexts and to consider the way in which informal workers seek recognition as citizens as well as workers.

The paper will go on to focus more specifically on the way in which these new international measures relating to domestic workers ‘fit’ into the categories associated with global labour governance. Here the focus is on binaries such as state or market (rights or trade); human or labour rights; ‘hard law’ labour rights or ‘soft law’ standards; rights or voluntary corporate social responsibility. While the ILO has promulgated a hard law Convention to provide rights to domestic workers the new orthodoxy is to rely more on soft law measures which some would argue can amount to ‘reflexive labour law’<sup>7</sup>. Global governance debates, while recognising the way in which globalisation has produced informalisation, flexibility and precarious working, tend to focus more on commodity rather than service production. These processes which underpin the way in which a commodity moves through its life cycle from inception to disposal attract scholarly and policy analysis and civil society activism. The focus, particularly within a development framework, is on global value chains, (GVC) or networks to highlight the way in which each stage in the process adds value<sup>8</sup>.

Different analytical frames of reference, primarily migration studies, tend to be used when it is a ‘factor of production’, a person who is to provide a service, that is passed along the chain or within the network rather than a commodity although trade economists understand

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<sup>7</sup> Ralf Rogowski *Reflexive Labour Law In The World Society* (Edward Elgar 2013)

<sup>8</sup> P Gibbon and others ‘Governing Global Value Chains: An Introduction’ (2008) *Economy and Society* 37 (3) 315

migration in this way<sup>9</sup>. Feminists have characterised these processes as global care chains (GCC) and established analogies with GVC<sup>10</sup>. We increasingly ‘see’ the distant workers, large numbers of whom are women, involved in the production of commodities for export partly because of high profile events such the death of textile workers in Bangladesh but also because of sustained campaigns such as those relating to the conditions of workers in agribusinesses in Africa, Latin and Central America. Pressure from alliances of global north consumers, non-governmental organisations (NGO), activists, policy makers and trade unions has contributed to the development of a raft of measures aimed at ensuring basic rights for workers. Such ethically inspired interventions are increasingly being understood as smart business where they result in a more productive workforce.

We do not ‘see’ so easily the proximate women involved in GCC. To what extent do global labour governance measures including the ILO approach to domestic worker protection extend to these chains? Such an assessment reveals the real challenges to effective protection for domestic workers whose labour is being used in many respects to avoid the essential political debate on how to ensure that communities are able to socially reproduce themselves in ways that do not involve profound inequalities and injustices. In this respect Ela Bhatt is right – a focus which isolates domestic work from broader public consideration of responsibilities for caring is an obstacle.

### **International Labour Office approach: context and content**

The ILO reports that:

at least 52.6 million persons above the age of 15 worldwide engage in domestic work as their principal job; and 83 per cent of them are women. Domestic work is a truly global phenomenon ... and on the rise everywhere. It accounts for 3.6 per cent of wage employment worldwide, representing 0.9 per cent of wage employment in industrialized countries, almost 12 per cent of wage employment in Latin America

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<sup>9</sup> Alan Hyde ‘Legal Responsibility for Labour Conditions Down the Production Chain’ in Judy Fudge and others (eds) *Challenging the Legal Boundaries of Work Regulation* (Hart Publishing 2012)

<sup>10</sup> Ann Stewart *Gender, Law and Justice in a Global Market* (Cambridge University Press 2011); Nicola Yeates ‘Global care chains: a state-of-the-art review and future directions in care transnationalization research’ (2012) *Global Networks* 12 (2) 1470

and the Caribbean, 8 per cent in the Middle East, and about 5 and 3.5 per cent in Africa and Asia, respectively<sup>11</sup>.

*Work like any other*

The ILO adopted the Domestic Workers Convention and Recommendation at its 100th Session in 2011. These new measures lay down basic principles and minimum labour standards for domestic work and make clear that ‘domestic workers, like other workers, are entitled to fundamental rights at work and to minimum labour and social protection. [They are] grounded on the principle of non-less favourable treatment between domestic workers and workers generally’<sup>12</sup>. The ILO’s approach is made very clear: ‘[l]egislation and regulatory policy are ... essential tools for eliminating the negative aspects of informality in the domestic work sector ... Extending the reach of labour law to domestic workers is an important means of bringing them within the formal economy... Bringing domestic workers ... under the protection of labour legislation is a matter of gender equality and equal protection under the law: a question of human rights.’<sup>13</sup>

The Convention defines domestic work narrowly as work performed in or for a household or households and a domestic worker as any person engaged in domestic work within an employment relationship<sup>14</sup>. The definition distinguishes this work from that undertaken within the wider care economy. The ILO decided not to ‘rely on a listing of the specific tasks or services performed by domestic workers, which vary from country to country and may change over time’ ... [but to use] ‘a general formulation that draws on the common feature of domestic workers that they work for private households’<sup>15</sup>. In so doing, it enables them to be identified and counted using the International Standard Industrial Classification, a recognised industry based approach<sup>16</sup>. The ILO uses this classification for its research on domestic work.

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<sup>11</sup> International Labour Office Governing Body 312th Session, Geneva, November (2011) Third Item on the Agenda, Matters arising out of the work of the 100th Session (2011) of the International Labour Conference. Follow-up to the adoption of the resolution concerning efforts to make decent work a reality for domestic workers worldwide [www.ilo.org/global/topics/domestic-workers/WCMS\\_210411/lang-en/index.htm](http://www.ilo.org/global/topics/domestic-workers/WCMS_210411/lang-en/index.htm) 1

<sup>12</sup> ILO (n 4) 2

<sup>13</sup> International Labour Office, *Effective protection for domestic workers: a guide to designing labour laws* (ILO 2012) 2-3

<sup>14</sup> Article 1 (a) and (b)

<sup>15</sup> ILO (n 4) 8

<sup>16</sup> *ibid* 8

The Convention seeks to treat domestic work like other work by promoting and protecting the human rights of workers through incorporation of the ILO Declaration on Fundamental Principles and Rights at Work 1998 (see below)<sup>17</sup>. The Convention limits the employment of children<sup>18</sup>. It protects against all forms of abuse, harassment and violence<sup>19</sup>. Domestic workers, like other workers, are entitled to fair terms of employment and decent working conditions<sup>20</sup>. Importantly they must be informed of their terms and conditions of employment, ideally through a written contract<sup>21</sup>. They have a right to a safe and healthy working environment<sup>22</sup> and to similar social security protections as other workers including maternity benefits<sup>23</sup>. It requires States to provide accessible and effective dispute settlement processes including access to courts or tribunals and to ensure compliance with the national laws enacted to protect domestic workers through such measures as labour inspections<sup>24</sup>.

### *Work like no other*

However it also addresses the issues which tend to mark such work out from other forms of work. Thus Article 10 requires States to take measures to ensure that domestic worker are treated the same as other workers in respect to normal hours of work, overtime compensation, periods of rest, ‘standby’ time and annual leave. The Recommendation is obliged to provide very detailed guidance on this area in order to address the difficulties associated with establishing clearly demarcated working time due to the nature of the activities undertaken and the complex power relationships which underpin much of such work<sup>25</sup>. Equally ensuring equality of pay with other workers is not straightforward given the difficulties associated with turning what is often seen as a (uneven power) relationship into a time bound and economically valued activity<sup>26</sup>. The Convention recognises the particular issues relating to ‘live in’ workers and seeks to set minimum standards in relation to decent living conditions

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<sup>17</sup> Articles 3, 4 and 11

<sup>18</sup> Article 4: states are required to set a minimum age and to extend extra protections to workers between the ages of 15 and 18.

<sup>19</sup> Article 5

<sup>20</sup> Article 6

<sup>21</sup> Article 7

<sup>22</sup> Article 13

<sup>23</sup> Article 14

<sup>24</sup> Article 17

<sup>25</sup> Guy Mundlak ‘ReCommodifying Time: Working Hours of ‘Live-in’ Domestic Workers’ in Joanne Conaghan and Kerry Rittich (eds) *Labour Law, Work, and Family: Critical and Comparative Perspectives* (Oxford University Press 2005)

<sup>26</sup> Article 11 requires workers to be paid the applicable minimum wage while Article 12 addresses issues such as payment in kind (limited and not including uniforms or protective clothing).

that respect the workers' privacy<sup>27</sup>; the freedom to decide on whether to reside in the household<sup>28</sup> and to leave the premises during periods of rest and leave<sup>29</sup>; and the right to keep identity and travel documents<sup>30</sup>. However in any dispute the workers' right to protection must be balanced against the right to privacy of household members<sup>31</sup>. Again the Recommendations seek to provide detailed guidance on how to achieve these goals.

Given that a very significant proportion of domestic work is undertaken by migrant workers, in some countries almost exclusively<sup>32</sup>, the Convention addresses their particular vulnerabilities. It requires States to ensure that workers receive a written contract that is enforceable in the country of employment, or a written job offer, prior to travelling to the country of employment and that there are clear conditions under which workers are entitled to repatriation at the end of their employment<sup>33</sup>. Because such migration is often orchestrated by private employment agencies, Article 15 requires States to ensure that domestic workers are protected from abusive practices; that such agencies are regulated and that the fees charged are not deducted from their pay. Article 8 promotes co-operation between sending and receiving countries to ensure the effective application of these provisions including considering the use of bilateral, regional or multilateral agreements.

Albin argues that the legal situation of domestic workers will remain precarious 'as long as special attention is not given to the[ir] sectoral disadvantage. Their work has to be treated as 'work like no other' for the rules to be effective'<sup>34</sup>. She defines sectoral disadvantage 'as a situation in which the *rules* of a specific sector – its structure and culture – impact on workers in the direction of disadvantage'<sup>35</sup>. She considers that the 'Convention and recommendations have generally adopted such a focus, but there remains a tension in the instruments'<sup>36</sup>. What comparators are going to be used? Is sleeping in the employer's house a loss or a gain? Are deductions for accommodation and food appropriate even if the worker agrees to them?

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<sup>27</sup> Article 6

<sup>28</sup> Article 9

<sup>29</sup> Article 9

<sup>30</sup> Article 9

<sup>31</sup> Article 17

<sup>32</sup> Add figures

<sup>33</sup> Article 8

<sup>34</sup> Einat Albin 'From 'Domestic Servant' to 'Domestic Worker' in Fudge and others (n 9) 231, 248.

<sup>35</sup> Ibid 231. She points to the long history of subjecting such work in the UK to a particular legal regime.

<sup>36</sup> Ibid 248-249

‘Each and every rule should be thought of in light of the particular disadvantaged state of domestics and the primary causes of the distinction between them and other workers.’<sup>37</sup>

While this approach highlights the challenges that legislators and policy makers face in translating the aspirations contained in the Convention and Recommendation into substantive equality for domestic workers, it identifies the location for work, reinforced through rules (or lack of them) as the key source of disadvantage while others would point to continuities with other forms of caring work and with work undertaken in informal settings more generally. We will return to these points below.

### **Implementation in a soft law era**

This is the 189th ILO Convention. The Convention and the accompanying Regulations represent the ‘traditional’ ILO approach to global labour rights whereby Member States are encouraged to ratify and then ensure compliance with the content of the Convention through the implementation and enforcement of national level legal and policy measures. To this end, the ILO is pushing hard to encourage ratification in the crucial initial period after promulgation. To date<sup>38</sup>, there have been 12 ratifications: 7 in South and Central America; 2 in Europe (Germany and Italy); 2 in Africa (South Africa and Mauritius); 1 in Asia/Pacific (Philippines). In recent times, support for this ‘top down’ approach to the setting of global labour standards has waned leading to fewer new Conventions<sup>39</sup>. There are a number of reasons why this has occurred. Firstly, given the history of geo political power relations, there has been very uneven ratification by States generally and some key States such as USA and China have ratified very few. Secondly, national implementation is very patchy and the ILO like many other international institutions has weak enforcement mechanisms<sup>40</sup>.

On a more general level, this method of international labour standard setting has its origins in a different economic era, one in which an industrial relations framework based upon formal employment was assumed to be the norm or to be the ‘direction of travel’. The tripartite structure, involving employers’ organisations and trades union as well as representatives of states were in effect protecting domestic labour rights in capitalist welfare states against

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<sup>37</sup> Ibid 249

<sup>38</sup> 1 March 2014

<sup>39</sup> Philip Alston ‘Labour Rights as Human Rights: The Not so Happy State of the Art’ in Philip Alston (ed) *Labour Rights as Human Rights* (Oxford University Press 2005); B A Hepple *Labour Law and Global Trade* (Hart Publishing 2005)

<sup>40</sup> *ibid*



competition from states that did not abide by these standards. Power has shifted significantly with the liberalisation of trade and the expansion of multinational enterprises (MNE). The incorporation of lower income countries into the world capitalist economy has been accompanied by changed economic relations including far more informalisation and commercialisation of labour<sup>41</sup>. The boundaries between formal and informal sectors dissolved, along with distinctions between free and unfree labour. Nationally focused instruments such as labour law and collective bargaining do not fit easily with increasingly fluid cross border movements of business, labour and services. Both were weakened further by the reforms, designed to enhance international competitiveness, promulgated in one form or another from the late 1970s onwards by the international financial institutions.

As a result the ILO has adapted its methods of working to respond to demands for employer flexibility and regulatory experimentation<sup>42</sup>. It has increasingly resorted to the discursive power of human rights to establish a core set of universally recognised labour principles although historically labour rights have been recognised as a combination of measures that protect workers' substantive workplace rights and those that protect human beings from state backed forms of coercion. The 1998 Declaration on the Fundamental Principles commit ILO Member States to respect and promote a number of core principles and rights, whether or not they have ratified the relevant Conventions upon which these are based (freedom of association and recognition of the right to collective bargaining; the elimination of forced and compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation). These core principles feature not only in ILO Conventions but also in the International Bill of Rights, which has been ratified by most States and therefore are a response to critics who argue that the expansion of international rights dissipates their value<sup>43</sup>.

The ILO has incorporated the Principles within its third Declaration on Social Justice for a Fair Globalisation 2008<sup>44</sup> and translated these principles into policy through its decent work strategy. It uses an extended concept of work to include all who work or seek work which covers informal workers. It links work to poverty reduction and recognises the need for

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<sup>41</sup> Judy Fudge 'Blurring Legal Boundaries: Regulating for Decent Work' in Fudge and others n 9

<sup>42</sup> Alston n 39; now incorporated into the ILO Declaration on Social Justice for a Fair Globalisation adopted by ILO at its 97<sup>th</sup> Session Geneva 10 June 2008 [www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm)

<sup>43</sup> Susan Marks 'Four Human Rights Myths ' (LSE Legal Studies, Working Paper No. 10/2012)

<sup>44</sup> n 42

social protection particularly for vulnerable groups. The decent work agenda promotes work that is ‘productive and delivers a fair income, security in the workplace and social protection for families’ as well as ‘better prospects for personal development and social integration’. It reasserts that workers are not mere factors of production in a global market place<sup>45</sup>. In the decent work country programmes the ILO extends beyond its usual tripartism to use ‘social dialogue’ with wider constituencies to support implementation in individual States.

The ILO has sought co-operation with a range of institutions including those associated with international business and finance. The 1998 Declaration principles provide a ‘ready-made’ package which is able to be incorporated as ‘soft law’ into a wide range of settings including its own ILO’s Tripartite Declaration on Multinational Enterprises<sup>46</sup>, the OECD Guidelines on Multinational Enterprises<sup>47</sup>, the UN’s Global Compact with business and the Guiding Principles on Business and Human Rights (Ruggie Principles)<sup>48</sup> and the European Union’s Generalised System of Preferences (GSP) and GSP+<sup>49</sup>. They are embedded within private standard setting initiatives, such as codes of conduct, adopted by NME, which have accompanied the development of the liberal market such as Global Framework Agreements and the multi stakeholder Ethical Trading Initiative<sup>50</sup>.

Thus, a state focused institutional and normative framework of international labour law has not been conducive to the development of ‘modern’ global labour law<sup>51</sup>. A key question that labour lawyers pose therefore is whether international labour law can realign itself towards the shared task of ‘mitigating the distributional consequences of globalisation and transnational flexible production’<sup>52</sup>. Historically, structural inequalities have been tackled through the recognition of the need from resources, won through labour market collective bargaining and employment protection legislation. States have also been direct providers of services via social security benefits, access to health and education services. Welfare states not only provide social protection but also a guarantee of the right to collective action. Thus

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<sup>45</sup> ILO [www.ilo.org/global/topics/decent-work/lang--en/index.htm](http://www.ilo.org/global/topics/decent-work/lang--en/index.htm)

<sup>46</sup> First produced in 1977; most recently revised in 2006 which invites MNEs to observe its principles.

<sup>47</sup> First produced in 1976; most recently revised in 2000

<sup>48</sup> Office of the High Commissioner ‘Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework’ (United Nations Human Rights: Office of the High Commissioner New York and Geneva HR/Pub/11/04,2011)

<sup>49</sup> Hugh Collins and others *Labour Law* (Cambridge University Press 2010) 55-56

<sup>50</sup> Ann Stewart ‘Engendering responsibility in global markets: valuing the women in Kenya’s agricultural sector’ in Amanda Perry –Kessaris (ed) *Law in the Pursuit of Development: Principles into Practice* (Routledge 2010) 39-40

<sup>51</sup> Collins n 49, 87

<sup>52</sup> Ref; Collins n 49 87-90

labour rights have been used to make claims on States as well as employers to provide work and economic security and to recognise the collective interests of workers. With the rise of a social enterprise culture, with its critique of collective consumption and solidarity, social resources become claimed as juridical rights, more akin to civil and political rather than social and economic rights.<sup>53</sup> Market discourses of contract, competitiveness and efficiency enter labour and social welfare law. The fear is that individualised claims to resources will be used to undermine still further the principal institutions of the welfare state and be associated with the levelling down of rights and, while collective bargaining and freedom of association are broadly recognised rights, they have proven very difficult to enforce within a culture of individualism. These developments further undermine the already limited international labour rights of trades unions to operate outside their national borders to protect workers within a global market place.

The failure to impose a social clause within World Trade Organisation proceedings (WTO) in order to utilise its more developed enforcement procedures have led to separate institutional responsibilities between WTO (trade) and ILO (labour) and the ‘softer’ co-operative rather than coercive approach described above<sup>54</sup>. These initiatives are part of the general attempts to ensure that social justice is not lost in the processes of globalisation and to find ways of attaching human rights values to economic actors. They are often treated with considerable scepticism by progressive labour and rights lawyers who them as recasting labour rights as a subset of universal human rights and marginalising the progressive re-distributional aspects of labour rights within international human rights laws<sup>55</sup>. The fear is that labour rights become just one more consideration to be taken into account in shaping the values underpinning the liberalized global economy<sup>56</sup>. Being ‘human rights compliant’ becomes smart business.

### **Application to domestic work strategy**

The processes that led to the adoption of the Domestic Workers Convention and which now underpin the attempts to implement it are a product of the ILO’s changed positioning. Such

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<sup>53</sup> Simon Deakin ‘Social Rights in a Globalized Economy’ in Alston n 39

<sup>54</sup> The USA rather curiously given its general position on ratification of labour rights includes a social clause in its bilateral agreements; see Collins and others n 49, 54.

<sup>55</sup> H. W. Arthurs ‘Private Ordering and Workers’ Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation’ in Joanne Conaghan and others (eds) *Labour Law in an Era of Globalization Transformative Practices and Possibilities* (Oxford University Press 2002\_

<sup>56</sup> Alston n 39; Hepple n39

work did not fit the former model. The ILO recognises that protecting domestic work through formal labour rights framework requires much more than a ‘hard law’ Convention. As indicated in the earlier section, an effective legal and policy framework needs to recognise that such work is heavily associated with its private, familial/household location. It must overcome the difficulties of: establishing legal relations given the varied arrangements in which workers are employed; the differing legal regimes and socio- economic circumstances of member States; and the socio-economic disadvantage and vulnerability of the workers (associated with being from marginalised communities, internal or international migrants and being young and ‘living in’). The usual tripartite institutional building blocks are very weak:

most domestic workers typically have little contact with other workers and often are either unorganized or organized in volatile, understaffed and unequipped associations. Isolated, and without voice and organization, they would be in a weak position to claim their rights. Employers of domestic workers are equally hardly organized, and both groups have little or no experience in collective bargaining or in dealing with authorities on labour laws and social security<sup>57</sup>

To tackle these complex issues, the ILO has produced detailed guidance, incorporating numerous, specific examples, on how to implement every aspect of the Convention. It seeks to raise awareness and encourage attitudinal change through its applied research programme which provides a comprehensive profile of the local and regional contexts and a survey of existing legislative coverage<sup>58</sup>. This information also provides a baseline for action by States. However, while promoting implementation of state legislative measures via the ratification of the Convention, the ILO nevertheless stresses the Convention’s flexibility and the importance of social dialogue as a key principle in the implementation process. It roots domestic work within its decent work campaign and provides support to countries that are willing to improve the protection and working conditions of domestic workers, without the necessity of ratification<sup>59</sup>. It acknowledges the difficulties associated with ensuring an effective institutional framework to produce legislative reform and offers support to build institutions at country level and to facilitate organisation and representation of domestic workers and their employers. The ILO recognises the value of a combined human and labour rights

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<sup>57</sup> ILO n 11

<sup>58</sup> ILO n 4

<sup>59</sup> ILO n 11

approach. The 1998 core fundamental principles are incorporated into the Convention and their importance is stressed within the Recommendation and guidance.

Arguably this approach fits the experiences of women and offers a more inclusive way of protecting women workers. More expansive concepts of work go some way towards softening the informal/formal dichotomy. The critiques of collaborative, social dialogue based approaches discussed above reflect a perspective based upon a decline in collective organisational capacity and challenges to the labour and social protections achieved by formal workers. As is now recognised this is rarely the starting point for women. Their work has not attracted labour law protections and while, in welfare states, they have been able to access some universal social protections (often health and education) as citizens, access to other benefits has been derived from their relationship with men. The shift in approach towards more rootedness in ‘social dialogue’ and ‘global governance’ than on State government may enable more focus on process and the institution building that is essential if informal work is to attract the protections associated with the formal labour market.<sup>60</sup>

It has become policy orthodoxy that access to paid work is empowering for women as well as making good business sense – smart economics to use the World Bank phraseology<sup>61</sup>. However, as Kabeer and others point out, while formal working has been found to empower individuals, increasing self - worth and control over activities, it has had limited effect on enhancing women’s overall status as citizens and workers more generally<sup>62</sup>. Women’s access has not promoted the wider organisational capacity to struggle for the recognition and realization of rights which would increase broader economic security and political inclusion<sup>63</sup>. In any case, the industrial model which has trade unionism as its dominant form of labour organisation extended only as far as import substitution industries in the developing world. As such it covered only a tiny proportion of the working population and very few women. Trade Unions have often been unwilling or unable to embrace informal workers particularly women. They are unlikely members because of: the nature of the activities they undertake - ‘casual, dispersed, isolated, part-time, irregular and often home-based’; their lack

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<sup>60</sup> Guglielmo Meardi and Paul Marginson ‘What is Global Labour Governance: Potential and Limits of an Emerging Perspective’ Paper for the 2013 Work, Employment and Society Conference Warwick University Sept 3-5

<sup>61</sup> World Bank, *World Development Report 2012: Gender Equality and Development* (World Bank 2011)

<sup>62</sup> Naila Kabeer and others, ‘Introduction’ in Naila Kabeer, Ratna Sudarshan and Kirsty Milward (eds) *Organizing Women Workers in the Informal Economy: Beyond the Weapons of the Weak* ( Zed Press 2013) 1, 2

<sup>63</sup> Ibid

of an obvious employer; their ‘direct competition with each other’... ‘for work, for orders for their products, for space to sell their goods and services’<sup>64</sup>. Equally importantly, they undertake stigmatised and marginalising activities, dirty or symbolically shaming- while often being drawn from groups which experience intersectional inequalities based on class, ethnicity, caste or legal status. Women who are heavily dependent on the goodwill of dominant family and community members and who are culturally not expected to challenge authority will struggle to identify with the dominant public organisational strategies<sup>65</sup>. Women informal workers therefore face multiple injustices which require in Fraser’s terminology a combination of redistribution, recognition and representation to address<sup>66</sup>.

To organise collectively informal workers often rely upon sustained external support from (middle class) activist organisations, not trade unions, to enable them to develop their own strategies<sup>67</sup>. Their primary goal is often to tackle the stigma or indignity attached to the activity which they see as a means to survive or to secure a livelihood rather than ‘work’. The initial organising factor may be violence experienced as a particular group of migrants rather than grievances relating to their work. Women revalue their activities: from rummaging on waste tips to providing a recycling service; from prostituting oneself to being an entrepreneur; from natural feminine dexterity to skilled valued horticultural or fisheries work and in so doing, develop a group identity.

The organisational focus will often involve in the first instance claims on the State for inclusion in social protection schemes. In these contexts the discourse of human rights, pursuing claims to be treated as citizens, can have significant rhetorical power. Some groups use the power associated with law more broadly to pursue claims using mechanisms such as arbitration rather than ‘spontaneous, largely ineffectual’ strike action<sup>68</sup>. As a result of these strategies, an organisational framework emerges which reflects a re-valued identity such as claiming the Convention rights as a worker rather than being ‘part of a family’ - and which can then be used to pursue re-distributional issues. However, while the workers may establish a new trade union or link with an established one, they may use alternative forms of

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<sup>64</sup> *ibid* 5-6

<sup>65</sup> *Ibid* 6

<sup>66</sup> Nancy Fraser *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (Psychology Press 1997)

<sup>67</sup> Kabeer and others n62

<sup>68</sup> *Ibid* 23

organisation – a self- employed union (such as SEWA) or a NGO which focuses more on every day needs such as the provision of child care, toilets or small scale loans.

Those working with such precarious workers recognise that ‘access to some form of social protection may be a necessary precondition for taking the risks associated with strategies for longer-term change. In addition, for those whose work, and status as workers, had been largely overlooked by the state, the struggle for social security can also be, to some extent, a struggle to gain recognition of their status as citizens’<sup>69</sup>. The struggle to make care visible through social security rights unites women along the formal/informal continuum and across borders, a point increasingly recognised by Trade Unions and international campaigners. Thus the ‘same processes of globalization that promoted the pursuit of flexible labour and the expansion of the informal economy have also opened up new possibilities for organization among sections of the working poor’ and for the organisation of ‘informal workers at the global level’<sup>70</sup>. One such is the International Domestic Workers’ Network (2011). As we shall see below this is not an easy task and it is important ‘not to overstate the significance of such embryonic and small scale organisations’<sup>71</sup>.

‘[T]he struggle against capital appears to have less relevance for these workers than the struggle for rights’. This can be interpreted ‘as conceding defeat on the larger more important issues’ or ‘as reflecting the priorities that begin to surface when some of the most marginalized sections of the working classes ...become actively engaged around the politics of redistribution, recognition and representation’<sup>72</sup>.

### **Caring economies?**

The importance of social protection for women informal workers reflects the growing recognition that there may be what some call a crisis in social reproduction<sup>73</sup> and others a process of social depletion<sup>74</sup>. Feminist highlight the artificial dichotomy between ‘productive’ paid labour carried out in the market and ‘reproductive’ unpaid labour carried

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<sup>69</sup> Ibid 27

<sup>70</sup> ibid 37

<sup>71</sup> Ibid 37

<sup>72</sup> Ibid 45

<sup>73</sup> Nancy Fraser ‘Between Marketization and Social Protection: Resolving the Feminist Ambivalence’ in *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso 2013) 227; Stewart n 10 chapter1; Ann Stewart ‘Gender, Justice and Law in a Global Market in Margaret Davies and Vanessa E Munro (eds) *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013)

<sup>74</sup> Hoskyns and Rai n 6; Rai and others n 6

out in the household and community that nurtures and cares but also maintains and transfers social norms and values to next generations<sup>75</sup>. Failing to recognise the importance of these activities produces a partial and biased picture of the economy as well as of society<sup>76</sup>. Fraser adapting Polanyi's concepts suggests, however, that it is less a matter of recognition and more an attempt by neo-liberalism to 'dis-embed' markets from the restraints of society: to free them from the extra-economic controls which would value a 'just price' and a 'fair wage', to be 'self-regulating'. However, this process, in which land, labour and money are factors of production, destroys the fabric of society. 'Far from enhancing social cooperation, then, the project of dis-embedding markets inevitably triggers social crisis'<sup>77</sup> and leads to demands for the social regulation of markets.

Political economists argue that to dis-embed care from being a field of life, it needs to be marketised and commodified<sup>78</sup>. The former process turns caring whether taking place in private households or through publicly provided services into market products while the latter fundamentally changes understanding of caring. To become a commodity care has to acquire value – to be 'really' subsumed within capitalism<sup>79</sup> - a process which involves the simplification, subdivision and rationalisation of tasks. An economic or market logic must develop to enable care to be competitively exchanged. Informal care is priced so that social providers can contract for services. Governments contribute to this process by creating ways of measuring and evaluating care and supporting the development of differentially skilled care workers catering for different market sectors. Within an 'enterprise' society, individuals and families are expected to take responsibility for anticipating and meeting their care needs. A logic of choice based upon transactions in which fluid things become fixed replaces a logic of care as understood by care ethicists<sup>80</sup> which involves interactions between active participants.

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<sup>75</sup> Diane Elson, 'Gender at the Macroeconomic Level' in Joanne Cook and others (eds) *Towards a Gendered Political Economy* (Macmillan Press 2000) 80

<sup>76</sup> Paula England and Nancy Folbre 'Contracting for Care' in Marianne A Ferber and Julie A Nelson (eds) *Feminist Economics Today: Beyond Economic Man* (University of Chicago Press 2003)

<sup>77</sup> Nancy Fraser, 'Between Marketization and Social Protection: Resolving the Feminist Ambivalence' in Nancy Fraser *Fortunes of Feminism* (Verso 2013) 231

<sup>78</sup> Tiina Vaittinen and Hanna-Kaisa Hoppania 'The Governance of Care Through the Body: A (Bio)political Reading of Commodification' Paper for Corporeal Capitalism: Body Matters in International Political Economy seminar Birmingham University 2013

<sup>79</sup> Nancy Fraser 'The Wages of Care: Reproductive Labor as Fictitious Commodity' lecture, University of Cambridge 19 March 2011 see Vaittinen

<sup>80</sup> Rianne Mahon and Fiona Robinson 'Introduction' in Rianne Mahon and Fiona Robinson (eds) *Feminist Ethics and Social Policy: Towards a New Global Political Economy of Care* (University of British Columbia Press



A variety of care economies are developing rapidly involving differing degrees and forms of marketisation and commodification<sup>81</sup>. Within the UK we see commodification in the way in which adult social care, particularly for the elderly is now provided. Government creates understandings of need through policy criteria. Local authority commissioners turn these criteria into tasks, priced by the minutes needed to undertake them. Suppliers bid against tender specifications to provide a set number of these specific tasks. Care workers are closely monitored to ensure that they undertake and are paid for the precise amount of time involved in completing each task.

These developments raise the question: to what extent can care be commodified? Human relationships are complex, caring is complicated, highly culturally specific and involves often physically and emotionally intensive, time consuming body work<sup>82</sup>. In economic terms, without lowering standards, the productivity of caring cannot be raised through mass production. Arms and legs cannot be washed in mass showers in different locations. Measures of high productivity are indices of low quality care<sup>83</sup>. There is considerable evidence in the UK that the market model for the provision of adult social care is failing and is in crisis. High profile businesses such Southern Cross have collapsed. The present model is built around a low skilled, low paid, marginalised workforce. Many work informally attracting few labour protections or are classified as self employed. The intensive, gruelling conditions of work result in very high turnover. There is clearly a major lack of investment in the sector as a whole in part due to reliance on highly rationed public funding but more generally because there is no agreement on how the costs of such care should be distributed between the individual and society more generally. It comes therefore as no surprise that the sector is heavily reliant on migrant predominately female labour<sup>84</sup>. Such workers are usually better educated and deemed ‘more willing’ and ‘empathetic’ than their local counterparts<sup>85</sup>. Their undervalued labour hides the costs of care.

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2011). Modern liberal theorists place the detached neutral objective subject centre stage while ethic of care scholarship argues that subjectivity is rooted in the interdependency of human beings. We all need care to be truly human and caring is part of all our lives whether or not we recognise it.

<sup>81</sup> *ibid*

<sup>82</sup> Wolkowitz n 5

<sup>83</sup> Susan Himmelweit, ‘Policy on care: a help or hindrance to gender inequality’ in Jacqueline Scott and others (eds) *Women and Employment: Changing Lives and New Challenges* (Edward Elgar 2008) 347

<sup>84</sup> 60% of care workers in London are foreign born workers in institutional care in London of which 28% are estimated to be UK citizens Margaret Shutes ‘Social Care for Older People and Migrant Workers’ (Migrant Observatory 2011) available at <http://migrationobservatory.ox.ac.uk/policy-primers/social-care-older-people-and-demand-migrant-workers>

<sup>85</sup> Stewart n 10 chapter 6

There is huge public concern over the often appalling quality of care provided, highlighted in high profile exposes of abuse by care workers. These developments have led to a range of demands for greater public regulation to protect the interests of vulnerable care recipients and to the blaming of individual workers resulting in increasing monitoring and surveillance as well as criminal prosecutions. As such, workers are seen as potential dangerous factors of production.

Is this a specific crisis therefore - a product of commodification within the particular UK context? Or has the increasing entanglement of women within global economic processes resulted in a general crisis? In many parts of the world, there has been a rapid drop in fertility levels and family size which eases women's burdens considerably although there has also been a reduction in extended family networks and nuclearisation of families at time when the population is ageing<sup>86</sup>. In the global south, there has been a general improvement in access to primary education, and to health services<sup>87</sup>, thereby shifting some responsibility from women to other institutions. There have also been improvements in basic infrastructure, such as water supply and roads which ease women's burdens<sup>88</sup>. These developments enable more women to undertake paid work but have not changed the enduring gendered assumptions relating to women's responsibility for socially reproductive activities.

Geo-historical contexts of care differ: particular institutional contexts, including state economic and social policies and specific political economies of livelihoods produce different care practices<sup>89</sup>. For instance, in India these take the form of stratified familialism whereby the state deals with family and community networks not with citizens with individual rights. In elite and middle class homes there is 'good' care including activities associated with investment in children's future while in poor and labouring households where women undertake paid work in or away from the home, there are few resources for care and so practices appear as poor care – as a care deficit. Public provision of formal care is scarce and not available to the bulk of informal workers; work place provision is lacking, even for formal workers. Elite and middle class families in any case prefer privately hired

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<sup>86</sup> Lourdes Benaria 'Globalization, Women's Work, and Care Needs: The Urgency of Reconciliation Policies' (2010) North Carolina Law Review 5,

<sup>87</sup> World Bank n 61

<sup>88</sup> *ibid*

<sup>89</sup> Shahra Razavi 'Rethinking care in a development context: an introduction' in Shahra Razavi (ed) *Seen, Heard, Counted: Rethinking Care in a Development Context* (Wiley2012)

individualised services. Their ability to replace and supplement familial care through services in this way reinforces the idea of familism and women's central role in maintaining it.

Local care chains are stratified according to the range of kin and unpaid care available and the extent to which it can be drawn upon. Care work is pooled within families across urban and rural locations, classes, regions and castes. The most successful are large households and those living near kin, consisting of non migrant middle and upper class households and rural households, which can maintain relationships and reciprocity and therefore are able to call on kin who are available to assist. The urban poor and migrants are not in this position and poor labouring households all have to earn. Their poverty ensures that they cannot provide much assistance to others which undermines long term reciprocity within kinship networks<sup>90</sup>.

Changing needs and understandings of care in India are met primarily through informal arrangements. Wealthier, urban families supplement with paid domestic workers and nannies either recruited locally or through placement agencies which supply internally migrant workers. Different contexts result in differently constructed needs and ways of meeting them. In other Asia Pacific countries such as Thailand, Singapore and Malaysia and in a number of Latin America countries there is far more reliance on regionally migrant domestic workers. As we have seen, the ILO records significant rises in the number of domestic workers over the last 20 years, accounting for almost 8% and 12% of all women in paid employment in these two regions<sup>91</sup>. They attribute this rise to high levels of income inequality within and between States as well as to women's increased labour force participation. Wealth accounts for the exceptionally high levels of domestic workers in the Middle East where there are very low levels of female employment.

In contrast there is very low reliance on domestic workers in Nordic and Eastern European countries with different histories. Both regions have given higher priority to supplementing informal care with social forms of provision. Households in European welfare states more generally rely less on domestic workers (although migrant workers are used in Spain, France and Italy). Similar work is undertaken by 'social' rather than 'domestic' care workers although the work can take place in domestic as well as institutional settings. Social care workers often work informally.

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<sup>90</sup> Rajni Palriwala and Neetha N 'Stratified Familism: The Care Regime in India through the Lens of Childcare in Shahra Razavi n 89

<sup>91</sup> ILO n 4

Women who have gained access to formal work can utilise its associated labour and social protections to help manage their care responsibilities. The extent of these rights will depend on economic positioning within global markets but they are more extensive in global north welfare states than in the south. European reconciliation policies in particular seek to address the ‘balance’ between work and family responsibilities. There is little or no appetite within States with emerging economies to substantiate further the rights of their formal workers or to extend these forms of entitlements to the many more informal workers. Informed by feminism, development campaigners are increasingly constructing a care crisis for women living in extreme poverty as a barrier to social and economic inclusion<sup>92</sup>. As we saw in relation to informal workers’ campaigns, they focus on rights to social protection. Women’s still huge burden of unpaid care constitutes a violation of their rights as citizens: to education, political participation, leisure and to decent work as well as to gender equality. They therefore seek to recast existing measures within CEDAW and other human rights treaties as rights to be relieved of care. They call for more quality public services including basic infrastructure, social protection, early child care and health services to be financed through more ‘progressive domestic resource mobilisation’ (taxation)<sup>93</sup>. Women who are incorporated at the margins of globalisation or who are decoupled from such processes tend to view their activities as meeting their socially reproductive responsibilities, as a survival strategy.

International policy makers tend to see the problem in economic terms, as impeding efficiency and productivity: not ‘smart economics’<sup>94</sup>. The international financial institutions have seen the social damage caused by their earlier rampant free market policies with minimal ‘safety nets’ and now recognise the need for social expenditure if their liberalisation agenda is to continue<sup>95</sup>. There is support for a social enterprise model which values more participation, greater community solidarity, more care focused services and some basic social protection measures, one form popular in Latin America and now in some parts of Africa being (conditional) cash transfer programmes<sup>96</sup>.

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<sup>92</sup> Action Aid *Making Care Visible: Women’s unpaid care work in Nepal, Nigeria, Uganda and Kenya* ( Action Aid 2013)

<sup>93</sup> *ibid*

<sup>94</sup> World Bank n 61

<sup>95</sup> Shahra Razavi n 89, 1

<sup>96</sup> *ibid*

Care is becoming a political issue as a variety of constituencies make it visible in order to tackle a range of ‘crises’ in relation to social reproduction. The increasing reliance on predominately migrant women workers to undertake care in a wide variety of institutional contexts because they are often unable otherwise to survive and to meet their own socially reproductive responsibilities raises the question as to whether this phenomenon itself constitutes a crisis and if so, for whom, and whether the ILO approach based on valuing ‘domestic’ workers addresses it adequately.

Domestic workers, as defined by the ILO, at present ‘fit’ into less commodified local care economies. Nonetheless, their caring labour serves similar purposes both in terms of the activities undertaken and of hiding the social costs of care within familial structures. The ILO strategy to make domestic work valuable facilitates marketisation and commodification – it makes it more like social care. It can facilitate the further development of a stratified global care service industry. The logic of choice rather than care will be strengthened. While the express aim of the decent work agenda is to avoid labour being seen as purely a factor of production, the formalisation of a work relationship may work against this objective. If however the strategy is successful, domestic workers will be more visible and valued but also potentially more costly.

Who will bear this more visible cost of care? Hugely wealthy households will have no difficulty but for the rest? Is it appropriate for individual households in societies where there is very few State provided social welfare rights or facilities to bear more commodified costs? Will individual (female) employers be blamed for non compliance? Making domestic work visible facilitates the development of a stratified global care service industry. To what extent will such workers, the majority of whom are migrants, be able to realise the potential protections and an improved market position when caring itself remains economically and socially un/undervalued?

### **Global Value Chains, Global Care Chains and the international division of reproductive labour<sup>97</sup>**

As we have seen the ILO has adapted its approach to international labour standards in order to embed within the global governance framework workers’ claims to be more than factors of production. This strategy is part of a more general shift to tame trade through soft law and

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<sup>97</sup> Rhacel Salazar Parrenas ‘The reproductive labour of migrant workers’ (2012) *Global Networks* 12 (2) 269

voluntarily adopted measures. Labour rights are reconstructed as fundamental human (and labour) principles; public rights are transposed into pre packaged private standards. MNEs 'care' for more than their shareholders through the adoption of corporate social responsibility measures such as social labelling<sup>98</sup>.

Global value chain or network analysis reveals the impact on labour of the complexity, fragmentation and geographical distribution of contemporary production processes<sup>99</sup>. By considering each and every stage in the development, production, distribution, consumption and disposal of a commodity, it is possible to see where and through which processes value is added. Both macro and micro governance measures play their part. Thus the extensive macro context (for example the WTO multilateral trading framework, the OECD's corporate governance measures, the US and EU Generalised Systems of Preferences, bilateral and regional agreements such as NATFA and EU Economic Partnership Agreements) contributes to the corporate governance processes which regulate the supply chains.

This frame of analysis enables a wide variety of stakeholders including global south states, development practitioners, civil society organisations, trade unions and consumer activists to seek to capture more value for those who are involved at the 'end' of the chain including workers<sup>100</sup>. High profile disasters such as the death of hundreds of (mainly) women workers when the Rana Plaza building containing 5 textile factories collapsed and the threat of mass suicide by (mainly) women workers at FoxConn, an Apple manufacturing partner, in China provoke (often short term) public debate on the human cost of a tee shirt or an iPhone but put pressure on companies with reputations to protect to ensure that workers are treated better. Generally there is a growing policy consensus that it is not 'smart economics' for those involved in GVCs to 'race to the bottom' or assume a country gains a competitive advantage by offering the cheapest labour force<sup>101</sup>. The argument is that in the medium to long run there is more value to be added in home states through upgrading strategies including boosting capacity to comply with company, state and international standards and regulations.

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<sup>98</sup> Stewart n 10 for detailed discussion.

<sup>99</sup> Gibbon and others n 8

<sup>100</sup> Capturing the Gains: Economic and Social Upgrading in Global Production Networks and Trade [www.capturingthegains.org/about/](http://www.capturingthegains.org/about/); Cornelia Staritz and Jose Guilherme Reis (eds) *Global Value Chains, Economic Upgrading, and Gender: Case Studies of the Horticulture, Tourism, and Call Center Industries* (World Bank 2013)

<sup>101</sup> UNCTAD, *Global Value Chains: Investment and Trade for Development*, *World Investment Report 2013* (United Nations 2013)

This involves states investing to strengthen watchdog organisations such as Trade Unions and civil society groups and co-operating with lead firms and suppliers to ensure compliance.

While some may argue that what is being created here is a form of reflexive law which will ensure compliance<sup>102</sup>, there are many problems with this approach<sup>103</sup>, not least of which is that this type of measures only extend to or can be enforced within first tier production. They cover factory workers but not those working for subcontractors, more informally or at home. Private standards only apply to those who are able to join the global production process and unless they are generalised through public legal and policy measures protect only the most advantaged. Unless the companies are subject to pressure from their consumers and/or are operating in a sector with a strong Trade Union presence there is little or no incentive to develop these measures or capacity to monitor implementation<sup>104</sup>.

Because the main aim is to protect the supply chain, the regulations tend to focus on product quality and safety and may extend only to the core labour principles. Some such as the multi-stakeholder Ethical Trading Initiative go further to require that signatories provide ‘living’ wages; do not require ‘excessive’ working hours; and ensure safe and hygienic working conditions<sup>105</sup>. Because most use compliance with home state legal rights as the bench mark for compliance, the process rights – freedom of association and collective bargaining- are compromised in states which restrict these, particularly in Economic Process Zones. Very few such initiatives address gender issues such as harassment at work, sex discrimination and the need for social protections and, because state labour protections are at best provided to employees, few women are able to rely on them even when they are used as the benchmark<sup>106</sup>.

Despite the many limitations, the development of global governance mechanisms has facilitated international campaigns to highlight the position of women workers. Alliances of stakeholders, not restricted to Trade Unions, have been able to use social dialogue to think creatively about women’s needs and how to meet them including through use of the decent

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<sup>102</sup> Rogowski n 7

<sup>103</sup> Alston n 39; Deakin n 53; Collins n 49; Hepple n 39

<sup>104</sup> Jimmy Donaghey and others ‘From Employment Relations to Consumption Relations: Balancing Labor Governance in Global Supply Chains’ (2014) Human Resource Management

<sup>105</sup> Ethical Trading Base Codes available at [www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English\\_0.pdf](http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English_0.pdf)

<sup>106</sup> Stewart n10

work framework<sup>107</sup>. As a result, women workers in global value chains are more visible partly because their position can be fitted within emerging global governance regimes.

Here we are primarily concerned with workers (not commodities) who move to provide caring services. Recent iterations of feminist global care chain (GCC) analysis have been enriched by drawing upon the GVC conceptual framework to provide a ‘materialist relational approach’ to this form of migration<sup>108</sup>. GCC now encompasses those who migrate to undertake public caring such as nurses<sup>109</sup> and to include sex work within a body work framework<sup>110</sup>. It uses globalist, ethical and policy analysis to identify the relations of interdependence within the chains and the ways in which vulnerability is created. It asks who benefits, who bears the risks, how are costs distributed and who is exploited. It recognises the important part played by global governance structures<sup>111</sup>.

Generally services play a significant and growing part in national economies worldwide<sup>112</sup>. Does the trade related global governance framework extend to protect those who provide such services? Global services providers such as G4S have embraced this framework. It has signed up to the Global Compact, adopted the Ruggie Principles and is developing a code of conduct for the security sector<sup>113</sup>. The market in care services is not generally constituted by multinational service providers although there are large players such as BUPA.

We have seen that the way in which caring is undertaken depends heavily on local contexts. The demand for migrant care workers comes from state, social or private service providers or from households. These markets are mediated through recruitment agencies or through informal networks which work within the political economy of migration. As the relative lack of support for the WTO GATS process demonstrates, establishing a robust multilateral trade in services framework has proven difficult. In particular, little progress has been made in developing mode 4 which potentially facilitates the movement of natural persons. This process, if based upon easily available mode 4 visas for those providing care services, could facilitate the development of a transparent visible market. However, there is little political

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<sup>107</sup> Stephanie Barrientos ‘Gender and Ethical Trade: Can Vulnerable Women Workers Benefit?’ in Sylvia Chant (ed) *The International Handbook of Gender and Poverty* (Edward Elgar, 2010) 440.

<sup>108</sup> Yeates n 10

<sup>109</sup> *ibid*

<sup>110</sup> Stewart n 10

<sup>111</sup> Stewart *ibid*; Yeates n 10

<sup>112</sup> Jane Kelsey, *Serving Whose Interests? The Political Economy of Trade in Services Agreements* (Routledge 2008)

<sup>113</sup> <http://ethicalperformance.com/reports/view/790>



support for a free trade discourse, most particularly if it involves low skilled workers (although free movement is a founding EU principle). Instead states impose immigration controls. Because care labour is not politically or socially valued, it is seen as a problem while economically it is sought after because it keeps wage, and therefore care, costs down<sup>114</sup>. As a result, recruitment agencies often operate on the margins of legality while those outside the boundaries are constructed as traffickers or smugglers and attract international criminal sanctions. While some states seek to regulate agencies, this is not conducive territory for embedding fundamental human rights and labour principles.

In the absence of a functioning multilateral framework, states enter into bilateral agreements to address particular care service demands<sup>115</sup>. Here there are opportunities to ensure that workers are protected via the incorporation of the core principles and adoption of the decent work agenda. However, much depends on the relative power relations between the particular states.

It is also difficult to replicate in these segmented but often highly familiarised informal markets the conditions which have given rise to the wider corporate social responsibility initiative associated with GVC. Large private service providers have reputations to protect and are more likely to respond to ethics based campaigning. Social providers, such as charities or public authorities may also be responsive for instance within the UK, the NHS has an ethical recruitment policy which guarantees that internationally recruited staff enjoy the same rights as locals while restricting recruitment from countries with high health care needs<sup>116</sup>. UNISON a public sector trade union has produced an ethical care charter directed at commissioners of home care services<sup>117</sup>.

However, small providers employing few staff, and households, even less, are not in the same position as Apple, Walmart or Zara. Not only are the difficulties with providing an institutional framework to support domestic workers identified by the ILO replicated in the global governance context but as we have seen in relation to organising informal workers,

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<sup>114</sup> Shereen Hussein and others *International Social Care Workers in England: Profile, Motivations, Experiences and Expectations* Social Care Workforce Unit (Kings College London 2010)

[www.kcl.ac.uk/sspp/kpi/scwru/pubs/2010/husseinetal2010internationalfinalreport.pdf](http://www.kcl.ac.uk/sspp/kpi/scwru/pubs/2010/husseinetal2010internationalfinalreport.pdf)

<sup>115</sup> For example Japanese-Philippines Economic Partnership Agreement allow Filipino nurses and care workers to work in Japan available at [www.wipo.int/wipolex/en/other\\_treaties/text.jsp?file\\_id=225225](http://www.wipo.int/wipolex/en/other_treaties/text.jsp?file_id=225225)

<sup>116</sup> available at [www.nhsemployers.org/RecruitmentAndRetention/InternationalRecruitment/Code-of-Practice/Pages/Code-practice-international-recruitment.aspx](http://www.nhsemployers.org/RecruitmentAndRetention/InternationalRecruitment/Code-of-Practice/Pages/Code-practice-international-recruitment.aspx)

<sup>117</sup> UNISON's ethical care charter (UNISON 2012) <https://www.unison.org.uk/news/unison-welcomes-sign-up-to-ethical-care-charter>

transnational multi-stakeholder alliances focused around the production process are unlikely to emerge. These difficulties are all the more difficult in familial care settings where employers are also recipient, consumers of care.

## **Conclusion**

On one level, the recent ILO measures relating to domestic work suggest that it is possible to come to official attention without being seen as an obstacle to policy makers. The ILO brings domestic work into the public sphere and fits it within the wider decent work framework. This framework reflects an understanding that present forms of globalisation have changed the relationship between employers and workers. Solidaristic means of achieving labour and social rights through collective bargaining and state social provision are being replaced by social dialogue and greater reliance on the discourse of fundamental human and labour rights. Within this framework informal working, including domestic work, is not, in principle, an obstacle to protection. It reflects the necessity of recognising that women are entitled to be treated as citizens entitled to social protections and freed from unequal care responsibilities and well as workers when undertaking often socially ostracised and undervalued work.

The concerns of labour activists that such developments in global labour governance undermine solidarity and do little to tackle profound disparities in wealth are valid. Reliance on a consumption based politics involving alliances of multinational stakeholders to nudge or shame state policy makers and employers into the provision of better rights may have positive effects in some sectors of production but this form of politics does not fit easily with service provision. Care economies are very context specific. As the rising numbers of domestic workers indicates they are often based upon models of familiarism.

Problems associated with the provision of care are becoming more politically visible. The focus for the anxiety varies. In the UK it is very much on the rights violations of the care recipient with care workers, not the lack of social investment in care, being cast as the problem – very much a case of workers coming to public attention as an obstacle.

Development campaigners highlight the plight of women socially and economically exclude by the burden of their caring responsibilities. Activism around domestic work highlights the violation of rights of workers, not consumers/care recipients who due to huge inequalities in wealth are not seen to be of concern

GCC analysis must therefore take account of feminist analysis of the international division of socially reproductive labour. As Parrenas argues such an approach allows us to factor in the women who employ workers and the ways in which they seek to manage their socially reproductive and work roles in any given context. It avoids individualising conflicts and culpabilities which not missing the hierarchies that exist<sup>118</sup>. The present ILO conceptualisation of domestic workers does not fit their work into this wider framework which would focus on the creation of segmented global markets in care and how domestic work fits within these. Care workers are vulnerable in part because care is difficult to trade. Care is not recognised as valuable yet it is costly to provide in the market place. The costs of the failure to develop a regulated global market are borne, often invisibly, by migrant care workers. While it is essential to protect workers providing care, the vulnerable receiving it and to relieve women of the need to do too much of it, the real challenge is ensure that there is public recognition of the value of the social reproductive relationships which support each and every person and community.

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<sup>118</sup> Parrenas n 97