

**PROMOTING WORKER HEALTH RIGHTS
WITHIN GLOBAL SUPPLY CHAINS AND BEYOND**

A Case Study of the Kenyan Export Floriculture Business

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Abstract

Considerable resources are being devoted to tracking an exponential increase in the number of voluntary ethical sourcing¹ initiatives which promote objectives reflecting principles in the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, or related practices. So far, the emphasis has been more on which principles are endorsed and on arrangements for verification of application. This includes statements on worker health and safety. Most of these statements, however, remain general and refer to codes of practice in which engineered or 'scientific' monitoring systems are used to promote and verify a safe product more than a healthy and safe work environment. Few statements address how such standards are governed, whether they extend beyond the remit of the factory floor, or how they address workers' own short and long-term health concerns.

By contrast, comparatively less emphasis is placed on understanding the management methods, priorities and definitions such rights-based initiatives use to give effect to their labor policy objectives, or to ascertain whether their objectives are attainable in practice. Even less is known about the extent to which the scope of the application is being enlarged to include appropriate and relevant issues and stakeholders. This includes worker health and well-being issues and their relevant stakeholders, including government bodies and institutions, and the extent to which they are fulfilling their own remit in this application. Finally, knowledge is especially scant about the way in which actors, particularly in developing countries, prioritize,

¹ Ethical Sourcing refers to a company's responsibility for labor and human rights practices in its supply chain. Specifically, it refers to a company taking responsibility to work with its suppliers to implement internationally accepted labor standards in the workplace.

implement and govern these worker health standards and how relevant in context or beneficial they are to worker welfare.

The overarching aim of this thesis, therefore, is to consider how both the *methods* and the *purpose* of ethical sourcing can lead toward establishing an *ethic* with which to apply rights-based frameworks. Qualitative research was carried out to describe and identify the opportunities and challenges implicit in promoting a right to health and well-being for workers in transnational supply chains, particularly within the Kenyan floriculture supply network. The objectives of the research reflect on: a) definitions of ethics, human rights, health and well-being and the way they are being described in current ethical sourcing trends; b) the benefits, tensions and ambiguities in implementing worker health standards; and c) how and what worker health standards should be governed.

The research primarily focused on a case study approach (Kenyan floriculture) to explore the scope and involvement of stakeholders and the ways in which worker health were interpreted and prioritized. Concepts emerged during the process of the research and were analyzed using ‘grounded theory’ (Glaser & Strauss 1967) as a means to explore and explain key issues that contribute to the dilemmas and opportunities of promoting ethical sourcing initiatives, particularly for worker health. These categories of findings were then organized to ascertain the benefits, tensions and ambiguities in promoting an ethic for applying human rights standards -- an ethic that upholds a dynamic, comprehensive and democratic process in promoting worker health and welfare. These data were then used to develop an analytical framework in terms of viewing the scope and governance of worker health rights. Finally, key

recommendations are made on the opportunities and challenges of ethical sourcing approaches in promoting worker health and welfare goals.

This thesis argues that worker health and well-being standards are often interpreted and promoted according to the capacities and priorities of those who are managing them. In the case study, it was found that larger export floriculture producers are able to provide a range of health benefits and services to their workers unlike their smaller-scale cohorts. Other case study findings revealed that key worker health targets involved addressing customer health concerns over worker wellness issues. These findings support the idea that ethical standards are often interpreted and applied according to consumer priorities and values over producer driven ones and only target those workers directly linked to transnational enterprise networks. Some policies intended to protect workers were rendered discriminatory in practice. Governance, participation and responsibility in giving effect to worker health and well-being standards remained predominantly with the business sector; government and civil society were minimally engaged or responsible. Thus, this study's research findings concurred with the evolving notion that worker health and well-being is not sufficiently governed when applying transnational ethical standards without a local context of support (via laws, infrastructure and civil society) and, therefore, at present will not achieve a widespread realization of rights.

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* Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.

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THE DOCTORATE IN PUBLIC HEALTH PROCESS

I enrolled in the London School of Hygiene and Tropical Medicine Doctorate in Public Health course with an NGO background in public health education and program monitoring and evaluation. Originally, this public health interest had been sparked years before while as an undergraduate participating in a research trip to Costa Rica. The aim of the trip involved examining government and NGO public health projects underway in rural areas – coastal areas where export processing zones employed significant numbers of inhabitants within the region to produce bananas for consumer markets in the U.S. and Europe. Minimal coordination existed between government/NGO public health and fruit company actors, however, in addressing these inhabitants' and their communities needs. My interest in public health continued to deepen as I served as a health education specialist for the Peace Corps where I lived and worked in rural Honduras for over two years. During this time, again I witnessed remote areas of the world being linked inextricably to global supply networks. I knew several young women who left their rural villages and hamlets to go and work in the export processing zones in San Pedro Sula and elsewhere – zones in which mainly garments were made for export to industrialized regions such as the U.S. and Canada, Europe and Asia. During their holiday breaks, these women would often return home to their agrarian villages and hamlets bringing back much needed income as well as a new found degree of sophistication compared to their sisters and friends who had remained behind. It was this field experience of examining development issues through a public health lense that led me to complete a masters degree in public health from Columbia University where I learned and practiced a variety of social science methods.

Public health and business fields completely converged for me, however, when I went to work for a South African organization serving the rural populations involved in the fruit and wine export industry. Historically, this organization had been established to work directly with landowners to assist them in health promotion for their workforce – laborers formerly classified as ‘Colored’ under the apartheid regime and isolated by geography as well as from existing government health services at that time. When I was there in 1996, the organization needed to evolve in order to adjust and respond to the political changes underway in the country promising land reform and health care to all its inhabitants. Nevertheless, I found that the organization’s own hands-on experience and established relationships among the business sector remained a crucial element during this time in which other organizations were being called upon to move from advocacy to practicality in nation building and serving the health needs of vulnerable and isolated populations such as farm workers. The challenge for them, as well as for the business sector, was how to address new concepts of ethical and political requirements in their practice. And the corresponding challenge for the new government and advocacy groups was how to fulfill their own duties – the ‘business’ end – toward fleshing out the ethical and political requirements they espouse.

Thus, the time for partnership building not only between private sector actors (business and civil society) but also with government was ripe for the South African fruit and wine industries after the ending of the Cold War and while emerging as a liberal democratic state. It was becoming apparent that the business sector – especially those businesses linked to global supply chains – was playing an instrumental role in the development and outcome of people’s livelihoods, including their health. In this context, some fundamental questions became evident to me: how

should businesses respond to addressing the conditions of their workers in order to maintain and improve their health? And what are the limits to this uni-sectoral approach, especially when operating in regions that are absent of effective labor standards, health programs, social security and when their workers are externally affected by formidable health issues (e.g. HIV/AIDS)?

These were timely questions that needed careful consideration as the concept of corporate social responsibility and labor standards were being swirled about. Hence, with these questions in mind, I decided to examine and participate in this phenomenon by enrolling in a DrPH course in order to complement my skills in undertaking such research. The DrPH – considered to be a more ‘practical’ degree than a PhD – I found was not only the more suitable choice but is a necessary one for most public health professionals – including policy experts. Just as the theme of my research topic has to do with grappling with the business end of high-minded principles, statements, and political requirements, the health policy world is also being challenged in similar ways. The public health policy domain should be challenged to better manage its role so that an ‘ethic’ is distilled in which to practice both the purpose and methods of its intent.

Time Line

The taught component – 1997 to 1998

The compulsory courses were Leadership and Management Development, Media Training, Financial Management, Study Design: writing a study protocol, and Health Economics for Developing Countries.

The content of the Management course provided some knowledge into examining organizational behavior and culture that was useful for writing my Professional Attachment report. The Health Economics course was also instrumental in enabling me to understand my research topic in a context that extended beyond purely managerial issues.

The professional attachment & research preparation -- 1998

My professional attachment (PA) was arranged with a member organization of the Ethical Trading Initiative (ETI), the New Economics Foundation (NEF). The professional attachment took place in 1998 and was occurring when the ETI was at its beginning stages, particularly when its members (companies, trades unions and NGOs) were working together to develop a socially responsible code of conduct for business. Even though I was assigned to NEF, the work I did was linked to ETI related activities. As this organization was in its early stages at the time of the PA, a significant portion of my management theory analysis of the ETI was derived from the continuous work I had done indirectly for the organization later on (2000-2002) as an employee of an ETI member business.

The topic of my thesis directly relates to not only the work being done by the ETI but also to its overarching experiment. As a result, my PA was instrumental in my choices of data analysis for the thesis research and as a ‘participatory observer’ (Jorgensen 1989).² My PA experience helped me decide on using a case study approach (the Kenyan floriculture sector), and identify the actors and issues involved in promoting ethical supply chain management. Moreover, I chose ‘grounded theory’

² See Methodology for an explanation of participatory observation.

(Glaser & Strauss 1968) as a means to explore and identify key issues highlighted by thinkers and practitioners in the ethical sourcing field as they emerge.³

The research study & Writing Up – 1999 to 2004

The Kenyan floriculture industry, at the time, a sector that was beginning to develop ‘ethical’ strategies intended to address consumer concerns over working conditions. Again, applying grounded theory analysis proved to be a useful tool with which to identify issues and patterns while witnessing some of these strategies being put into practice. This case study, involved in its early stages of developing policies, meant that I could research without the possible distorted lense of hindsight, the interpretations of ethical standards, stakeholder involvement and their strengths and challenges. Qualitative field research in Kenya took 4 months while other meetings with key informants and documentation research regarding Kenya floriculture also occurred in the UK sporadically between 1999 and 2002. Open-ended, semi-structured, interactive interviews and observation techniques were put into practice as a means to discover themes and issues as much as to fulfill the research project’s objectives.

After conducting the Kenyan field research, I took a 2 year interruption of studies to accept a job working for a portfolio of companies with responsibility for their ethical supply chain management. This experience, as a participatory observer (see Methodology), proved to be critical in helping me formulate the ways in which I would analyze and consider my field work data on a practical level. The work not only involved monitoring and verifying labor standards in countries producing goods

³ This method is exploratory and generates theory rather than being driven by it. The research topic’s objectives aim to discover issues in lieu of starting with preconceived problems.

for global brands, but also working with other stakeholders (e.g. civil society, local government, donors, other global brands) in developing comprehensive strategies to address labor standards -- and the larger influences that affect them. Worker health issues were key if not inextricably linked to the labor projects that were underway in promoting decent working arrangements. I also came to have a deeper understanding of the meaning of health and the fragility of being human around the time I returned to my doctoral research when I cared for my terminally ill partner. It was during this time of researching, writing and caring that many of my ideas, values and beliefs merged into not just a framework but a way of being. And it was this segment of the DrPH process that was rendered slow and even painful, yet it was the most enriching.

Conclusion

The DrPH course was an unusual learning experience in how to manage human rights and ethical approaches in the beneficial ways in which they are intended. Exploring how public health and worker health issues converge within these approaches also raise as many questions as answers. But hopefully this exercise invokes a breath of fresh air and dynamism into what can often be rendered static or self-serving thinking when making assumptions about ethical and rights-base behavior.

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GLOSSARY OF TERMS

Actors

Actors are representatives from state or society that have varying degrees of involvement in a policy process.

Audit

An *audit* involves applying methods of checking and verification as means to capture the quality of the inputs and processes involved in production or performance.

Brand

A *brand* is a product and/or name from a known source. The value of a brand reflects how a product/name is perceived by the market place or target audience. Thus, such perceptions can illicit different meanings and different values.

Civil Society

The term Civil Society often refers to a composite of civic and social organizations that form a basis for democracy. Thus, these bodies represent a set of institutions, organizations and behavior that intermingle between the state, business and society. Civil society groups can advocate for social development and for the 'public' or a particular group's interest and include bodies such as trades unions, NGO, voluntary organizations, cooperatives, environmental groups, clubs, professional associations, policy institutes, consumers' groups, religious organizations, academia etc.

Codes of Conduct

Codes of Conduct refers to a set of general, core principles that describe ethical behavior. Such codes often refer to professional (e.g. medicine) or sectoral (e.g. business) protocol in which to be both professionally and socially responsible.

Codes of Practice

Codes of Practice are often described as a more specific approach detailing how to adhere to a generalized set of codes of conduct. But codes of practice can equally just be a set of rules related to a company or sector's particular system of operation. Thus, codes of practice are usually arrangements that influence, shape, control or set benchmarks for behavior within a certain context (e.g. marketplace, business sector, individual company or organization). Just like codes of conduct, codes of practice encourage organizations to conduct themselves in ways that benefit both themselves and others (e.g. customers, workers, community).

Corporate Social Responsibility (CSR)

Corporate Social Responsibility has two basic approaches: how businesses *spend* their profits and how they *make* their profit in their efforts to give back to society. The first principally has to do with a philanthropic model in which support and resources are donated to peripheral or charitable causes. The latter approach addresses the integral aspects of the wealth creation process and is the one discussed and analyzed in this thesis. Thus, this approach involves a commitment by business to behave ethically and contribute to economic development by maintaining and improving the quality of life for their workforce and the larger community.

Domain

A domain covers a specific profession (e.g. medicine, law) but needs to cover more than knowledge and skill to be recognized as a profession.

Ethical

The underlying description of *ethical* in this thesis includes a composite of excellence (e.g. profession, skill) and social responsibility.

Ethical Sourcing

Ethical Sourcing refers to a company's responsibility for labor and human rights practices in its supply chain. Specifically, it refers to a company taking responsibility to work with its suppliers to implement internationally accepted labor standards in the workplace.

Ethical Trading

Ethical Trading is an overarching term for a variety of initiatives addressing concerns related to the trade in, production and marketing of goods between developed and developing countries. Special emphasis is given to the social, environmental and financial conditions in which the goods are developed and sold. There is no single definitive approach and, thus, ethical trading is a generic term that describes fair trade schemes, organic agriculture, environmental codes, and ethical sourcing initiatives of major retailers.

Field

A *field* encompasses a discipline or subject in which professions are based i.e. medical practitioners and physiotherapists work within the health field.

Frameworks

Frameworks are a set of assumptions, values, concepts and practices that establish scope and boundaries in which to promote policy.

Importers

Importers are those intermediaries -- individuals or groups -- that bring goods or products into a country or state.

Instruments

Instruments are actual means by which policies are agreed upon and implemented (i.e. voluntary codes of conduct, regulation, monitoring and verification of codes of conduct).

Positivism

Positivism is a model that emphasizes the supremacy of human reason in which there is a single objective truth. The key tenets of positivism, according to Dworkin (1977:17), are the organizing propositions that include the law of a community for determining behavior, directly or indirectly, that upholds clear rules and a set of obligations. In social science, positivism is described as a 'school' in which research seeks to test correlations between variables as opposed to "interpretive social science which is more concerned with observation and description and, at best, generating hypotheses" (Silverman 1993: 21).

Principles

Principles are propositions that describe rights (Dworkin 1977:91). In the context of this thesis, the term principles refers to the key statements in the Universal Declaration of Human Rights, the ILO Conventions and Recommendations or in specified codes of conduct. Policies are propositions that describe goals. The concept of an entitlement uses rather than explains the concept of a right. A goal is a non-individuated political aim, that is, a state of affairs whose specification does not in this way call for any particular opportunity or resource or liberty for particular individuals.

Retailers

Retailers are mostly found at the end of a supply chain in which they are responsible for selling goods/products that they buy from importers, manufacturers and/or producers. Large and transnational corporations (TNCs) are usually described as retailers.

Stakeholder

Stakeholders roughly encompass two definitions: 1) an individual or group with an interest in the success of an organization delivering intended results and maintaining viability of an organization's products and services; or 2) "any individual or group who can affect, or is affected by, the actions, policies, practices or goals of the corporation" (Freeman 1984:vi).

Stakeholder Analysis

A *Stakeholder Analysis* is an approach in which to organize and generate knowledge about actors (e.g. individuals, organizations, groups) in order to understand their activities, intentions, and their described and non-described responsibilities. This form of analysis also can assess an actor's "influence and resources [that] they bring to bear on decision-making or implementation policies" (Varvasovszky & Brugha 2000:338).

Supply Chain

Supply Chain describes the complete business network of inputs that go into the production of a product. Thus, a supply chain includes retailers, distributors, transporters, storage facilities, suppliers (including a composite of sub-contractors, outsourcers and homeworkers) that participate in the sale, delivery and production of a product.

Traceability

The capacity to describe and follow the life cycle and inputs that go into the development of a product is called *traceability*. Thus, determining how much a horticulture product is exposed to agrochemicals becomes a task in determining its residue levels as well as identifying all the points in where it was grown, handled, assembled and transported.

Trade(s) Unions

A *Trade Union* or Union is a legal entity consisting of employees or workers that have a common interest, such as assembly for one employer or all the workers in a particular industry. Its purpose is to negotiate collectively with an employer or employers on wages, hours and other terms and conditions of employment.

Value Added

Value Added is a processing strategy to increase the selling price of a product before export and/or closer to the origins of the product. For example, adding value to flowers could mean assembling them into a ready-made bouquet that is wrapped in plastic and includes a packet of powder to prolong the vase life of the blooms, which is all done at the point of cultivation.

ABBREVIATIONS & ACRONYMS	
AIDS	Acquired Immune Deficiency Syndrome
COLEACP	Comite de Liaison Europe-Afrique-Caaibe-Pacifique
CREM	Consultancy and Research for Environmental Management
CSR	Corporate Social Responsibility
DFID	Department for International Development
ETI	Ethical Trading Initiative
EU	European Union
EUREP/GAP	Euro-Retailer Producer Working Group/Protocol
FIAN	Food First Information & Action Network
FLP	Flower Label Program
FPP	Fetal Protection Policy
GCC	Global Commodity Chain
FPEAK	Fresh Produce Exporters Association of Kenya
HACCP	Hazard Analysis Critical Control Points
HCDA	Horticulture Crops Development Authority
HIV	Human immune deficiency virus
ICFTU	International Confederation of Free Trade Unions
ICIPE	International Centre for Invertebrate Pest Ecology
ICM	Integrated Crop Management
ICPWWCFI	International Code of Practice for Worker Welfare in the Cut Flower Industry
ILO	International Labor Organization
IPM	Integrated Pest Management
ISO	International Organization for Standardization
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
KARI	Kenya Agricultural Research Institute
KEPC	Kenya Export Promotion Council
KEWWO	Kenya Women Workers Organization
KFC	Kenya Flower Council
KHRC	Kenya Human Rights Commission
KPAWU	Kenya Plantation & Agricultural Workers' Union
MOARD	Ministry of Agriculture & Rural Development
MPS	Milieu Project Sierteelt
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Co-operation & Development
OSH	Occupational Safety & Health
PCB	Pesticide Control Board
PPE	Personal Protective Equipment
PRP	Performance Related Pay
SA8000	Social Accountability standard
SAI	Social Accountability International
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UPOV	Union for the Protection of New Plant Varieties
WTO	World Trade Organization

PART ONE – Introduction – Research Methodology

1. Background

This thesis chronicles an early phase of practice and thinking among actors who envisage a beneficial or key responsibility for business to play in the development of communities and states.⁴ As globalized business networks establish themselves in regions with weak state provision and governance or come to play an instrumental role in the income generation of the underemployed, policy makers will need to consider how the business sector contributes – and could contribute -- to the well-being of local populations and societies. Furthermore, other relevant sectors, (e.g. civil society, local and national government, international bodies), will need to evolve and establish creative and appropriate responses and strategies that promote sustainable and beneficial outcomes especially for those most vulnerable – usually workers and businesses at the ‘bottom’ or beginning of the production cycle.

Health status is inextricably linked to the well-being of working populations especially for those in emerging and developing economies around the globe with few, if any, state-sponsored safety nets. Often workers in global supply chains serve as key providers for their families and significant populations depend on workers’ health status to be robust and to persevere in their income-earning capabilities. Thus, not only do occupational health and safety standards bolster this status, but also larger health issues affecting these same populations of the globe need to be considered in

⁴ In light of the practical and innovative nature of the research topic, a DrPH (doctorate in public health) program was chosen as the most appropriate means in which to consider leadership skills and management issues of worker health initiatives. Furthermore, a DrPH study is more likely to consider how its research can be integrated into public health practice than research just focusing on theoretical issues in health.

any worker health promotion scheme. For instance, health impacts from HIV/AIDS have devastating consequences not only for workers and their families, but also for their region's or society's economy.

Since the time of this thesis' field research, using the Kenyan export floriculture sector as a case study, considerable progress has been made in engaging a wider circle of stakeholders in the process of considering decent working standards for Kenyan floriculture workers. This can also be said for numerous other cases around the globe as new combinations and permutations of partnerships and methods are established to address ethical sourcing⁵ and larger socio-economic and development concerns. Factory floors and production sites often represent a microcosm of larger, existing issues and conditions at play within a society or state. Thus, what was once just a primary concern over articulating *methods* (i.e. codes of practice and their monitoring and verification) with which to promote decent standards within the work sphere, has led to more consideration and questions over the *purpose* of ethical sourcing. The questions now being asked are how or whether ethical sourcing can improve standards for enough people and, in particular, the most vulnerable and what role it has to play in a more comprehensive strategy to reduce poverty and strengthen liberal democracy. The overarching aim of this thesis, therefore, is to consider how both the *methods* and the *purpose* of ethical sourcing can lead toward establishing an *ethic* with which to apply rights-based frameworks.

⁵ Ethical sourcing refers to a company's responsibility for labor and human rights practices in its supply chain. Specifically, it refers to a company taking responsibility to work with its suppliers to implement internationally accepted labor standards in the workplace.

The recent phenomenon of ethical sourcing refers to the application of criteria influencing purchasing decisions usually made by 'Western' consumers of products made by 'Third World' suppliers and workers. Its approach in informing the buyer as to what they are purchasing or consuming is to apply ethical criteria throughout the entire system of production so that producers, those at the 'cradle' end of production, benefit through decent working conditions and fair pay. Yet, as production globalizes and relocates across national boundaries and relies on informal sectors (e.g. homeworking, smallholding), determining whether ethical standards are applied becomes a far more complex endeavor. Increasingly, however, businesses, particularly Western businesses, are being called to account in terms of upholding ethical principles throughout their globalized production networks. And core human rights principles and standards are often being used to describe and determine ethical conditions at these 'cradle' points of production. Such scrutiny is usually applied to working conditions (e.g. union rights, fair pay, health and safety, child labor). The reason for this scrutiny is due to a recognition, brought on by a simultaneously spreading global civil society, that in light of their scope and influence, transnational companies (including retailers) have a greater unfulfilled potential for improving the context in which they operate (or from where they source) than any other actor, including government.

The underpinning philosophy forming the basis of ethical sourcing comes from a positivist paradigm⁶ promoted increasingly via the internationally accepted frameworks provided by the ILO and Human Rights Conventions and by a variety of transnational actors including export/import businesses, large retailers, trades unions,

⁶ A model that emphasizes the supremacy of human reason in which there is a single objective truth. Refer to glossary of terms.

NGOs and multi-lateral organizations. Yet, the responsibility for implementing these frameworks lies primarily with governments, who are obliged to adopt and use these frameworks as a template for more specific codes of conduct and laws. The Universal Declaration of Human Rights (UDHR) indicates, however, that ‘every individual and every organ of society’ is responsible for respecting these rights. Thus, ‘organ of society’ can encompass organizational bodies within the private sector, including businesses. With their increasing reach and influence and the transnational supply chains they generate, the globalized business sector should accept that there are inherent responsibilities in their operations throughout their networks.

How these ‘rights’ are interpreted through ethical sourcing initiatives, however, can vary depending on a myriad of values and beliefs held by the stakeholders involved. This is particularly relevant to the ways in which worker health and well-being are conceptualized, prioritized and promoted. A qualitative approach was chosen for this thesis to identify interpretations and challenges in promoting the right to health and well-being for workers in transnational supply chains and to examine the ways in which ethical sourcing objectives are governed and by whom. In order to research these key issues involving ethical sourcing and worker health and well-being on a practical level, a case study of the Kenyan export floriculture market was chosen as a context for examination. This sector was selected due to timing, in that Kenyan cut-flowers is an emerging and successful sector in which, in the late 1990’s, the industry was in the early stages of developing ethical codes of practice for its producers. Moreover, Kenyan floriculture employs a largely female semi-casual workforce that is representative of workforces linked to transnational supply chains around the globe.

This study covers one practical activity (ethical sourcing) in which a wide range of themes and disciplines have been drawn on to justify or explain its *raison d'être*. Before this thesis begins to describe and analyze the intent and activities of this phenomenon of applying ethics and human rights to the sphere of working conditions within globalized supply chains, an examination of the conceptual themes involved and some of their aspects relevant to ethical sourcing is presented.

1.1 Human Rights and Ethics

The act of declaring the existence of a human right -- as well as entitlement to it -- has been described as 'enlightened self-seeking' (Sen 2000). Furthermore, this kind of *modus operandi*, which has been linked to the tradition of ethics, has been also described as the 'cornerstone' of culture and civilization (AJC 1944). In other words, the words and thought involved in acknowledging and declaring human rights reflects a foundation (or *raison d'être*) for behavioral ethics and morality of conduct that is brought on by *reason* (Rorty 1998). This point, according to Amartya Sen, on the one hand can be "related to ethical reasoning on behalf of the society, and on the other, connected with reasoned or dispositional choice supported evolutionary survival related to long-run individual gains and social success" (2000).⁷

⁷ The neurobiologist Antonio Damasio, however, does not separate our biology and emotions from our reasoning and warns against the underlying rationalist assumption that fosters schisms between them. Consciousness is not rooted in 'I think, therefore I am' but 'I feel therefore I am'. "Emotion, feeling, and biological regulation all play a role in human Reason" (Damasio 2000). What are often considered to be lower orders within human function turn out to be the "shadow of our evolutionary past at the most distinctively human level of mental function" (Damasio 2000). Yet, this interdependence between high and low 'brain' does not diminish or alter our ethical ideas and behavior. In fact, according to Damasio, what can change is "our view of how biology has contributed to the origin of certain ethical principles arising in a social context, when many individuals with a similar disposition interact in specific circumstances" (Damasio 1994).

Thus, Sen describes humanity's *raison d'être* in terms of *behavioral ethics*. Intrinsic in humanity is a core of 'enlightened self-interest' in which the seeking of long-term gains as a basis for survival subsequently allows for fuller consideration of our interdependence (Sen 2000). Keiron O'Hara describes this 'win-win' notion of ethics citing that the Hippocratic Oath was developed because "trust was an important mechanism, and a doctor's reputation was what secured – or did not secure – his living" (O'Hara 2004: 35). Howard Gardner describes ethics in terms of 'good work' in that it is a form of expression done expertly as well as responsibly (Gardner et al 2001). Furthermore, 'good work' – not unlike 'enlightened self-interest' – is something that allows the full expression of what is best in us: wholly engaged in activities that exhibit the highest sense of responsibility (Gardner 2001). Higgott also emphasizes this ethical dimension in terms of economic liberalizing reforms in describing markets as a sociopolitical construction whose functioning and legitimacy depends on their acceptance (in both breadth and depth) of civil society (Higgott 1999).

In these contexts, ethics -- which include codes of conduct and lists of rights -- are thus seen as a set of social practices (behavioral ethics) that regulate relations between, and help to constitute, citizens and states in 'modern' societies rather than representing a timeless (or ahistorical) system of essential moral principles (Donnelly 2003; Rorty 1998). As modernization further expands and influences nation states and market systems across the globe, those affected nations will have to modernize and participate in a modernizing global economy. And, inevitably, they will be

challenged to cultivate the social conditions described above that generate the demand for human rights.⁸

1.2 Ethical Space

All of these interpretations describe an *ethical modus operandi* in that each individual works within an ethical space that contributes to society and a profession/skill thereby maximizing the space that is within their control. But equally individual behavior has an impact and is determined by the individual's own intent, requirements of others, informal and official policy as well as by the behavior of others. Thus, an expansion of ethical behavior to accommodate an interdependent framework of actors (e.g. citizens, stakeholders) is an approach that can instill a maximizing effect over a more circumscribed approach that risks becoming too rigid and removed. Yet, too much consideration of dependence could have the opposite effect in that an ethical modus

⁸ One theory on the origins of the concept of human rights is that it emerged out of the western world as the outcome of Modernism -- a period in time when particular regions and civilizations created and fomented what has come to be called 'modern' markets and states (O'Hara 2004; Donnelly 2003). The emergence of modern markets and modern states was born out of a conflict in which privileged ruling groups were increasingly challenged with political, economic and social claims for equality and toleration. And these markets and states in themselves generated social conditions and thinking in which the creation of human rights was sought. As physical and social mobility increased, thanks to an extraordinary increase in wealth, literacy and leisure, contemporary human rights ideas and practices were fomented and exported from Europe to America (Donnelly 2003) and back again. To contextualize the origins of these norms further, Messer argues that "human rights are the exclusive heritage of the Western liberal political tradition" (Messer 1997:310). Yet like other concepts, ideas or practices invented or developed in one place (e.g. mathematics and numerals from the Muslim Near East, Yoga from ancient Indian philosophy) human rights may be adopted or adapted by others elsewhere (Donnelly 2003). Furthermore, proponents of the universality of human rights not only emphasize that the current lists of human rights were born out of the experiences Modernism instilled over the last few centuries but also were crafted as a liberal scheme to curtail reactionary responses to socio-economical changes. Socio-economical changes brought on both by emerging diversity and the push for new and rapid industrialization. And it is these concrete experiences, including the sufferings invoked by collective envy of particular cultures and groups of people, genocide, rampant capitalism, slavery, etc., which also have increasing resonance for other regions in this time of en masse migration and ethnic tension. Human rights, therefore, offers a way in which humanity can progress or maintain dignity for all in response to both the ills and opportunities brought on by the changes Modernization instills.

operandi is rendered relativistic or is weakened. Therein lies one particular distinction – and tension – between ethics and human rights.

1.3 Codes and Measurement

Human rights enables us not only to focus on our fundamental needs as human beings ‘but to do so explicitly through measurement’ (Holt 2001:1-22). With a similar distinction, Perry explains that the idea of human rights informs us that:

...there is something about each and every human being, simply as a human being, such that certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain things ought to be done for every human being (Perry 1998).

The drawing of such distinctions and terms embodies the rights language, therefore, into forms of ethical behavior that can be organized into something measured. And, frequently, ethical behavior has been defined in terms of such parameters and lists. Measurable language, however, often has been regarded more as a composite of words that have *logical conclusions*. Subsequently, renditions of corresponding ethical behavior have anticipated ‘rational’ or ‘scientific’ outcomes including laws, contracts, and scientific or systematic instruments with which to measure ‘compliance’.

Yet, what often gives rights language life is when these words are regarded as *symbols* in which to craft a variety of ethical possibilities. Furthermore, lists of human rights, contracts are based only loosely on abstract philosophical reasoning and a priori moral principles and are, rather, rooted in the descriptive nature of human existence. Human rights lists, particularly the principles outlined in the Universal Declaration of Human

Rights (UDHR)⁹ and ILO core principles, have emerged from concrete experiences, especially the sufferings, of real human beings and their political struggles to defend or realize their dignity. Internationally recognized human rights, therefore, are descriptive in the sense that they reflect a politically driven process of social learning.

1.4 Rights and Duties

*Declaration of rights ostensibly offer something to everybody, without coming clean about the costs and demands of respecting rights they proclaim. Governments have generally been willing to sign up to declarations of rights, indeed to ratify them, but less keen to meet their counterpart duties. Individuals have often been willing, even eager, to claim rights, but less willing to meet their duties to respect others' rights.*¹⁰

Onora O'Neill

To have a right is to be entitled to it (Morsink 1999; Dworkin 1977; Donnelly 2003). It is owed to you, belongs to you in particular. If the right is threatened or denied, right-holders are authorized to make special claims that ordinarily “trump” utility, social policy, and other moral or political grounds for action (Dworkin 1977:91; Donnelly 2003:8). Rights create, in both their constitutive and regulative forms, “a field of rule-governed interactions centered on, and under control of the right-holder” and thus renders individuals to become a particular kind of political subject: “free and equal rights-bearing citizens”(Donnelly 2003:8).

⁹ The UDHR includes a preamble that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights were adopted within the wake of the Universal Declaration and together with it comprise the International Bill of Rights. See Appendix A for further details.

Yet an underlying difficulty has been highlighted in what a rights declaration can assume without acknowledging the implications involved in the act of its declaring.

Onora O'Neill has asked whether implementing human rights are feasible while ignoring the counterweights. She writes:

My first suspicion falls on one of most sacred cows: the human rights movement. We fantasise irresponsibly that we can promulgate rights without thinking carefully about the counterpart obligations, and without checking whether rights we favour are consistent, let alone set feasible demands on those who have to secure them for others. (O'Neill 2002:27)

Dallin H. Oaks also explains the dilemmas implicit in pursuing a human rights agenda:

We have tried to promote too many social goals through rights and have given too little attention to responsibilities....The enjoyment of rights depends on the fulfillment of responsibilities. (Oaks 1990:37)

Furthermore, Tony Evans claims:

In some ways enthusiasm for the idea of human rights is dependent upon confusion and interdeterminancy, for human rights provide a convenient banner on which to pin political and ideological values without the need for expressing preferences or going into detail over the content of the idea. Claiming to uphold human rights, like claiming to support the idea of democracy, can offer legitimacy without explicit *responsibility* (Evans 1996:169-170). Italics added

Thus, even when human rights are well defined, as they are in the UDHR, responsibilities are elusive.¹¹

¹⁰ O'Neill (2002), Cambridge University Press, pp. 29-30.

¹¹ Although some of the Declaration's articles imply correlative duties to its stated rights and allude to who is responsible (everyone) and directly mention the state as responsible for upholding them, there has been much speculation as to whether the Declaration says anything about corresponding duties. Nor does it say *who* is required to do *what* for *whom*, or *why* they are required to do it (O'Neill 2002; Paust 1992). The reason for this being that lists of rights, particularly those in the Universal Declaration of Human Rights, is conceptual or seen as 'canonical' and is seldom argued (O'Neill 2002). Yet many have declared human rights intrinsically elicits a call for duties to be fulfilled in upholding them (Paust 1992; Dworkin 1985; Donnelly 2003). Article 30, for instance, ties rights and freedoms to private duties by citing that *nothing* "may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein." Thus, these proponents state that human rights instruments, especially those since World War II, have provided expressly or implicitly a recognition of duties, according to human rights proponents. Furthermore, these duties apply to private individuals and groups as much as states and their authorities (Donnelly 2003; Paust 1992).

Nevertheless, the underlying difficulty that remains for this and any declaration of human rights is that it assumes a passive view of human life and of citizenship (O'Neill 2002: 28) and can have deleterious consequences if its corresponding responsibilities go unrecognized (CGG 1995). And without considering their responsibilities and applicability, lists of rights are rendered mere wish lists. "Rights answer the questions 'What are my entitlements?' or 'What should I get?'" writes O'Neill and adds that human rights declarations don't answer the question 'What should I do?'. She speculates as to why there is exclusive focus on rights over its corresponding duties:

Perhaps it is partly because it is more fun to think about all the things that others should do for us, than it is to think about what we should do for them. But there may be more deeper, more political reasons. Declarations of rights ostensibly offer something to everybody, without coming clean about the *costs and demands* of respecting the rights they proclaim (2002:29). Italics added.

Yet, if such rights are predicated on the recognition that there is intrinsic value and worth in all human beings, should human rights be considered to be universal and vested equally in all persons *whether or not they uphold their duties*? And should these rights exist independently of legal recognition? Donnelly writes:

Defensible limits on the exercise of a right should not be confused with duties inherent in the possession of a right. When irresponsible exercises of a recognized right threaten interests that are legitimate matters of social or political regulation, they may be appropriately prohibited. These restrictions, however, are separate from the right – unless the right in question is contingent on accepting those restrictions, in which case it is not a human right (2003:115).

Similar distinctions are made when describing human rights' origins with liberalism (Donnelly 2003; Zakaria 2003; Plattner 1998). It is the primacy of individual rights that provides the key ingredient to political order (Zakaria 2003; 1997; Plattner 1998). Again, with this prism, we return to the over riding importance of not who rules but, rather, *how* rule is exercised. And it is this 'rule' of order in which the rights of the individual are organized into a backbone with which to foster democracy. But are

liberalism and democracy inextricably linked or mutually exclusive? And could either just as much enable as it could hinder human rights principles to flourish?

1.5 Human Rights and Democracy

All this will not be finished in the first one hundred days. Nor will it be finished in the first one thousand days, nor in the life of this administration, nor even in our lifetime upon this planet. But let us begin. In your hands, my fellow citizens, more than mine, will rest the final success or failure of our course And so, my fellow Americans: ask not what your country can do for you – ask what you can do for your country.

John F. Kennedy Jr.
Inaugural Address, January 20, 1961

You cannot create conscience, you cannot create a sense of moral good and moral evil, if you do not have a sense of self. You need to have a sense of self first.

Antonio Damasio

Some human rights proponents (Donnelly 2003; Rawls 1993; CGG 1995) assert that an overlapping consensus can be established on a list of human rights principles.

Because human rights can be derived from an array of moral theories imbedded in natural law to political law, the idea that an overlapping (rather than uniform) political -- in lieu of moral or religious -- consensus can be instilled. And it is this cosmopolitan consensus that underpins a democratic notion.

According to O'Neill, however, it is the converse: democracy is what presupposes rights, and rights only then presuppose duties (2002). She bases this assertion by

purporting the notion that we are all moral equals. And it is this understanding in which a deeper implication is revealed: equal duties are what underpins equal rights.

Thus, from an ethical and political perspective:

[W]e would do better to begin by thinking about *what* ought to be done and *who* ought to do it, rather than about what we ought to get. Passive citizens, who wait for others to accord their rights and mistakenly suppose that states alone can secure them, are doomed to disappointment. Active citizens who meet their duties thereby secure one another's rights (O'Neill 2002: 32).

Yet democracy -- the 'will of the all' secured either through direct or electoral means - - often expresses only particular individual and group interests. Thus, such participation of 'popular' power frequently falls short of the demands of internationally recognized human rights (Zakaria 2003; 1997; Donnelly 2003; Plattner 1998). In other words, "[d]emocracy can show us what is politically legitimate; it can't show us what is ethically justified" (O'Neill 2002: 31). This is why Donnelly emphasizes the point that even though human rights require a democratic government, democracy only contributes contingently to human rights: "[e]ven where democracy and human rights are not in direct conflict, they often point in significantly different directions" (Donnelly 2003:193).

In exploring the qualities and definitions of human rights and democracy and their relationship, parallels can be drawn between the duality of universalism and relativism, individualism and communitarianism. This discernment is well illustrated in their contrasting aims. Democracy aims to empower 'the people' (e.g. community, types or groups of 'citizens') while human rights, by contrast, aims to empower *individuals*. Human rights in its ability to provide an equal and universal scale, thus limits the sovereign people and their government because it focuses not on *who* should rule but *what* rulers, people or any other group should do and *how* they should

rule. “The acceptable range of political, economic, social, and cultural systems and practices is severely restricted by the requirement that every person receive certain goods, services, and opportunities” (Donnelly 2003:191-194). It is in this view that ‘autonomous moral agents’ -- who have responsibilities to one another on the basis of their shared humanity – do not have their rights superceded by ‘particularist’ obligations to separate collectives, e.g. states, communities and nations (Donnelly 2003).

Conversely, however, the highlighted pitfalls with democracy can also occur while in pursuing human rights. O’Neill questions whether it is inevitable that acting upon one’s human rights always leads to securing one another’s rights within this shared sense of humanity. She cites that abuses occur when certain individuals or groups act on principles in which others cannot adopt. She emphasizes that, in such cases, the corresponding duties -- in which human rights principles for all are meant to be upheld – are ignored. This is why she emphasizes the need for ‘democracy’ to be central in rights promotion so that all and each stakeholder is engaged and considered. Her illustration of democracy, however, often overlaps with Donnelly’s when she envisages duties:

Without competent and committed persons and institutions, duties are not met; where they are not met, rights are not respected; and where rights are not respected; democracy is unachievable. Democracy can show us what is politically legitimate; it can’t show us what is ethically justified (O’Neill 2002: 31).

This point converges with Donnelly’s assertion that the commitment (duties) to individual rights derives from ‘liberal’ forms of governance (e.g. institutions, civil society). And it is this liberal tradition of human rights that ‘democracy’ – via the will of ‘the people’ – which may or may not be upheld.

The crux to this manifestation is to promote an *ethical form of governance*. In this context would mean that people, nationally and transnationally, should be able to take their own decisions, rather than being passive objects of choices made on their behalf, which thus enable them to be active citizens with rights, expectations and responsibilities. Norton and Wood¹² provide three key principles that underpin this approach to governance: participation, inclusion, and fulfilling obligations. More specifically, in the context of ethical sourcing, this thesis elaborates on these principles:

- **Participation:** enabling people to become active citizens so that they can realize their rights to participate in, and access information relating to the decision-making processes which affect their lives is a cornerstone to developing a democratic process. Allowing and enabling workers to organize, bargain collectively and articulate their concerns is a key part to instilling this right to participate.
- **Inclusion:** Building socially inclusive societies, based on the values of equality and non-discrimination, through development which promotes all human rights for all people. It is this type of inclusion – that adheres to both the spirit and letter of rights-based laws and frameworks -- in which codes and standards can equally honor the rights of all and vulnerable groups and individuals. An actor's or stakeholder's acceptance and adherence to the UDHR principles and ILO standards is relevant to this approach.

¹² Norton, A & Wood, A. (2002), unpublished document on labor standards and governance (DfID).

- Fulfilling obligations: strengthening institutions and policies that ensure that obligations to protect and promote the realization of all human rights – or one’s *remit* to instill an *ethic* that upholds this realization -- are fulfilled by states, other duty bearers, organizations, groups and individuals.

These three aspects of governance will be later explored in a stakeholder analysis examining the ethical sourcing practices for the Kenyan floriculture sector.

1.6 Aims and Objectives of Research

This thesis examines the concept and practice of workers’ health rights within a particular and current context. In this chapter, definitions and interpretations of rights and ethics are explored broadly and provides a general epistemological background in which to analyze and shape the development of the research’s aims, objectives, key questions and overall focus of the thesis. A conceptual and theoretical framework, however, was not chosen at the outset of the research since grounded theory was used as a form of data analysis.¹³

As a result, the research methods are thus explained – including the reason behind their selection -- in the next chapter (Chapter 2) identifies those methods that were used to investigate the three key research objectives of this thesis:

¹³ I believe the very nature of conducting DrPH research requires theory to be generated from practical, participatory experience. Thus, a general and definitional background into these concepts is provided at this stage in the thesis and a discussion of how they have shaped the development of the research’s aims, objectives, key questions and overall focus is provided. However, a conceptual and theoretical framework, built on generated theory (i.e. the ‘fleshing out’ of the key concepts profiled in Chapter One) is provided in the second part of the thesis (Chapters Three and Four).

Objective One: Reflect on definitions of ethics, human rights, health and well-being and the way they are being described in current ethical sourcing trends, particularly within a case study of the global supply chain (Kenyan Floriculture).

Chapter 4 discusses the definitions of health and well-being and how they have been described as a human right and the social and economic aspects for setting health and well-being standards via core labor standards. Chapter 5 describes the emergence of ethical sourcing and some of the definitions and approaches used to facilitate an ethical modus operandi within the global and international business sector. The ways in which such standards and overarching themes, (raised in both of these chapters), are envisaged are then examined in context as a case study in Chapter 7.

Objective Two: Explore benefits, tensions & ambiguities in implementing worker health standards globally & within Kenyan export floriculture.

To meet this objective, Chapter 3 discusses broadly, using the definitions and the outlined from the introductory chapter, the process of promoting a human rights ethic and the caveats in its application (or lack thereof). And Chapters 4 and 7 focus specifically on the definitions and challenges involved in implementing worker health standards globally & within Kenyan export floriculture, respectively.

Objective Three: Identify how worker health standards should be governed within global and local (Kenyan export floriculture) contexts.

Finally, a framework is presented in Chapter 8 that aims to level the imbalances in governing ethical initiatives promoting worker health rights, particularly within a Kenyan export floriculture context. Moreover, the framework is useful in analyzing current ethical sourcing schemes that attempt to implement and maintain decent working standards.

2. Research Methods & Design

The purpose of my research was to identify interpretations and challenges in promoting the right to health and well-being for workers in transnational supply chains and to examine the ways in which ethical sourcing objectives are governed and by whom. In order to research these key issues involving ethical sourcing and worker health and well-being on a practical level, the Kenyan export floriculture sector was chosen as a case study. Research questions were developed (see Appendix K) to explain four key queries:

What is/are:

- The contributing factors leading to the genesis of ethical sourcing?
- The scope and role of actor involvement in promoting worker health and well-being standards?
- The underpinning priorities or interpretations reflected in the design and application of ethical sourcing initiatives?
- The challenges and opportunities in implementing worker health and well-being standards?

Below is an explanation of the steps involved in conducting the research followed by a graphic representation of the process.

2.1 Research Objectives

The objectives of this thesis are to:

Objective One: Reflect on definitions of ethics, human rights, health and well-being and the way they are being described in current ethical sourcing trends, particularly within a case study of the global supply chain (Kenyan Floriculture).

Objective Two: Explore benefits, tensions & ambiguities in implementing worker health standards globally & within Kenyan export floriculture.

Objective Three: Identify how worker health standards should be governed within global and local (Kenyan export floriculture) contexts.

2.2 Sampling

For the Case Study, the approach used was purposive sampling in order to identify “information rich” individuals and groups (Patton 1990:169-186) considered representative of the stakeholders involved in the ethical sourcing process, specifically in export Kenyan floriculture. In addition to the key informants listed in Appendix J, the “snowballing” (Patton 1990:169-186) technique was used to identify further informants as persons were interviewed and documents were gathered and reviewed. The field research in Kenya covered the months of February 1999 and from April to August 1999. Interviews were conducted with 32 informants linked to the Kenyan floriculture sector ethical sourcing initiative, and approximately an additional 8 were interviewed for general research into global ethical sourcing matters. Informants

represented a range of expertise and sectors (see Appendix J) with the volume derived mainly from the agrochemical management and floriculture (e.g. employee, worker, manager) fields. Of those interviewed from each sector (see Appendix J), half of the floriculture workers and transnational non-governmental organization representatives were women; and all of the trades union, retailers, and multilateral/donor representatives were also women. Of the remaining representatives (floriculture management/business, importers, industry associations, agrochemical experts, auditors, and health professionals), all were men.

2.3 Time Line

Literature and documentation from cooperating organizations was collected and analyzed between 1997 and 2004. Field research in Kenya was conducted from April to August 1999. Field research within the UK was on-going and was conducted between 1998 and 2002.

2.4 Data Collection -- Methods

The breadth of the research covers the challenges and opportunities for defining, promoting and governing ethical policies within a global supply chain involving worker health and welfare, in which theory was generated from a practical level and examined (see 2.5.1 Grounded Theory). The purpose in conducting the research in this way is elemental to the Doctorate in Public Health (DrPH) approach in which

theory is generated and/or tested from practical, managerial experience. As a result, the structure of the thesis is organized and devoted to discussing conceptual elements relevant to the issues highlighted from practical research done into ethical sourcing and worker health rights generally and specifically within the Kenyan floriculture sector.

2.4.1 Literature Review/Document Analysis

A literature review was conducted to identify underlying conceptual definitions and descriptions of ethics, human rights, health and well-being to enable an examination of how health and human rights can overlap within an ethical sourcing context and its objectives. A literature review also covered documents on health and ethical sourcing issues generally and directly related to the case study.

The literature search was broad and covered many disciplines ranging from philosophy, business, poetry, horticulture, geography, political economy, psychology, international development, occupational health, and health ethics. Literature was collected from published articles and books from several libraries including the London Business School, the British Library, and the London School of Economics. Furthermore, a search for 'gray' literature from relevant organizations (e.g. NGOs, businesses, trades unions, governments, multi-lateral agencies) involved in ethical sourcing, worker health and corporate social responsibility was conducted. The reason for conducting a multi-disciplinary search -- particularly to explore notions of ethics, human rights and health -- was to illuminate (or liberate) such notions from

what can become underlying, static assumptions about what it means to be ‘ethical’ and what human rights and health can promise. Key words and phrases used to capture this information include but are not limited to: ethics, health, well-being, human rights, occupational health, decent work, dignity, suffering, ethical trading and sourcing, corporate social responsibility, business, and agriculture.

Literature and documentation from cooperating organizations was collected and analyzed between 1997 and 2004. Other literature collection and review occurred as a ‘participatory observer’¹⁴ (while on professional attachment and working in other ethical sourcing roles) in individual and group meetings with member businesses, NGOs and Trades Unions. The information gathered contributed to identifying key issues highlighted in the Case Study, as well as to the development of the analytical framework presented in the thesis.

2.4.2 Participatory and Structured Direct Observation

Especially useful for exploratory and descriptive research purposes in which theories are derived as well as tested, participatory observation is a strategy in which to gain “access to otherwise inaccessible dimensions of human life and experience” (Jorgensen 1989: 23). This method was used for data collection when knowledge could only be obtained as an ‘insider’ or as a ‘resident’ (Jorgensen 1989; Yin 1984; Pelto & Pelto 1970). Thus, this method was applied while working for organizations involved in ethical sourcing during the Professional Attachment in 1998 and during

¹⁴ See below for a further explanation of participatory observation.

interruption of studies (2000-2002) as an ethical sourcing manager. Participatory observation was used to witness ethical sourcing in progress (i.e. 'internalized' practices and habits of those involved) and to gain knowledge and experience accumulated as an actual practitioner in this field. This experience and knowledge provided both preliminary and on-going information necessary for developing interview questions and other research tools (Pelto & Pelto 1970). Furthermore, participatory observation provides more scrutiny of field information essential for evaluating data gathered as Pelto and Pelto describe: "Often the [participatory observer], observing a particular pattern of behavior or an event, must find out a great deal more about that event than can be observed firsthand" (Pelto & Pelto 1970:69). This statement is particularly valid for a researcher – who is often unknowledgeable of the realities and practicalities of the business world – in order to gain a deeper understanding of the business case for ethical sourcing. Thus, much of the base knowledge gained in this research was done through participatory observation in which observations were recorded and then structured to explore systematically the relationships between different events through other methods including direct observation, interviews, etc.

Direct observation (both unstructured and structured via a checklist) was applied to the Case Study. Yet, for the Case Study, access to Kenyan floriculture farms is extremely limited. Nevertheless, access was provided to key larger and smaller farms. There was access to medium-sized farms during the field research time frame in 1999. Health and safety practices were observed over these periods and personnel were interviewed. In Kenya, key informants were interviewed over a four-month period to collect information on pre-determined questions (see Appendices J and K).

2.4.3 Key Informant Interviews

Key informant interviews were conducted with persons selected on the basis of their specialist knowledge and experience in the area of ethical sourcing, codes of practice, and Kenyan horticulture. Informants identified as those able and responsible for the concept of ethical sourcing and the ways it could be applied both globally and more specifically through the Case Study were chosen for interview. More specifically, these key informants represent those directly involved in ethical sourcing and come from a wide range of sectors and approaches (e.g. business, trade union, NGO, and government). Some key informants were identified through participatory observation (during the Professional Attachment) in order to ascertain which informants were most involved in ethical sourcing actions. Moreover, informants' role as a stakeholder were also gleaned through a combination of key informant interviewing and participatory observation (during the Professional Attachment and as an ethical sourcing manager) and then analyzed retrospectively through a stakeholder analysis. Thus, participant observation was used for some necessary checking and evaluating of key informant data.

2.4.4 Formal and Informal Interviews

Open-ended, semi-structured, interactive interviews were conducted to collect information for a series of prepared questions and checklists (Appendix K). The questions and checklists were not asked verbatim or systematically in order to ensure that the quality and scope of information was as uninhibited as possible. Key

informant data was cross-checked with data accumulated through these interviews. The information gathered from these methods also contributed to identifying key issues by applying Grounded Theory (see below). This information also contributed to the development of the analytical framework presented in Part Five.

2.5 Data Analysis

As mentioned above, the structure of the thesis has both conceptual and practical components organized throughout the sections. Using the methodology described above (e.g. literature review, qualitative research), conceptual themes emerged from the data collected relevant to ethical sourcing and worker health rights generally and within the Kenyan floriculture sector. These themes were analyzed using the following instruments:

2.5.1 Grounded Theory

As a recent phenomenon, ethical sourcing embodies evolving and varied notions of what it means to practice business ethically. Thus, collected information was organized and analyzed using ‘grounded theory’ (Glaser & Strauss 1968) as a means to explore and identify key issues highlighted by thinkers and practitioners in the ethical sourcing field.¹⁵ This form of analysis was mostly useful in identifying the values and interpretations highlighted by ethical sourcing activities as well as the

¹⁵ This method is exploratory and generates theory rather than being driven by it. The research topic’s objectives aim to discover issues in lieu of starting with preconceived problems.

challenges and opportunities emerging in their *implementation*. Interviews were transcribed using grounded theory whereby each new datum was compared to previously collected data to determine similarities and differences. This method has been used to code, analyze, re-code, and produce core categories of issues (that contribute to the dilemmas and opportunities of the phenomenon under investigation) by constant comparison of data obtained through a range of collection strategies and analyses (see Appendix O for code key).

2.5.2 Case Study Evaluation

A case study approach was used as an empirical method in which to analyze the data collected from a particular sector and region according to the study's research objectives. The principal reasons for this thesis were to explore the phenomena of an emerging plethora of codes of conduct addressing workers' rights for those in the developing world export sector and to analyze the challenges and opportunities faced when applying international worker health and well-being standards. Moreover, a mention of health is often included in most codes of conduct, but there is considerable variability both in the interpretation and application of measures for worker welfare. Thus, in order to examine these broad issues more closely, the Kenyan floriculture sector was chosen as a case study.

The reason the Kenyan floriculture industry was selected for a case study evaluation is that numerous codes have been developed in this sector and region. Many codes have been adopted within the UK retail sector, mainly large supermarkets (Benady 2002;

Hughes 2001; Orton 1997) that increasingly sell a wide-range of cut flowers produced in Kenya (Harris-Pascal et al 1997). These supermarkets have started to implement codes of conduct throughout their supply chains (Benady 2002; Orton 1997). Furthermore, codes have been developed and adopted within developing country export sectors by floriculture actors such as importers, exporters, and trade associations (Hughes 2001). These codes capture several levels of actors and instruments and cover a larger remit of export floriculture producers who sell to customers other than UK supermarkets. Ethical sourcing organizations such as Social Accountability 8000 (US) and the Ethical Trading Initiative (UK) have also become involved (the latter only recently as it begins a Kenyan floriculture pilot project) in promoting sets of codes for their clients or members. Subsequently, there are a myriad of codes of conduct with which an exporting producer must contend and comply. These sets of codes are as variable as they are similar.

The case study includes a background of the export floriculture industry, its employment aspects and a brief account of the evolution of Kenyan floriculture codes and participating stakeholders. Moreover, the case study provides a description and comparison of the assortment of codes of conduct and actors within this sector and considers its relationship to national regulation, industry and international standards. By assessing the relevant codes and standards, in both breadth and depth and in terms of actor remit and participation, the case study approach enabled the exploration of the extent to which underpinning priorities and interpretations of health codes address the issues studied (during field research). How current ethical sourcing initiatives capture the overarching right to health is explored and is used in part to construct a framework illustrated in the final section of the thesis.

The data collection for this case study consisted of a literature review (mainly comprised of ‘gray’ literature) and analysis of documentation from cooperating enterprises and organizations – including those in the supply chain. Guided open-ended interviews (see Appendix K) were also conducted (mainly in 1999) with farm managers and staff, auditors, NGOs, donors, government and industry representatives as well as other interested parties (see Appendix J). A brief checklist (see Appendix K) was also used to guide direct observation during visits and interviews. In 1999, visits were made to large horticulture farms in Kenya and included tours of the on-site clinics and interviews with clinic staff.

2.5.3 Stakeholder Analysis

In the case study, a stakeholder analysis (Crosby 1997; Varvasovszky & Brugha 2000) was applied to assess the roles and capacity of each identified actor in which to govern and participate in ethical sourcing and worker health and well-being standards. The stakeholder analysis was done retrospectively, after most of the data for the Case Study had been collected, in order to consider each actor’s characteristics in terms of position, expertise and influence in the field of worker health and well-being.

2.6 Data Interpretation

Established in particular contexts (general ethical sourcing activities and using Kenyan export floriculture as a case study), categories of findings (derived from using Grounded Theory) were collected to ascertain how ethical sourcing principles, particularly worker health standards are applied and interpreted. Data interpretation included how concepts and standards are applied according to:

- Governance – Participation, Inclusion, & Remit (Introduced in Chapter 1 and discussed in the stakeholder analysis in Chapter 7)
- Fulfilling worker health standards – Risk, Services & Education, & Well-being (Presented in Chapters 7.10 and 8)

2.7 Outcome

The outcome addresses the key issues raised in the research as well as the strengths and weaknesses of the ethical sourcing phenomenon, with particular reference to Kenyan export floriculture. Furthermore, the research data and its interpretation contribute to an analytical framework, developed by this author, that reflects on this thesis' research findings in terms of scope and governance of worker health rights. The framework includes knowledge based on professional health and ethical sourcing experience and interprets data according to issues of governance and worker health and welfare. Thus, it examines: 1) how universal standards relate to national and

local instruments and 2) the extent to which underpinning priorities and interpretations of health codes capture the overarching right to health.

2.8 Limitations

There are some caveats in undertaking research in the ethical sourcing sector, particularly in Kenyan floriculture. Hindered access to key informants and the disclosure of information relevant to my research (i.e. sensitive business issues, workers' rights struggles) were the principal obstacles. For local workers' rights campaigners, facilitation through international campaigning NGOs assisted in accessing some of these key informants. Bias, in terms of how each stakeholder interpreted floriculture worker experience and their working conditions was considered and, therefore, not rendered 'untrue' or disqualified. This approach was chosen to reflect the process underway (examined by the case study) that aimed to include an array of divergent voices from different stakeholders as a means to manage a sustainable and acceptable form of ethical sourcing.

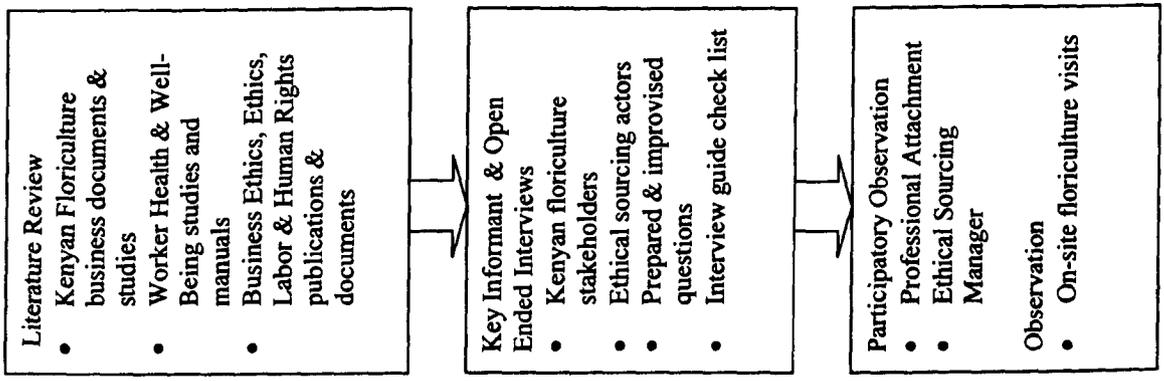
Also, there was limited access to floriculture workers. This restriction occurred in part to not being granted private space in which to conduct proper interviews as well as problems with translation. Some stakeholders denied access to floriculture workers with the explanation of 'confidentiality'. Nevertheless, brief interviews took place among some workers on the medium-sized farms and with line managers and other managerial staff on the larger estates. Bias incurred from not being able to interview certain key informants, particularly workers, was factored into the research design by

examining whether workers' (and other stakeholders') input and concerns were considered in the studied ethical sourcing objectives. Additionally, the conclusions of my research will raise considerations and possible implications inherent in the adoption of these ethical sourcing practices, rather than provide 'evidence' of the efficacy of their implementation.

Graphic of Research Process

Methodology/Objectives
 Reflect on definitions of ethics, human rights, health and well-being & the way they are being described in current ethical sourcing trends, particularly within a case study of the global supply chain (Kenyan Floriculture). **Chapters 4,5,7**
 Explore benefits, tensions & ambiguities in implementing worker health standards globally & within Kenyan export floriculture. **Chapters 3,4,7**
 Identify how worker health standards should be governed within global and local (Kenyan export floriculture) contexts. **Chapter 8**

Data Collection (Methods)



Analysis

Grounded Theory
 Case Study
 Stakeholder Analysis

Interpretation (Generated Theory)

How principles & standards are applied & interpreted according to:

- Governance – Participation, Inclusion, & Remit
- Fulfilling worker health standards – Risk, Services & Education, & Well-being

Outcome

Key findings from case study.
 Analytical framework in which to assess future ethical sourcing initiatives.

PART TWO –Conceptual & Theoretical Framework – Promoting an Ethic for a Worker Health Rights Agenda

A prevalent theme emerging throughout this thesis identifies an asymmetry between conceptualizing and defining human rights which affects the subsequent demand for human beings to be treated as such. An asymmetry between the abstractness of that demand and the concrete reality and capacity of human behavior and resources. And from this asymmetrical relationship a struggle ensues between striving to meet material conditions with which to be human and fulfilling one's mental, physical or spiritual capacity. Thus, O'Neill asserts, declaring rights is only as valid as there is the ability to actualize them. And this ability is contingent upon whether there are adequate institutions, people, states and other responsible bodies willing and able to respect and/uphold them (O'Neill 2002). Yet this notion -- that human beings must act before human rights can be established -- is not so fundamentally different from the viewpoint that, in this act, we declare ourselves agents, sharers and shapers in becoming ethical. The problem resides, however, in establishing the right conditions for individuals *to act, to be and share* their ethical humanity. And whether they are described as pre-conditions or conditions with which to instill human rights, they remain abstract principles and beliefs until they are grounded in material (human) realities. In the following Chapters 3 and 4, some of the challenges or tensions faced when grappling in implementing rights-based initiatives are highlighted.

3. Promoting a Human Rights Ethic

3.1 Creating an Ethical Space -- This is a Hate Free Zone¹⁶

Much consensus building has occurred over an agreed set of human rights principles upon which local traditions and cultural perspectives can agree (Arnold 2003; Donnelly 2003; Morsink 1999). This fact illustrates the possibility of capturing the common thread -- of being and acknowledging our shared humanity -- which is key to establishing a universal rights culture. Paradoxically, however, the challenge of perpetuating an all-encompassing sense of ethical humanity often lies closer to home. Such challenges exist among proclaimed ethically tolerant proponents themselves¹⁷ and within ethical zones of production (behavior) described earlier, for instance, as ethical sourcing. O'Neill describes a part of this ethical challenge:

No competent person, and none of the institutions that human beings construct, is exempt from fundamental duties This is a tough requirement. It is always easier to think that one's own case is exceptional (O'Neill 2002:34).

O'Neill's way forward, ultimately, is through *trust* and Rorty describes a similar baseline in terms of *sympathy* and *security* (Rorty 1998). For O'Neill, this basis can only be instilled when we see ourselves as protagonists -- in other words as ethical beings.

Kieron O'Hara cites the same remedy conversely:

¹⁶ These placards are found in the front windows of many Berkeley, California houses.

¹⁷ Rorty describes that the crux of this problem is the belief that there is, fundamentally, a 'true' self in which it is 'rational' to be 'moral': Producing generations of nice, tolerant, well-off, secure, other-respecting students of this sort in all parts of the world is just what is needed -- indeed, all that is needed -- to achieve an Enlightenment utopia. The more youngsters we can raise, the stronger and more global our human rights culture will become. But it is not a good idea to encourage these students to label "irrational" the intolerant people they have trouble tolerating. For that Platonic-Kantian epithet suggests that with only a little more effort, the good and rational part of these other people's souls could have triumphed over the bad and irrational part. It suggests that we good people know something these bad people do not know and that it is probably their own silly fault that they do not know it. All they had to do, after all, was to think a little harder, be a little more self-conscious, a little more rational (Rorty 1998:179-180).

If there is a crisis of trust in our society, there is only one known potential remedy, and to the chagrin of many it is at the micro-level of individual behaviour, rather than at the macro-level of social engineering. It is for us to attempt to be trustworthy, to the best of our abilities (O'Hara 2004: 285).

And as ethical beings we therefore must act as the sharers and shapers of such principles *before anyone* can have rights. To become an ethical protagonist in life's plot means "[W]e can set aside the passive outlook, which fantasises that blaming and accusing others contributes to justice" (O'Neill 2002: 72). Furthermore, if we do start from the point of passively – and self-righteously -- expecting our human rights to be met, we are bound to be disappointed. And this sense of disappointment, in turn, can destroy trust through cynical and controlling interpretations and renditions of behavior and provision. Thus, what is called for is the creation of a consciousness into the framework. A consciousness that can either be sought through a passive or reactive form or an ethical more integral progressive one. The former being one of propaganda that conditions the mind to a kind of 'correct' answer and, although efficacious, may well adapt itself to the opposite stimulus. Such social engineering projects risk creating order without trust if human fallibility (or just the sheer, naked, terrifying beauty of being human) is not allowed or denigrated and instrumental reason is over-privileged (O'Hara 2004). Whereas the latter is based more on an ethical *modus operandi* expressed *through* rational discussion but not *because of* an idealized form of rationalism. Damasio explains this more conscious level of reasoning in which the feeling function evolves *from emotion into a knowing one* that can understand the nature of feelings and reason. Worried that there is often an acceptance of feelings without "any effort to understand their complex biological and sociocultural machinery", Damasio asserts:

The best example of this attitude can be found in the attempt to explain bruised feelings or irrational behavior by appealing to surface social causes or the action of neurotransmitters, two explanations that pervade the social discourse as presented in the visual and printed media; and in the attempt to correct personal and social problems with medical and non-medical drugs. It is precisely this lack of

understanding of the nature of feelings and reason (one of the hallmarks of the “culture of complaint¹⁸”) that is cause for alarm (Damasio 1994:132)

Thus, the paradox remains in that the more diversified sociological and economic networks and relationships become, in this time of globalization and multiculturalism, the more need there is for trust (O’Hara 2004:65). And by trusting in ‘risk-amelioration systems’ (e.g. financial auditing, rights-based instruments, unaccountable one-way complaint mechanisms) another challenge or dilemma emerges in where to redraw the boundaries when mapping out ‘the truth’ in terms of people, systems and institutions so that there is a symmetry (and accountability) between all parties.

3.2 Codes & Measurement Called to Account: The Brightest Light Casts the Deepest Shadow

Another challenge to explore is in the actual promotion -- or competition -- of human rights. As mentioned in Chapter One, an intrinsic caveat in monitoring human rights is one in which a ‘rational’, utopian and obligatory prism to judge humanity is applied and thereby has either a bleaching or undermining effect. Human rights, by their very nature, are meant to be worked *through* and together (in consensus) within an ethical *modus operandi* so that they remain a dynamic instrument with which to promote the dignity of being human rather than trying to re-create the human experience within a utopian theme-based hologram. Thus, not only a balance must exist between the intrinsic and explicit in ‘proving’ ethical behavior but both should be aware of their interdependence.

¹⁸ See Roberts Hughes’ *Culture of Complaint*, 1992.

Ironically, this misalignment occurs when a cohesive epistemology has yet to evolve in a field such as human rights. Often, there is much discussion about one's 'rights' and another's abuses, another's rights and their perpetrators neglect, etc., but very little cohesive scrutiny of one's own procedures and ethic in the way they operate and analyze others.

One such way in which a culture of mistrust has fomented has been within the profession of auditing¹⁹ – a domain that has, over recent years, exponentially extended its remit beyond the financial (O'Neill 2002; O'Rourke 2002, 2000; Power 1997). Consequently, this profession's traditional remit of independent financial analysis has extended into realms involved with social, labor, environmental, and organizational management factors. It has been through this process of scrutiny and criticism that auditing has launched its own self-fulfilling/perpetuating trajectory in which those audited – institutions, organizations, businesses and professions -- have had to respond to incentives that are often unrelated to the intrinsic requirements (or *modus operandi*) of their mission or profession. The outcome being that the proper aims of the practice are distorted and a sense of 'pride and integrity' (dignity and ethic) is damaged (O'Neill 2002). Another outcome is that the epistemology used to scrutinize is inadequate to assess accurately, in breadth and depth, or influenced by those being audited (O'Hara 2004; O'Rourke 2002, 2000).

In the realm of ethical sourcing, there has been increasing concern (Interviews 2001 & Observation) that 'Third World' suppliers to TNC's are "being audited to death" through a multitude of criteria, often conflicting, applied by a number of customers.

¹⁹ See glossary for definition of auditing.

The results often are, through these mechanistic activities and systems, manifold. Some reported implications have been that enforcement is encouraged over a more educational/development model of ‘continuous improvement’. Another outcome has been that it undermines relationships and, therefore, trust in that ‘compliance’ oriented auditing in which transparency is demanded through confrontation (e.g. threat of media exposure, loss of a lucrative contract) rather than through a cooperative catalyst in which appropriate and viable solutions are sought. Finally, there often is an underlying assumption that auditing removes the need for trust, but this notion has recently been challenged by such scandals as Enron (O’Hara 2004) and by Dara O’Rourke’s work on the need to ‘monitor the monitors’ within ethical sourcing (O’Rourke 2002). Auditors, regulation systems, and other ‘social capital’ agents still need to be trusted (O’Hara 2004).

In terms of health, a particular challenge brought on by codes and measurement initiatives is the perception of the need for action on the work environment to protect workers’ health. When concern for workers’ health does exist it usually is limited to medical interventions. Yet these health services (e.g. on-site clinics) often do not include occupational hygiene expertise and surveillance.

And often in cases when an occupational health understanding is applied, it is left to the remit of the clinic or medical workers to apply a “preventive” approach which relies solely on medical surveillance – including biological monitoring, early detection, or diagnosis of occupational diseases. These may be indispensable approaches to primary prevention, but can never replace it since they can only confirm exposure or disease. “Early” is already too late for the detection of such

irreversible impairment as occupational hearing loss, silicosis, and occupational cancer.

In the history of occupational health, the shift from a purely medical approach to the understanding that prevention should start at the workplace, and not the clinic, in order to eliminate or control hazards before health impairment occurs, marked the beginning of occupational hygiene – that is, the change of focus from the “sick worker” to the “sick environment”. This shift, however, has not yet taken place in many parts of the world. In some countries, the only officially recognized occupational health professions are occupational medicine and safety engineering. This has often been reflected in limited or inadequate attention to the field of primary health hazard prevention in the workplace. For example, experts can install state of the art ventilation systems, but no consideration may be made for who and how it shall be maintained and routinely checked.

Thus, another problem is the perception of occupational health, even when applied to the work environment, is that it is highly technical and thus a “science”. Occupational experts are seen by some as those who “measure” with the implication that what is done with the results is outside their scope of action and that the interpretation of obtained data should be left to the bio-medical personnel and the control measures to the safety engineers. Furthermore, lack of understanding of the professional ethics and commitment involved in the practice of occupational hygiene has generated suspicion among workers that occupational hygienists may be biased towards the employers and vice versa (I - Interviews 2001; participatory observation).

3.3 Rights & Duties -- Costing Ethics

Despite all the codes and ethical sourcing dynamics, often there is just not the impetus among key people to apply available solutions. Thus, the problem is not that there are not enough codes of conduct or relevant national and local laws in developing countries. Nor, quite often is there a lack of occupational health experts and institutions in developing countries. The weakness, rather, often lies in the application of such codes and laws and an omission of expressed interest on the part of key private and public stakeholders, as is illustrated by the Kenyan floriculture stakeholder analysis in Chapter Seven. Of course, the reasons for these weaknesses are complex and thus do not just make it a question of awareness and knowledge of rights and entitlements, but rather a problem influenced by other factors that involve the 'business' end of ethical and political requirements. And the business end -- i.e. costs involving socioeconomic and cultural priorities -- vary from country to country. In terms of public health, other problems may influence the perception of the importance of workers' health within a context of national priorities. The priority of contending with poor working conditions with no controls may easily be placed on the back burner when there are more pressing issues which threaten national basic needs (e.g. employment, epidemics, competition, access to resources). Nevertheless, such a result often means that the consequences for not controlling workplace hazards are that they are seriously underestimated.

Yet another result in fulfilling rights obligations are the distortions and/or imbalances that can emerge in the ways in which resources and priorities are applied. As discussed above, considerable resources are spent by one or a few key stakeholders to

address worker health matters that extend beyond their remit. Furthermore, considerable resources are spent on fulfilling health standards more geared towards consumer rather than worker concerns. Imbalances in the fulfillment of rights based measures have also been noted as an overarching dilemma for any ethical sourcing agenda and the result is often that ‘islands of excellence’ emerge surrounded by a sea of poor standards for the majority of the population.

Thus, instilling a more coordinated, interdependent effort, in which human rights principles interact with duties, allows for a fuller consideration of matters that influence the business end of fulfilling rights. As discussed above, the ways in which to foster an ethical culture are not achieved by relying on rational or utopian notions that risk evolving into regressive or unsustainable approaches and outcomes. Rather, ethical approaches that are based more on *trust* and shared responsibility are more likely to equalize such lopsided outcomes of obligations and entitlements. And an ethical *modus operandi* is not just a description of an individual’s or actor’s free will in which to be a good citizen or to fulfill one’s remit, but it also extends to a form of ‘good governance’ of partnership building for civilizations and states.

3.4 Problems Developing and Defining Health as a Human Right

*He was a man of invention great,
Above all that lived nigh;
But he could not invent to live
When God called him to die.*

On the tombstone for Jonathan Kilbourne, Esq. (1706-1785)
Colchester Burying Ground, Connecticut.

Jonathan Mann acknowledged a dominant problem for the nascent 'health as a human right' movement is the 'lack of knowledge about human rights among health professionals' (Mann 1997). Iles also notes that the human rights movement is in its early years of being able to sufficiently apply modern health (including healthy environment) issues to its approaches (1999). He goes on to conjecture that perhaps this is because health status is often the result of a 'synergistic interaction with a series of different risk factors' rendering it difficult to identify effects and causes. Indeed, the public health domain's remit encompasses a broad realm that often involve 'complex and diffuse phenomena' in which there are multiple connections between social, economic, political, medical and ecological elements. And the effects, including diseases, are thus now more often viewed as public health issues rather than regarded as infrastructure development issues solvable through technological and scientific means (Iles 1999).

Underpinning this approach, that aims to not just identify the cause of ill health or lack of well-being, is also a desire to identify *who* or *what* is responsible or culpable for such maladies (Jamison et al 1998). In this approach, an 'all manner of human

need' is considered and encompassed into a set of 'fundamental' human rights principles. Increasingly, as the concept of a fundamental 'right to health' and/or 'health as a human right' features on human rights agendas and vice versa, several challenges will occur. There might be a danger of having so many aspects of individual choice or welfare translated into 'rights' claims in which the concept of rights could be rendered meaningless through saturation as well as create a despairingly complex array of competing rights. Furthermore, especially with regard to 'positive rights' (e.g. rights to basic goods and services needed to sustain health and life), such rights will be criticized on the grounds that they are impossible to fulfill and, rather, capture an immortal ideal instead of a (mortal) right. Maurice Cranston furthers this criticism:

The effect of a universal declaration that is overloaded with affirmations of economic and social rights is to push the political and civil rights out of the realm of the morally compelling into the twilight world of utopian aspirations....[N]othing is more important to an understanding of a right than to acknowledge that a right is *not* just an ideal (1983:66-67).

Ruth Macklin also warns that when human rights violations are interpreted into morbidity and mortality, a profound philosophical question is raised: whether "the right to health" is a useful practical idea in light of the leading (and expansive) definitions of health and the reality of what lies beyond human control in contributing to good or bad health (1999).

And this warning exposes a deeper dilemma at work when attempting to capture health and well-being, particularly within the nets of public health and human rights. This is because both address the moral dimension implicit in the promotion of prevention and, therefore, eliminating the risk of suffering (Mayerfeld 1999). Thus, often, as discussed previously, the underlying assumption in the communication and application of public health and rights-based frameworks is that suffering is a waste

product and, therefore, an *unnecessary* (and even morally deemed ‘evil’) part of life that must not occur. Rather than acknowledge that suffering is an element inseparable from life and in *being* human²⁰, rights-based agendas that automatically cite suffering, *ipso facto*, as a moral condemnation, are vulnerable to falling and wounding themselves on their own utopian notion as they seek to achieve for humanity a state of passive, detached poise within life:

Sometimes ... “suffering” is used to mean the subjective experience of people who are oppressed or are victims of injustice. When used in this way, the word by its very meaning implies a moral judgement on someone’s behavior. To say that some people are suffering is to say that some other people are oppressing them or acting unjustly toward them and that, consequently, these people should change their behavior so as to end the oppression and remove the injustice (Mayerfeld 1999).

Yet, there remains a tragic element to human life, which is due to not only the fragility of its biological constitution and the inherent instability within the physical environment, but also to humanity’s own work. Even despite our best efforts, the human body does break down, through both explicable and inexplicable causes. Furthermore, an individual, often through his/her own free will, contributes to the ethics of the health matter. Additionally, “[p]eople will get sick from a wide variety of causes that governments, public health officials, and doctors cannot now prevent or cure and may never be able to” (Macklin 1999). Thus, striving to achieve a complete state of health and well-being is perpetual and its corresponding demands are infinite.

And when we turn to trying to control humanity’s state of well-being, the identification and elimination of suffering is as, if not more, elusive. Attempts to measure suffering turn out subjective renditions of what are, principally, subjective experiences because suffering derives from the realm of human feeling. And often human feeling is curtailed, repressed or made relative by culture, context, deprivation,

²⁰ Sidwick describes suffering are part of the realm of human feelings and that feeling is one of three

etc. Amartya Sen and Martha Nussbaum note, for example, that some destitute people suffer less than what others expect them to, given the extent of their deprivation (Nussbaum & Sen 1993). In this light, acknowledging one's own suffering, paradoxically, could enable one's capacity to function fully as a human being and, therefore, allow for one to acknowledge or recognize one's own birthright entitlements. Thus, even though the power of naming, describing, and then measuring health and well-being can be enormous and difficult, it has proven to be a meaningful form of mapping human experience and feeling. "Child abuse did not exist in meaningful societal terms until it was named and then measured; nor did domestic violence" (Mann 1999: 449).

Another challenge, poised within the tension of facing these infinite and elusive demands, is limited resources. Limited resources are deficits found in health and well-being knowledge and treatment as well as within budgets. And limited resources also reflect the very nature (and finiteness) of life – both mortality and morbidity. These intrinsic limits arise when the right to health and well-being are understood as positive more than negative rights. By piling high the human rights shelf with 'fundamental' principles or by ultimately denying the mortal and suffering reality and role of humanity, there is an implicit yet compelling attempt to defend against life's necessities and inevitabilities via a hyper-conscious and 'correct' conviction of human rights. States of health and well-being are impermanent and permeable; thus health rights should be integrated into this dynamic and malleable reality.

key elements to consciousness; the other two being cognition and volition.

Yet, even though the right to health may be an unattainable state for governments or other bodies to fulfill for their citizens and clients, they have a mortal (and thus moral) obligation to take proactive steps to improve or maintain a healthy status (Macklin 1999; Mann 1999). Additionally, the right to health care, as outlined within WHO's Convention, is a meaningful and understandable social and economic right (Mann 1999; Macklin 1999). Furthermore, if the fundamental premise of having the 'right to life' as the most basic of all human rights is, as it has been, acknowledged, it should then follow that the right to health and health care are fundamental rights inasmuch as they directly contribute to supporting the right to life. To be absent of health is not just to be unhappy and/or have a poor quality of life, it also means to be limited from fulfilling one's potential to flourish in the circumstances in which they find themselves (Nussbaum & Sen 1993). And this understanding of the *épanouir* of being human – one which allows the human personality to expand and blossom so that one's living also fully contributes to society – directly refers to the ethical dimensions of the Self and Society (outlined in Chapter One) that link together.

If the meaning and spirit of health and well-being are to be shaped into a practical framework – a 'bell jar' – so that individuals and societies are allowed *épanouir*, (in terms of both their 'negative' and 'positive' rights), what ingredients or steps should be involved to have this obligation fulfilled? How is it possible to distinguish between a right that governments – or other bodies – can realistically fulfill and a noble ideal that is worth striving for but cannot be fulfilled with the same ease as negative rights? Macklin notes that what is required when applying these international, yet generally-termed, instruments to the health field is a 'careful

interpretation in the various circumstances in which they are to be applied' (1999).

And, again, this is where the application of ethical principles therein resides.

Mann describes the realm of shared core values where both ethics and human rights reside with respect to public health:

... [I]t seems more appropriate to consider a continuum on which human rights is a language most useful for guiding societal-level analysis and work, while ethics is a language most useful for guiding individual behavior. From this perspective, and precisely because public health must be centrally concerned with the structure and function of society, the language of human rights is extremely useful for expressing, considering, and incorporating values into public health analysis and response (1999: 439-452).

In this context, explained by Mann, to protect and promote *public* health and human rights remain two fundamental, and overlapping, responsibilities. Yet, even in this complementarity therein lies the challenge in attempting to keep notions of a rights format dynamic and real, rather than 'superior', in its more static formation of unobtainable or elaborate goals. The way forward entails a continuous revisit in determining which conditions (e.g. one's health or state of mind or one's environment) are not necessary and inevitable in the context at the time.

3.5 Summary

Universal human rights are principles with which to complement man's *ethical* nature. It is paradoxical in that it describes where and how far we must not fall as well as promotes a sense of possibility by describing those requisites responsible for enacting a more ethical, and thus, humane life. Furthermore, human rights set the limits and requirements of social and, especially, state action. In turn, state and

society play a role in realizing that nature. In this sense, human rights are both a utopian ideal and a practical mechanism for aspiring to that ideal.

Yet intrinsic in the promotion of any utopian notion is the danger of adopting static and regressive policies that seek to achieve a state of suspension: a passive, detached poise within life. And this poise, in its application, can have ineffective or even pernicious effects through an over reliance on laws, audits, etc., which can distort into forms of irrational rationalism, dynamics without change. If the cosmopolitan tradition of a rights-based approach affirms a universal set of ‘self-evident moral truths’ which take precedence over state autonomy, then there is a risk of rendering local stakeholders, including local and state governments, as passive agents. And thus the local context, e.g. national and cultural realities, are ignored. Thus, an *ethic* for applying human rights standards is needed insofar as it can distill the excellence promised in these principles into a responsible and humane *modus operandi* – one which can cultivate a dynamic and democratic process implicating common and shared values.

Thus, universal rights principles, conventions and articles can help local communities and nations fortify human rights as long as it is the individuals and actors themselves who enjoy (and declare) these rights. In the case of workers’ rights, many individual human rights can be exercised, and can be enjoyed. The recent phenomena of ethical sourcing codes of conduct emerged from the inception and withering of statutory codes and, of which many, have the core ILO Human Rights Conventions underpinning them. Although ethical standards between local and global level actors may often contrast as much as they overlap, this does not diminish the relevance of

universal rights standards. Rather, such tensions indicate not only the need for core principles to respect all aspects in which human rights can be *described* but should also acknowledge each actor's contribution and own and distinctive ethical responsibility to fulfilling them.

Over the past decade, a transnational multistakeholder approach of partnership building has been proposed as a mechanism with which to develop and maintain robust systems of rights and ethical standards along economic national and transnational levels. From this perspective, the ethical sourcing movement is comprised of a wide range of actors and is promoting rights via labor standards in an attempt to globalize the regulation of these principles that affect local conditions along production lines. Not enough attention, however, is paid to the role and influence local government and civil society have in determining the priorities and practice in fulfilling the purpose of these transnational agendas.

4. Describing Health as a Human Right for Workers

Health is one of those everyday slippery-as-mercury words, the meaning of which seems so obvious and self-evident ... [W]e share an amorphous idea of what it is to be healthy beyond simply being 'well-functioning'; a clear concept of health could add some form and substance to this vague awareness.²¹

This chapter discusses the definitions of health and well-being and how they have been described as a human right and the social and economic aspects for setting health and well-being standards via core labor standards. Worker health and well-being issues are also explored within the context of the Kenyan floriculture industry.

4.1 Definitions of Health and Well-Being

There are many different ways in which people talk about health and well being. Both professional and lay voices.²²

Several different disciplines have grappled with defining and describing *health* and *well-being* over the ages, especially in modern times. The concept of well-being, in particular, has been noted through an array of professional discourses from the humanities and sciences including medicine, psychology, occupational health, philosophy and even socio-economic political thought. Often well-being has been coupled with health when it has been described as an expression or 'appetite' for life via one's physical and psychological health. Well-being has also been identified as an attainable state in terms of establishing a safe environment, including personnel and inspection policies, that fortify and regulate a sense of safety or poise (physical and/or psychological) within a working environment or community (Beattie 1993).

²¹ Mordacci, R., Sobel, R. (1998). 'Health: a comprehensive concept', Hastings Center Report, Vol 28.

²² Alan Beattie (ed.) in *Health and Well Being: A Reader*, 1993.

In recent years, the modern definitions of health have had it inextricably bound to the sphere of well-being (Mann 1999: 2). WHO defines health as “a state of complete well-being, physical, social, and mental, and not merely the absence of disease” (Constitution of WHO, Basic Docs 36th edition Geneva 1986). Lynn Freedman also expands the definition of health by linking the term *public* to it so that it is understood not simply as a function of “self-contained biological systems of the human body, but also as a function of the wider conditions of a person’s life” (Freedman 1999: 227-228). Jonathan Mann supports this perspective on health as encompassing more than health care or medicine. Health, specifically *public* health, embraces a broader dimension and context involved with individual and group well-being (Mann 1999). Citing that only a small fraction of the variance of health status among populations can reasonably be attributed to health care and that health care is necessary but clearly not sufficient for health, Mann describes medical and other health care as constituting only one of the essential conditions for health. In this sense, medicine and health care are not ‘synonymous’ with health but, instead, *domains* under which the *field* of health is made manifest through a variety of contexts and conditions (Mann 1999).

Thus, if health is an outcome or status determined by a composite of underpinning conditions, *public* health, as described by the Institute of Medicine, is “what we as a society do collectively to ensure the conditions in which people can be healthy” (1988). This definition, therefore, implicates society to shape and execute favorable conditions for health to manifest and moves beyond the more traditional understanding of health as being one of treatment or service delivery. Mann emphasizes this distinct role of public health:

Public health seeks to influence societal conditions in which people can be healthy. This work necessarily leads far beyond ensuring access to medical care. It includes efforts to ensure societal opportunities (such as education), a healthful environment (including housing, nutrition, and workplace safety) and prevention of threats to mental or social well-being (violence or persecution). Discussions of public health, therefore, consider the social context, including its economic and political dimensions. Thus, attention is paid to community responsibility and collective participation in ensuring the conditions in which people can be healthy (Mann 1999: 444).

Yet tackling these conditions are only one dimension to a public health approach.

Even with enough resources devoted to health services and systems, public health approaches can be misapplied. For example, too much attention and resources are spent on tertiary prevention and high tech solutions over effective primary preventive strategies and lower cost measures; the converse can be as equally true as maternal mortality experts will attest (Maine & Rosenfield 1999; Browere, Tonglet & Lerberghe 1998; Campbell et al 1997). Additionally, many of the causes of death involve human behavior. Mann notes that since efforts to change human behavior are intricate and difficult, it can seem more manageable to find a 'solution' in which engineering or hard scientific approaches are used. Moreover, although socio-economic status does influence health status considerably (Mann et al 1999; Adler et al 1999), other factors contribute to explaining ill health, disability and premature death. And the human rights framework has been used increasingly to explain these other reasons (Mann 1999).

4.2 Health and Human Rights

Along side the recent definition revising of health and well-being has been a trend to overlap the fields of health and human rights. WHO has made this far-reaching link within its Constitution by proclaiming: “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being (WHO 1986). This particular phrasing -- of how the highest standard of health should be embraced -- seems to suggest that the outcome is precisely one of *enjoyment* and one in which achieving a state of well-being is synonymous.

This connection between health/well-being and the responsibility of states had its start in the UDHR. Albeit only a broad mention of health occurs in the UDHR’s Article 25 but a more elaborate list is mentioned within the “core obligations” of the UN Committee on Economic, Social and Cultural Rights (ICESCR). This list includes improving environmental and industrial hygiene; preventing, treating, and controlling epidemic, endemic, occupational and other diseases; reducing stillbirth and infant mortality and promoting healthy child development and assuming medical care.

Mann points out that this is both a partial list and that it highlights an opportunity in which to explore further both the conceptual and practical dimensions in defining and advancing not only health and well-being, but also how they fit into a human rights framework. He cites as an example:

...[E]pidemiologically identified clusters of preventable disease, excess disability, and premature death could be analyzed to discover the specific limitations or violations of human rights and dignity that are involved. Similarly, a broad analysis of the human rights dimensions of major health problem such as cancer, cardiovascular disease, and injuries should be developed (Mann 1999).

Thus, the language of human rights continues to expand into the field of health (Macklin 1999; Mann et al 1999). Furthermore, the ‘promotion and protection of

health are inextricably linked to promotion and protection of human rights and dignity' (Mann 1997). Based on gathering evidence that the level of respect for human rights and dignity independently and decisively influences health status (Mann 1999), 'health as a human right' language extends beyond linking human rights and health primarily to a medical and service framework.²³ Instead, this discourse grapples with an evolving concept that includes defining and advancing human well-being. In linking health and human rights so that it advances human well-being, an integral framework²⁴, therefore, is applied which includes health promotion as its goal with an emphasis on *preventing* disease, disability and premature death (Mann 1999).

Although comparisons are made between the health and the human rights fields via quantitative and qualitative descriptions of individual and collective human well-being according to occupation, class structure and prevailing political economies, a common language – based on a conceptual coherence -- addressing these concerns has yet to emerge (Mann 1999: 7; BMA 2001; Macklin 1999). Despite this fact, however, both fields increasingly refer to the concept of 'health as a human right' especially when public health goals are seen to overlap with human rights principles and vice versa. This coupling serves as a strategy to 'ensure' that conditions in which people can be healthy are linked to upholding the societal determinants of human well-being (Mann et al 1999). The problem remains, however, that the approach in overlapping two distinct fields such as health and human rights, can render the approach prone to ambiguity and overstatement. It also raises the question, as business globalizes and

²³ e.g. denied access to health care or to state-sponsored intent to harm (torture)

²⁴ Mann constructed a 3-part framework in which the overarching goal of health as a human right is envisaged: 1) impact of health policies, programs and practices on human rights; 2) health impacts resulting from violations of human rights; and 3) a combined health and human rights approach in exploring the inextricable link between these two fields. This thesis will focus primarily on the third segment of Mann's approach as it relates to worker health and ethical trading practices.

'outgrows' national regulation (that often is poorly developed and under funded), whether it is sufficient to rely on state responsibility to actualize these health rights principles. Thus, there are some inherent problems in moving forward in coherently identifying integral health and human rights issues.

4.3 Work & Globalization

While in the past the question of work and human rights has been one described in "class" terms, it is the "world" question that is now increasingly emphasized (Braithwaite & Drahos 1999; Boatright 1997). Now, not only is the sphere of class taken into consideration, its definition has had to accommodate demographic shifts based on geographical, socio-economic and gender aspects (Johns & Vural 2000; Standing 1999). Furthermore, the question of work has had to increasingly grapple with issues of inequality and injustice on a world level that involve other aspects unrelated to class. Economic life can no longer easily be described as a form of rigid capitalism -- a position that defends the exclusive right to private ownership of the means of production. This is because individual capitalists normally do not own or control a company or the means of production in this current globalized world (Standing 1999). Moreover, there is a growing awareness that capital itself is usually provided by a variety of inputs, particularly the variety of stakeholders described in Chapter Seven's stakeholder analysis (who can include workers themselves), either directly or indirectly. Subsequently, fair/ethical trade and ethical sourcing²⁵ have

²⁵ 'Fair Trade' and 'Ethical Trade' are commonly described as an arrangement in which the producer (i.e. coffee grower) or country (respectively) receives a 'fair' or premium price for his/her/its goods. 'Ethical Sourcing' refers to the quality of the production process and conditions throughout the supply

been two prevailing themes in many globalization – and anti-globalization – campaigns and initiatives. This shift in focus realigns perspectives that determine the value and dignity of human work not in terms of the kind of work done but on the fact that it is a human person who does it.

4.4 Health, Globalization & Ethical Sourcing

In light of the emerging recognition of the need to develop and apply ethical forms of conduct to international business practices (Bettcher & Yach 1998; Boatright 1997), new forms of transnational analysis are being used to view health problems in terms of health service provision and occupational health. Traditional views about global governance and regulation have expanded, or shifted, to cover the business sector's role and influence on global and local health matters. What previously was analyzed as an individual nation state problem and responsibility has begun to intersect with other sectors (including business and civil society) which extend beyond increasingly permeable nation-state borders.

Only recently, however, has there been health literature discussing the linkages between health and globalization (Lee 2000; Bettcher & Yach 1998; Bettcher 1998). The globalization of public health and the health impacts from globalization, its writers have asserted, have several core implications which warrant analysis and attention. These include health-related issues such as environment and poverty, human rights and entitlements, a safe working environment, and trade and health

chain. In this case, 'quality' is examined in terms of its impact on the environment and on the workers involved in the production process. See Glossary for further definitions.

status. Viewing globalization through a health prism reveals the “complex processes of economic, political, social and cultural integration which takes place as capital, traded goods, persons, ideas, images, values, environmental toxins, and even microorganisms move across state boundaries”.²⁶ This can generate health problems as well as opportunities. Conversely, the impact health has on globalization can be seen as an instrument with which to construct key principles and standards (including ethics) that can be applied across cultures and adopted by local, national, regional and global collectivities (Bettcher & Yach 1998).

These health concerns and experiences are not new to humankind, but it is their transnationalized inter-relatedness that sets it apart from earlier periods of history (Bettcher & Yach 1998). Consequently, the scope of health determinants has expanded to accommodate this transnational framework. Direct and indirect health determinants that are implicated in suffering, disease, and death now also extend and overlap with conditions and experiences linked to human rights-related responsibilities (Mann 1999, 1997). Where before medicine and public health existed as individual domains, they are now extending beyond borders and into spheres of action on an intrinsic global level. One proponent of bioethics, put forth this case for the evolution of his medical field:

²⁶ Bettcher & Yach 1998.

It is time to move beyond medical ethics, beyond bioethics, beyond an ethics of health or of health policy, towards an ethics of health which calls on us to consider the interconnections among all of our choices and actions that affect the health status of people anywhere.²⁷

Citing that public health has lacked a conceptual framework for identifying and analyzing the essential factors that represent the “conditions in which people can be healthy”, Jonathan Mann reiterates this case:

... [P]romoting and protecting human rights is inextricably linked with promoting and protecting health. Once again, this is because human rights offers a societal-level framework for identifying and responding to the underlying—societal – determinants of health.²⁸

Thus, in this light, the domains of health²⁹ intertwine (in their capacity to prevent or relieve suffering and disease) by addressing those direct and indirect determinants brought on – or revealed by -- the processes and outcomes of globalization.

Ethical sourcing has been one strategy in which to address the far reaching concerns of promoting and protecting the health status for populations linked to global networks and chains. Despite the recent emergence of a plethora of codes of conduct developed by the business world in which to promote the health and well being of workers, many companies still rely on quality assurance schemes directed more at consumer health issues. Because these codes state general values about health and safety rather than clear, more specific descriptions of worker health and well-being standards, these codes have come to vary significantly in terms of scope and issues covered.³⁰

²⁷ Sam Gorowitz. ‘Reflections on the Vulnerable’, in Bettcher & Yach 1998.

²⁸ Mann, J. “Medicine and Public Health, Ethics and Human Rights”, Hastings Center Report, May-June 1997.

²⁹ Referred to as the domains Medicine and Public Health. See glossary for definition of domain.

³⁰ Scope in terms of: 1) which supply chains are covered; 2) the remit of its stakeholders (e.g. retailers, suppliers, licensees, sub-contractors, homeworkers, and other off-site workers). In terms of issues, for example, the extractive industries have extended their codes to cover indigenous people’s rights, political human rights and environmental issues (Ferguson 1998).

Ferguson, in her study of UK company codes of conduct, cited that there has been an evolution towards greater detail in codes and more explicit references to ILO conventions that involve more explicit coverage of health and safety issues (Ferguson 1998). However, not all codes include a commitment to health and safety standards beyond those set by local and national regulation. Neither do most codes make more than a general statement about commitment in applying health and safety standards (Ferguson 1998). Few companies have included health and safety measures for those workers off-site or outside the scope of production e.g. dormitories, transportation to and from work sites. The 'safety' in OSH rarely considers personal safety issues, including, for example, gender needs for accommodation and toilet safety. And where statements of medical provision are included, they are generally minimal, providing for the availability of first aid kits and procedures for dealing with serious injuries. In Ferguson's study, none of the codes included statements on the long-term health of employees or conditions of production that might lead to ongoing illness or disability. Nor did the codes mention entitlements or payments in case of illness or deal with the issue of access to general health and family planning services.

4.5 Health Rights within the Sphere of Work

I say here only: work as a means to other ends might have some favor in it, even which was of itself dull and heartless work, in which one's strength was used for another man's benefit: but the ends of this work are absorbed all but entirely into the work itself, and in what little remains, nearly all is obliterated; nearly nothing is obtainable; nearly all is cruelly stained, in the tensions of physical needs, and in the desperate tensions of the need of work which is not available.

James Agee³¹

There are certain aspects to the health rights-based program that are not recent. Traditionally, the right to a safe and healthy workplace has been defined by UDHR and ILO Conventions and described in detail in several workers' rights and occupational health articles and treaties. Some writers have based the right to health and safety within a working context as a principle to a right of survival (Werhane 1985). Others have defined these rights in context of a working environment in terms that persons ought to be treated as ends rather than as means (MacCarthy 1981).³² In other words, workers should be regarded as individual people -- and not as components to a functioning system -- who have the right to earn their living free from having their health and well being affected by job-related causes.

As economies and working environments shift and globalize, health linkages are being made between global trade and health and safety standards in the ways in which products are produced, marketed, distributed, and consumed. Hence, the transnational trade of harmful substances (i.e. tobacco, agrochemicals), health hazards resulting in transnational environmental degradation, and health hazards resulting in the

³¹ Agee, J & Evans, W. Let Us Now Praise Famous Men, 1938.

³² Based on Kantian concepts.

disparities between rich and poor between and within countries are just some of the possible combined outcomes examined. Subsequently, public health and occupational health have a relationship in the context inside and outside the 'walls' of the realms of production (i.e. workplace). In this permeable context, not only are there conditions which affect workers' health status, thus aggravating the adverse effect of occupational exposures, but there also may be interactions between workplace hazards and the surrounding communities. This is particularly true of both the informal sector and agricultural work, where it is not unusual for the working and living environment to be the same.

As developing countries industrialize, there will often be the lack of capacity or disregard in dealing with the steady increase in occupationally associated health problems. Yet, occupational health and safety (OSH) is an instrumental component to public health and in ensuring the basic right to health and safety for working populations. Furthermore, occupational health has been utilized to protect surrounding communities and the environment, and contribute to safeguarding natural resources and improving production, thus linking work, health, environment, and development aspects. It is, therefore, a key public health profession, needed wherever there is a workplace.

Work-related suffering plays a key role in the health status of all nations. According to the World Bank, "a burden of 36 million disability adjusted life years (DALYs), or 3% of the global burden of disease, is caused each year by preventable injuries and deaths in high risk occupations and by chronic illness stemming from exposure to

toxic chemicals, noise, stress, and physically debilitating work patterns.³³ Another aspect is that harmful workplace agents and factors often result in appreciable financial loss due to the burden on health and social security systems, to the negative impact on production, and to the associated environmental costs.

4.6 Health Status and Income and the Changing Face of the Workforce

There is now overwhelming evidence that the major determinants of health status are societal, but the nature of these determinants remain vague.

Jonathan Mann

Earning an income, and not just the working environment, has an impact on health and well-being. Health outcomes have been linked to socio-economic status (Adler 1999) and shifting economic patterns that affect health status from production throughout the supply chain to consumption. And there has been much discussion on the growing inequalities brought on by the forces of globalization and its effects on health (Walt 1998). But there has been less discussion in the globalization literature about how such forces *raise* health and well-being standards. Perhaps this is because less attention is given to the meaning and distinction work has in people's lives (Gardner 2002).

Viewed from a concrete perspective, work is the means by which humans live, either directly, for example, by growing their own food, or indirectly, by doing some job

³³ World Bank development report – Investing in Health 1993

which earns money to buy certain needs. Despite how it can be affected by a variety of arrangements, work (in the first place), is meant for humans rather than humans are meant for work. Thus, human beings remain the subject and not the object of work. And, from a human rights perspective, a human being's life, personality and development is shaped and dignified by work; and, in a sense, this human being thus becomes more a human being. From this standpoint, in which the human remains central to the sphere of work, the concept of human rights can emerge from work and play a part in a broader context of those fundamental rights of the person. Work, therefore, is one of the most powerful and rewarding forces in human life that has proven to be indispensable for the individual, for the community, as well as for the development of nations.

Many note that the changes occurring to the global division of labor affect low-income countries and alter the nature of work worldwide (Ackerman et al 2003; Walt 1998; Rodrik 1997). Shifting manufacturing and production bases to other parts of the globe where there has been a surplus, and a 'feminization' of labor (Standing 1999; Benería 1989) has meant the provision of employment opportunities to millions of people in places where underemployment has contributed to impoverishment (Wood 1995). Even critics of globalization will highlight that employment and health/well-being standards are correlative although it has been neglected or difficult to quantify (Adler et al 1999; Mann 1999; Rodrik 1997).

As these alterations to the global economic landscape occur, however, the prevalence of regular, full-time wage labor as the typical type of employment has been giving way to the prevalence of greater elasticity and volatility in the labor market (Rodrik

1997). Consequently, more direct employers cope by fixing working conditions below the objective requirements of the workers, industry and ILO standards (Braithwaite & Drahos 1999). Or upstart companies and sub-contractors in rapidly industrializing countries emerge without the knowledge or tradition of such standards (Barberish & Gardner 2000). Another consequence is that a more diverse pattern, characterized by 'informalization' of employment, through more outworking, contract labor, part-time labor, homework and other forms of labor unprotected by labor regulations is created. Social insurance, however, remains predicated on regular, stable full-time wage labor usually for males (Standing 1999) and usually for those working in the developed world is on the decline (Braithwaite & Drahos 1999; Rodrik 1997). Subsequently, among the current challenges, is the need to reform systems of social protection in which this emerging type of workforce is recognized both within developed and developing countries. Moreover, there is a corresponding need to promote alternative forms of collective institutions to protect and enhance the status of vulnerable groups in labor markets, and a need to combine flexibility with steadily improving economic security.

4.7 Social and Economic Aspects for Health in Standard-Setting

Overall, economic and social aspects related to health can overlap when applying human rights standards. The improvement of social and political stability, to which human rights and, particularly, labor standards can contribute, is often critical to achieving higher levels of private investment, including foreign investment as well as more sophisticated forms of OSH methods (Braithwaite & Drahos 1999). A higher

level of investment can, as already noted, contribute to reducing poverty by raising productivity and hence wages. Traditional economic analysis implies, however, that state welfare, employment laws or social protection schemes increase the cost of labor and business levies (Ackerman et al 1998). This analysis is disputed by those who reverse the argument by claiming that it is far more difficult for countries and regions without adequate safety-nets, both politically and industrially, to restructure and lay off workers if they are to remain responsive to market changes (OECD 1999, 1996). Yet this analysis is directed more at those states with instrumental protectionist actors such as inefficient industries and entrenched trade unions. Nevertheless, there may be cases and states, where the compliance with safety-net labor conditions enhances rather than undermines global competitiveness.

On a more direct level, core labor standards can support specific interventions, such as minimum wages, obligations to provide decent and safe working conditions, and formal systems of social insurance and social protection – all of which have a more immediate effect on health status. Such specific standards can raise worker productivity – by boosting labor motivation and effort, by improving workers' health, and by inducing employers to adopt new business strategies. Good wages and working conditions can reduce wasteful labor turnover, while the empowerment and security of workers can facilitate creativity and cooperation in the workplace.

4.8 Comprehending Worker Health

Some attention must be given to developing a comprehensive approach in which to consider the relevant worker health and well-being issues emerging from globalized systems of production. And the initial step of any OSH assessment must first attend to the details of the work environment.

Yet, information on the extent and distribution of risks and the size of the populations exposed to those risks is not available for many sectors, including floriculture.

Furthermore, OSH risks can only be inferred from ad hoc surveys or available exposure records, and from disaggregation of the total working population into the major sectors of employment such as agriculture, transport, construction, etc.

The identification of health risks within a sector such as floriculture, however, are often based on experience and sometimes on the outcome of research (ILO 2000) -- although frequently this knowledge is not exchanged between academics and emerging floricultural industries or smaller producers (I1; I2; P1; P2 Interviews 1999). As a result, there is often a reaction to addressing the more obvious or tangible risks over other less noticeable or perceivable high(er) risk practices. Industry, national and ILO standards provide important guidance for constructing a comprehensive OSH risk management program, but other input is needed, especially from practitioners (e.g. health services, line managers) on the ground who witness how the working environment interacts with workers' health and well-being and vice versa. Such knowledge is key in terms of knowing how to change risky behavior in an otherwise hazard-controlled environment as well as understanding where workers

might be particularly vulnerable or susceptible to occupational injury and disease. As with any specific country and sector, including Kenya and its floriculture sector, distinctive morbidity-mortality patterns exist and can interplay synergistically between a worker's home and work life. For instance, Kenya has a high incidence of HIV/AIDS and growers confirmed that they had to deal with HIV/AIDS amongst the workforce (I1; I2; I3; I4; I5; I6; I7 Interviews 1999). The impact of HIV/AIDS on both the working life and well-being of the worker is manifold.

Appendix P provides a framework of analysis that is used later in Chapter Seven to assess worker health and well-being status within the Kenyan export floriculture sector and contributes to the analytical framework introduced in Chapter Eight. The tiered model in which to assess the implementation of worker health rights is displayed below. It also serves as a practical plan with which to define, prioritize and describe health as a human right for workers. Worker health rights can be regarded and prioritized according to a three-tiered approach (see Appendix P for a detailed explanation of each segment):



PART THREE -- Ethical Governance

*The rank is but the guinea stamp,
The man's the gold, for all that.*

Traditional

To claim human rights is to acknowledge what is essential and definite to our selves as planmakers: a kind of bell jar defined by the limits of the regime.

Robin Holt³⁴

According to the way it is generally used today, the term 'ethics' relates above all to the domain of human rights, 'the rights of man' – or, by derivation, the rights of living beings Ethics is a matter of busying ourselves with these rights, of making sure that they are respected.... [The term 'ethics'] should be referred back to particular situations. Rather than reduce it to an aspect of pity for victims, it should become the enduring maxim of singular processes.

Alain Badiou³⁵

Part Two examined conceptual definitions of ethics, human rights, health and well-being, particularly involving current issues concerning globalization and working trends. In this section, (Part Three), Chapter Five examines the way ethics, human rights, worker health and well-being are being tackled in current ethical sourcing initiatives within the global supply chain. And Chapter Six explores how ethical sourcing and human rights frameworks can be integrated into an ethical form of governance.

³⁴ Holt, R. (1997).

³⁵ Badiou, A. (2001).

5. The Emergence of Ethical Sourcing

5.1 The Governance of Labor Standards

Declarations of rights, in particular the Universal Declaration of Human Rights (UDHR) and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work³⁶, serve as a model for legal and civil society, including pressure groups, in which to define and proclaim political, social and economic justice. Moreover, these recognized rights impose obligations and are exercised against sovereign nations (Donnelly 2003; Morsink 1999). The UDHR, for example, is "a common standard of achievement for all peoples and nations" and the states that represent them (Morsink 1999). And the Covenants cite the obligations for states to establish them within their jurisdictions and civics (Donnelly 2003; Morsink 1999). Current international and regional human rights standards remain supervisory mechanisms that monitor relations among states and their citizens (Donnelly 2003; Morsink 1999).

Thus, despite the fact that the idea of human rights has based itself on the sanctity of the individual human and its inherent universality, it has been the underlying understanding that the state is the one to be measured in its implementation of human rights. Often this obligation has been perceived in terms of a negative impact in which states should and could shoulder the task of securing the listed rights and therefore be blamed for when these rights are not upheld (O'Neill 2002; Nickel 2002). Yet far less attention has been paid to the opportunities in understanding how the state

³⁶ The ILO's 1998 Declaration of Fundamental Principles and Rights at Work covers four core labor standards that are binding on all ILO member states: freedom of association, and the right to collective bargaining; elimination of all forms of forced or compulsory labor; effective abolition of child labor; and elimination of discrimination in respect of employment and occupation.

remains an essential institution in promoting these rights. Its essential status derives not only from implementing and enforcing human and labor rights effectively but also in using rights principles as a way to strengthen the state via civic, political, economic, social and cultural infrastructure and processes (Norton & Wood 2004; Donnelly 2003). Furthermore, instilling core rights principles into the political, economic and social fabric of a nation is inextricably linked to the positive control citizens have toward their government (Norton & Wood 2004; Donnelly 2003; Zakaria 2003). And it is precisely because the nation state is the central institution within this contemporary Modern world that it has the opportunity in which to implement its political dominance in effectively recognizing human and labor rights (Donnelly 2003; Hirst & Thompson 1995).³⁷

However, governments are only one source of threat (or support) to human and labor rights. And government action alone will not be sufficient in protecting human rights especially if transnational forces, including certain forms of globalization, and decentralizing forces, including forms of ethnic tribalism, are at work to undermine nation state authority (Jamison et al 1998; Ackerman et al 1998). Untrammelled market forces also pose a threat in places that religion, ideology and government once operated with potency (Barberich & Gardner 2000). Such forces contribute to increased disparity between the state's responsibility to protect and provide human rights, and its capacity to do so given the increasing influence of non-state entities such as illiberal transnational networks and undemocratic parochial movements. Moreover, such currents discredit the rationale for upholding core universal human rights principles across the globe, which is particularly difficult since there is not a

³⁷ Even in the aftermath of decolonization and the dissolution of Cold War alliances and support, global political structures remain organized along nation state lines of sovereignty.

cohesive international political society in which a state can rely upon (Ackerman et al 1998; Waltz 2001). Thus, what has been considered once the domain of the multi-lateral institutions and national governments is now under revision.

On the other hand, there is as much of an opportunity on offer to strengthen governance as there is to undermine it. Although a nation state's function is less autonomous as a macro-economic manager in this time of globalization, it still remains an agency representative of its population and source of legitimacy for new forms of governance (Donnelly 2003; Hirst & Thompson 1995). The function remains for a nation to provide an *ethical*³⁸ form of governance, upwards toward international agencies and trade blocs and downwards towards regional and other sub-national agencies of economic co-ordination and regulation. Accordingly, the development of 'good governance' systems for human rights standards requires the political will and action of diverse sectors and partners at levels ranging from civil society to the global community. Global instruments, therefore, need to be interpreted according to the practical realities within specific societies and governments not so that these principles are diminished but rather to enable an active citizenry and government to uphold them (Beneria 1989; Amsden 1993).

³⁸ Ethical as defined in this thesis as a composite of excellence and social responsibility.

5.2 An Ethical Approach to Instilling Labor Standards

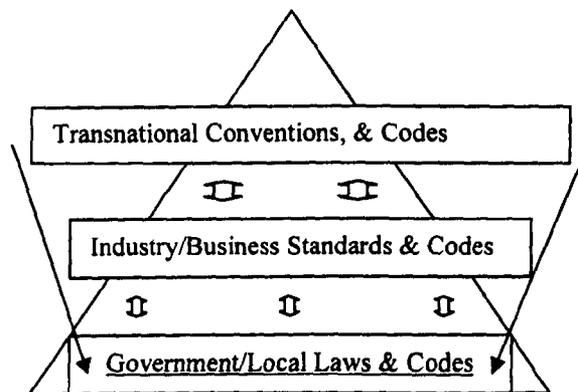
In light of these re-definitions of responsibilities and expansion of ethical space to involve more and different actors, and partly in response to the aftermath of neo-liberal structural adjustment programs (Pearson & Seyfang 2001), approaches by some policy advisors and donors promoting social, political and economic development on a national level are encouraging the building of government capacity and public governance plans that incorporate universal core labor standards (Norton & Wood 2004; Fox & Prescott 2004; Sengenberger 2002; Elliot & Freeman 2003). One of the results of this approach could be for developing country governments to create the conditions for responsible business behavior, through strengthening the implementation of existing laws and guidelines i.e. by helping governments to translate international principles into national legislation. Furthermore, by strengthening the capacity of the local private sector, labor and civil society organizations, who can act as intermediaries, advocates, technical advisers, whistle-blowers and pressure groups (Fox & Prescott 2004; Norton & Wood 2004) would be another approach in which to develop a series of sustainable governance strategies.

5.3 Actors and Instruments

From this model (see illustration below) of an ethical form of governance, a basis can be established in which a nation's sovereignty, and thus ethical *modus operandi*, is underpinned. Yet, as previously discussed, the nation state increasingly is not alone in influencing a process which assures the dignity and well-being of all parties.

Conceptions of economic and social citizenship rights have broadened over time and the scope of these standards has evolved with it. Where this conception has evolved significantly is in the remit of trade and labor standards (Ackerman et al 1998; Rodrik 1997; Wood 1994).

Ethical Governance Model



A public awareness of appalling labor conditions in developing countries, such as the exploitation of child labor and harsh labor processes for women workers in export processing zones, has emerged through the crucible of the global communications revolution.³⁹ And this information has fed on the growing popular anxieties of those in the industrialized nations, against a backdrop of job insecurity, wage inequalities and unemployment due to processes of globalization (Standing 1999; Ackerman et al 1998; Lee 1997). Responses to these rights violations and anxieties have been varied. One outcome has been the ushering in of a new wave of democratization and the proliferation of non-governmental organizations with social concerns across the world urging more effective action in dealing with upholding labor standards (Klein

³⁹ From transnational e-mail alerts and campaigns and global coverage of 24-hour news networks, civil society has expanded and fortified its network.

2000). This awareness raising has led to a plethora of political movements which seek to address workers' rights by raising the issue of how different sectors, including business and civil society, can become involved in the promotion of these standards. The following is an outline of these sectors and their actors and instruments.

5.3.1 Legal Systems, Standards and Mechanisms

International agreements, such as the UDHR and the ILO's Conventions and Recommendations, play an important role in the setting of common (universal) standards of achievement for action at the global, regional and local levels. At the global level, the core standards reflected in these agreements are embodied in international and regional rights treaties while the large body of labor standards is binding on ratifying states.

Regarding the ILO, means for enforcing state obligations vary from treaty to treaty and it is generally recognized that the ILO's mechanisms for promoting labor standards are stronger on reporting and incentives than they are on sanctions. Sovereignty of a nation still endures since the existing international enforcement machinery ultimately relies on the willingness of a government to implement its own obligations voluntarily. Unions and other civil society groups have an important, yet limited, role in making these mechanisms effective. The primary legal responsibility for enforcing labor standards and human rights lies at the national level, as states are the named 'duty-bearers' in international legal instruments.

Yet while transnational instruments can support and supervise national action, they cannot substitute for it. Many countries have included core rights, including labor rights, in their constitutions, and such rights are enforceable through constitutional or legal procedures. While this can be an effective mechanism with which government and civil society groups can actively engage in bringing violations before the appropriate legal channels, they are ultimately reactive and respond on a case-by-case basis rather than by systematic efforts.

For these reasons, a proactive approach by government is more likely to be effective in implementing labor rights standards, particularly where the government is able to form effective partnerships with trades unions and other civil society actors. The dilemma remains, however, over just how nation states can meet (or raise) working condition standards (Amsden 1993). Raise the minimum standards too high and they become unaffordable aspirations. Yet, no standards mean that their workers are not assured a prosperous outcome from the effects of globalization.

5.3.2 The Emergence of a Civil Society – Global and International

Whether national systems of accountability and legitimacy have been weakened or have not been developed, many would agree that the node of public power, in many respects, has shifted from the national context to the supra-state level (Maile & Braddon 2003; Picciotto & Mayne 1999). This is exemplified, for instance, through bureaucratic, technical and professional bodies and international NGOs. Furthermore, there has been a resurgence of a rights-based form of internationalism in which the

growth of a 'global civil society' has begun to tackle key concerns, brought on by globalization, involving social and ethical accountability over matters related to the environment, labor rights, consumer rights, animal rights etc. (Klein 2000; Zadek 1997). Depending on the concern or campaign, international civil society's support has coagulated into clusters of different audiences who have their own particular interest in effecting rights-based forms of governance. One such cluster of concern has been around globalization's impact on the world of work for people in developing countries.

5.3.3 Civil Society -- Labor Movements

The promotion of rights within a national and global context has often given rise to a number of interrelated social and economic concerns. These include rights principles that cover the implications of employment, the distribution of income, and the role of labor standards. The labor movement has been a historical driver of improved labor standards and workers' rights and the notion of labor rights started earlier than human rights (Braithwaite & Drahos 2000). Yet, historically, this sense of rights entitlement was contingent upon an 'integral plurality'⁴⁰-- i.e. a form of economic protectionism - - which meant that fair and decent standards could and should be applied to particular laborers in one sector or nation over another (Fitzpatrick 1984). The concept of harmonizing labor principles universally only emerged between the two World Wars

⁴⁰ Fitzpatrick notes that this notion of labor rights was a response to the competitive disadvantages emerging from the English economic hegemony of the time. Thus, such rights could be applied only to those living "on its land-intensive isle" and not the inhabitants of those living in "land abundant environments" benefiting from "the economic efficiency of the slave system."

through the creation of the International Labor Organization (ILO) and its standards (see Box 1 – 5.3.3).

The global labor movement today is a complex and varied community. Although the labor movement is generally perceived as a pro-human rights component to civil society, some labor groups represent elite elements of the labor force or other special interest and pressure groups reflecting more the historical function of privileges mentioned above. Furthermore, and paradoxically, the successes of European social democratic parties of the labor movement over the last century, in which social security and other safety nets were created, have weakened significantly labor's base (Braithwaite & Drahos 2000). Once exclusively sought after via union/employer negotiations, workers found many of their basic needs met by government initiatives and policies. Consequently, the labor movement has lost much of its broad-based membership. Another reason for this loss is the global 'feminization' and informalization of labor (Jenkins et al 2002; Standing 1999; Benería 1989).

In light of these trends, the opportunities labor standards offer workers can result, regressively, in the development of organizations that effectively protect the position of elite groups in the labor force (whether or not that is its explicit intention), imposing costs on other workers and consumers. In developing countries, in particular, membership of formal trade unions often omits the majority of the labor force, including most of those suffering from social discrimination on lines of gender, ethnicity, age or other characteristics. The labor market thus tends to become segmented into a protected 'formal' sector and an unprotected 'informal' sector. Moreover, high wages and standards in the formal unionized sector discourage

employment there, which forces more workers to seek jobs in the informal sector, where wages are thus driven even lower (Standing 2001; 1999).

It is the *international* trade union movement in particular, however, that gets its legitimacy through being committed to a *universal* (international) form of equity and justice since it is less influenced by national, protectionist pressures. And it is this claim in which unions are being required to take seriously policy debates even though some of their own practices and assumptions may be challenged that involve the application of a rights-based standard approach. Labor movements have been told to consider whether their actions will impede or constrain the opportunities of actual and potential workforces in developed and developing nations (Norton & Wood 2004). Additionally, within some developing countries, community organizations and NGOs have developed themselves to be labor rights advocates, especially for those within the informal and non-unionized sectors.

Box 1 – 5.3.3: International Labor Organization (ILO)

Established in 1918 at the Treaty of Versailles, the International Labor Organization is recognized universally as the focal organization where agreement on labor standards and labor rights can be reached. This is due to its mandate, its unique tripartite structure (involving global representation of trade unions, employers, and government), and its broad membership. It also provides the only functioning supervisory mechanism, and is central to international legal arrangements for labor standards. The primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. It pursues this goal through programmatic support to member country governments and social partners, and through standards setting and monitoring.

The ILO's norms are formulated in individual Conventions and Recommendations, which states adopt or not as there is not universality or uniformity of coverage. States, however, are required to submit all Conventions and Recommendations to national authorities to be considered for adoption and are required to submit reports on their practice even when Conventions have not been ratified.

The ILO has recently put forward its 'Decent Work' agenda as an approach to policy which is designed to help countries to combine social and economic objectives in public policy. The Decent Work agenda has four strategic objectives: rights at work; employment; social protection; and social dialogue. The ILO is providing support to member states to ensure that objectives of decent work are addressed as an integral part of the development process.

5.3.4 Civil Society -- Ethical Consumerism and Campaigning

It is but a sad profit which is achieved at the cost of the health of workers.

Bernadino Ramazzini (1633-1714)

The desire of a growing number of consumers in western industrialized countries to know that basic ethical standards are being met throughout the production chain (often known as ‘supply chain’) of the things they buy has been noted as an effective mechanism in the global economy (Hughes 2001; Klein 2000; Johns & Vural 2000; Barrientos 2000; Ignatius 1999; Zadek 1997). This mechanism applies to the ‘flip side’ of globalization, paradoxically, by using some of the ‘global’ consolidated power to promote and instill new forms of social and environmental regulation by attacking globalization’s Achilles heel: brand name recognition. Subsequently, these emerging forms of global solidarity movements -- of which many are embodied in the ethical consumer drives -- have focussed on high profile transnational enterprises – mostly retailers over the manufacturer (O’Hara 2004; Klein 2000; Johns & Vural 2000). However, some of these campaigns have been criticized for prioritizing the concerns of consumers or workers in developed countries (Johns & Vural 2000; Amsden 1993). In addition, this criticism has been directed at campaigners’ strategies that single out specific companies (known as “consumer vigilantism”) on a strategic basis but one that attacks those repositories of trust – brands⁴¹ (O’Hara 2004). Such attacks may help raise the profile of the issue (and the campaigner) but the attack may not reflect the actual ethical performance of the company but, rather, the company is

⁴¹ O’Hara cites that unbranded good cannot instill the degree of trust that branded ones can for these reasons: Brands invest more resources in ensuring quality; global branding stimulates world trade; and workers who produce global brands are often paid more than those who produce unbranded goods.

attacked for being iconic in representing 'immoral' qualities (e.g. rampant 'greedy American' capitalism, being 'number one' in the business). The overall consequence is that these 'anti-brand' strategies do not necessarily result in lasting and generalized improvements for the people intended (Pearson & Seyfang 2001; Picciotto & Mayne 1999) nor do they help foster trust among local and global stakeholders (O'Hara 2004). Thus, it could be suggested that the ethical modus operandi of those on the 'side of the angels' requires further soul searching.

Within the last decade however, the ethical sourcing movement has faced the challenge of moving from advocacy to dialogue (Chandler 2003; Zadek 2000,1997; Hughes 2001) and of developing with 'partners' from the business sector a plan in which to apply and monitor ethical standards that assess business practice.

Subsequently, an ethically based format has emerged to address human rights-related issues including labor, social and environmental issues that have been undermined by the demise of many statutory codes (Pearson & Seyfang 2001) in which a 'race to the bottom' in terms of decent standards occurs.

5.4 A Transnational Multi-Stakeholder Approach to Codes

There has been a growing amount of research into transnational approaches to implementing codes (Pearson & Seyfang 2001; Hughes 2001; Zadek 2000; Barrientos et al 1999) that has pointed to some considerable strengths and possibilities in pursuing a 'multi-stakeholder' framework in which to facilitate ethical sourcing.

Proponents of the multi-stakeholder approach point out that there is a general effect in

which codes can change the traditional way forums are structured in dealing with labor negotiations. The aim of this approach is to have different actors brought into contact with each other including previously excluded groups (Murphy & Bendell 1999). And another aim is to have these new forms of inter-actor communication ‘globalize’ the access to core standards and universal human rights and conventions as well as facilitated institutional support for these notions (Pearson & Seyfang 2001).

Before covering how the multi-stakeholder approach is envisaged for ethical sourcing, however, a background of this concept is needed in order to identify its underlying approaches and assumptions. Stakeholding has been described within the parameters of the business field in which customers, employees, managers, shareholders, suppliers, etc. are directly linked to business chains or networks. Transnational civil society groups and rights campaigners, however, are using a wider notion of stakeholding in which to promote ethical sourcing. Stakeholding, under this premise, captures a more thorough and inclusive process in which civil society can manifest through participatory democratization (Sunley 1999). As a result, however, stakeholding has moved from one of metaphor to that of concept (Sunley 1999) and thus runs the risk of evolving into a strident (instead of cautious) second generation idea in which its “qualifications, hesitations, and reservations” are lost (Barnes 1996). Nevertheless, there is an underpinning definition of a stakeholder that can be broadly defined as “any individual or group who can affect, or is affected by, the actions, policies, practices or goals of the corporation” (Freeman 1984). The concept of stakeholding has been applied in several ways (Sunley 1999) but for the purposes of this study a descriptive account of how the ethical sourcing field uses it will be given. And it is this particular usage that focuses on a normative sense to build an ethical and

moral framework for business (Sunley 1999) it insists that all stakeholders have rights and responsibilities. This normative framework of 'partnership' building thus animates an approach aiming to build trust via building local democratic associations and institutions (Shah et al 2003; Sunley 1999; Hutton 1996; Hirst 1997).

Stakeholding approaches in ethical sourcing, however, do not always establish a correlation between trust, cooperation, and economic efficiency (Sunley 1999) especially if local and cultural relationships and clusters are not taken into consideration. It is this blind spot cultivated by certain stakeholding approaches where the effects of social trust *within* economic relationships are ignored even though it would be more appropriate to acknowledge that "the benefits of clustering are compatible with a variety of market conditions, firm strategies, and financial frameworks" (Sunley 1999:2189-2205).

The question remains how equally each stakeholder's interest should be incorporated since interests can differ especially when stakeholders' goals conflict (Sunley 1999:2189-2205; Preston et al 1991) and can possibly threaten the well-being of the business (Sunley 1999; Kay 1993). Thus, there is a caveat to this more inclusive stakeholding approach of business practice that aims to address wider social and economic concerns and inequalities. The 'company as a community', interpreted by the stakeholder approach, can often replace a normative community ideal for the realities of actual communities (Sunley 1999). Furthermore, this focus on stakeholding according to business responsibility reduces the responsibility of the state (Henriques 2003; Sunley 1999) by shifting expectations from "the state and from local government to the benevolent corporation". And although it increases a plurality of actors, it does not always facilitate an extension to deciding on priorities

and objectives (Sunley 1999). Another caveat is that the requirement to consult with a range of actors via a broader notion of stakeholding may be participatory and democratic, but it may not guarantee accountability or adherence to liberal principles based on human rights frameworks. Sunley writes: “[T]he exhortation to consult with a range of bodies obscures the electoral unaccountability of many of these networks” (Sunley 1999).

Thus, some main considerations to include when promoting a multi-stakeholder approach can be summarized into three themes with an overarching premise that each actor has their own rights, but also their own ethical responsibilities.

- Whether the process enhances or undermines an actor’s remit and decision-making.
- How equal each actor’s interest should be incorporated into the initiative.
- How trust can be fostered and whether accountability can be established for each actor.

5.5 Codes of Conduct: An Ethical Business Framework Promoting Human Rights

One approach to developing ethical business practice has been the use of voluntary codes of conduct (or codes of practice). The primary focus of ethical sourcing to date has been the development of standards and codes of conduct⁴² that can act as a management tool that measure social performance (Sobczak 2003; Zadek 2000,1997) and its emergence being both a manifestation of and response to globalization (Jenkins et al 2002). Codes of conduct, in the broadest definition, are statements of values that a company purports to recognize in its enterprises and with regard to governing labor relations, which is not a recent trend (Sobczak 2003; OECD 1996). However, since the early 90s, a ‘new generation’ of codes of conduct has emerged in which its key characteristic has been its ‘privatization’ in that they are more often drafted by private actors instead of international organizations and public authorities (Sobczak 2003; Jenkins et al 2002).

Increasingly, many retailers and producers, particularly in the UK and US, now include suppliers (e.g. manufacturers, outsourcers) in their codes’ scope. The supply chain of a company may include suppliers, licensees, sub-contractors, home-workers and other off-site workers generally classified as self-employed. While not legally binding, codes raise expectations about norms of responsible business. And voluntary self-regulation through codes of conduct has been noted as an important mechanism for the promotion of responsible business practice (Zadek 2000; Jenkins et al 2002;

⁴² The term “codes of practice” is also used interchangeably with the term “codes of conduct”. Sometimes a distinction between the two terms is applied in which the former refers to a more detailed template (e.g. legal and industry-specific standards and measurements) in which to adhere to overarching ethical principles highlighted in the code of conduct.

Blowfield 1999). The apparent strength of codes are that they provide a more direct link than do treaties between internationally agreed standards and practical compliance by enterprises. Subsequently, codes of conduct can provide a direct link between local practices of contract businesses and internationally agreed principles. In essence, this can mean that appropriate strategies develop in which country capacity and a business' structure and size are considered in the making of reasonable aspirations for human decency.

Yet, voluntary approaches have a limitation as a means of not only promoting better working conditions but also because these codes, thus far, only have a direct impact on those workers linked to a particular production process in particular zones within developing countries (Bardhan 2001; Pearson & Seyfang 2001; Zadek 2000). Thus, the 'global' accountability taken up by selected firms appears to be more enclave (in promoting ethical zones) than universal since, despite their reach, transnational corporations only engage with specific segments of the working population and in specific 'islands' within developing countries involved in their supply chain. There are consequences born out of this effect in which developing country export businesses often, but not always, offer 'islands' of decent working conditions and wage levels in the midst of an 'ocean' of harsh and unfair conditions in the rest of the economy. Even though improvements are made for those workers involved in these ethical zones, it is plausible that it is at the expense of those left out -- a much larger number of workers and businesses -- which, in turn, depresses the local and national economy (Bardhan 2001). Although there is an emerging trend for supplier associations and businesses in export countries and regions to apply the same or similar codes, much of the onus remains on transnational corporations (TNCs) and

those employers *directly* linked to export production in which stable relationships occur. Yet, such “formal” links are not as solid as they might be implied in this time of globalization when production is not “mass” but is, rather, more dispersed (Standing 1999). Thus, another consequence emerging from all the efforts transnational businesses put into code implementation and monitoring is that the costs involved in doing so far exceed the effects (Standing 2001) and are, in the long-term, unsustainable.

Moreover, one of the results is that code coverage seldom reaches the casual and temporary nature of many employment contracts (Pearson & Seyfang 2001; Standing 2001, 1999; Barrientos et al 1999). And the ILO, national and local frameworks more often, in effect, omit these categories of worker from their scope. Many sectors around the globe, including the export horticulture sector with its seasonal and temporary female workforce, for instance, are characterized by insecure employment and subcontracting which render code implementation difficult when addressing employment conditions. It could be argued, therefore, that codes offer contingent entitlements to workers as long as they are engaged in particular – and often only global – formalized systems productions (Standing 2001; Bardhan 2001; Pearson 1998).

Many of the codes discussed above include some degree of stakeholder participation in their design, particularly by developed country NGOs and international trade unions. Even though developed country NGOs and trade unions are sometimes linked to particular developing country organizations and affiliates, there is usually scant process involved in determining their accountability (Standing 2001). And codes of

conduct are largely developed country driven. This partly points to the fact that many (though not all) of the codes originated from developed countries. But it also reflects the fact that most codes are not very flexible in their local application, with little or no room for input into this process by local stakeholders, especially workers (Standing 2001). Moreover, the normative (or prescriptive) labor standards listed in codes are often not identified or adhered to within developed countries (Standing 2001). As pressures within affluent, developed countries threaten existing hard-earned labor standards, labor advocates for developing countries may increasingly be called upon to promote retaining standards conceived closer to home (Standing 2001).

Consequently, the perpetual problem arises when inflexible high standards are applied unilaterally and thus have regressive effects. The threats cited, if codes are misapplied or misconstrued, are reduced competitiveness in local and/or world markets for labor-intensive products or poor practices are driven underground (Bardhan 2001; Standing 2001) and that the cost of code implementation and monitoring could be excessive relative to the effect (Standing 2001). This, in turn, reduces the opportunities for poor people in those nascent industrializing countries moving from poverty into development. Even if codes were internationally coordinated, setting them at too high a level could have similar regressive consequences. In light of these dangers, concerns have been raised over the legitimacy and accountability of non-business stakeholder involvement in the codes of conduct process.

Thus, it is through normative ethics that this scrutiny is being applied to monitor human rights principles and, specifically, through the scope and application of codes

of conduct. The commitment involved in upholding human rights standards via codes of conduct is, however, just a starting point. If such principles are to be integrated into business practice, top level support, allocation of responsibility and resources to integrate an ethical *modus operandi*, in which both excellence and responsibility reside, into mainstream business activities are necessary components (Sobczak 2003; Petry 2001; Zadek 1998; Blanchard & O'Connor 1997).

5.6 Corporate Social Responsibility – Oxymoron or Redundant?

As the practices and values of TNCs come under the spotlight and are called to be more transparent by a variety of pressures from civil society and through globalized communication channels, human rights issues are being linked increasingly to the practice of business. In the ethical sourcing context, business practice is scrutinized in terms of *how* and *where* the money is made,⁴³ instead of how corporations spend their profit in socially responsible (charitable) ways. The possibility for businesses to behave ethically is being described by a variety of actors as *corporate social responsibility* (CSR), although this wide-ranging CSR camp is divided over whether business has the innate ability to practice ethically. These skeptics – which come from both the business and campaigning worlds – point out that ethical business is a “bluff” in that ethical decisions are strategic decisions at the core (Carr 1968). They argue that the innate nature of business – a core product of capitalism – renders it an amoral manifestation, in which separate rules apply regarding right and wrong, with

⁴³ Corporate social responsibility can be described in terms of two different areas or activities: ethical practices in *how* the profit is made (i.e. fair and safe working conditions) and what the profit is spent on (i.e. schools for employees' children).

its primary reference being profit. On the other hand, those proponents of business ethics – also comprised of business leaders and civil society campaigners -- point out that the extent of moral evaluation already is an integral part of business activity (Boatright 1997). And the treatment of those connected to the business (e.g. employees, customers, suppliers, communities) frequently ‘speaks’ ethics. Even the strategic results of ethical action, the CSR proponents argue, would not be viable or believable if there wasn’t a genuine commitment.

Describing business’ *raison d’être* through an economic point of view is a valid one but it does not capture the entire picture, in breadth and depth. After all, business is comprised of people in which interdependent relationships thrive when a certain set of rules (inherent or specified) are observed and people interact productively, or falter when these rules are ignored or people violate certain relationships that rely on trust. Boatright points out the complex web of relationships that display the ethical considerations that business generates in its standard operations:

...[C]ompanies are not merely the abstract firms of economic theory but large-scale organizations that coordinate the activities of flesh-and-blood human beings. The task of organizing work so that people interact with each other productively requires some attention to ethics. The ethical climate of the workplace has a significant bearing on economic performance....[B]usiness firms operate in a complex environment with many constituencies to which they must constantly justify their activities (1997: 10).

The kind of ethics described thus far are usually understood as standards that rely on the successful ‘flow’ of efficient or ‘good work’ in terms of excellence (quality) – matters often covered by corporate codes or by law. And there has been an exponential increase in ‘scientific’ ways to measure this quality as a response to manage better the complex and far-reaching business networks currently at play in this globalized world (Zadek 1998). Increasingly, however, the concern for ethical quality that relates to social responsibility covers those areas where laws and codes

frequently do not reside and which, instead, call for good judgement and a set of values honoring quality which also takes into account the needs and interests of its customers and the dignity of its employees (Zadek 1998; Boatright 1997; Barnard 1968). Consequently, business is under pressure to maintain or deepen the ethical context in which it actually operates – contexts that are affected by larger socio-economic and cultural pressures, e.g. increased global competition, disparities in skills and wages, declining state provision, weakening job security, ethnic diversity or difference (Braithwaite & Drahos 1999; Zadek 1998; Rodrik 1997).

Thus, as forms of time and space radically alter due to globalization, the ethical space for business covers more ground and, consequently, the expectations placed upon this sector also alter and increase. Another consequence of this alteration is that the parameters and priorities of societal legitimacy can also change depending on the current concerns and ideals of a culture (Sobczak 2003; O’Riordan 2000; Sethi 1975). Corporate social responsibility can be thus defined as “bringing corporate behavior up to a level where it is congruent with the prevailing social norms, values, and expectations of performance” (Sethi 1975). Yet responding to these pressures, over the recent decades, has meant that the *process* rather than the *content* is emphasized when applying CSR measures. Messages from pressure groups (often using vigilante tactics over ‘ethical’ ones) have also muddled or encouraged businesses to respond in reactive ways in lieu of developing proactive responsible strategies that are underpinned by a set of *normative* ethics (Sobczak 2003; Hepple 1999).

As transnational businesses have their impact on the global political economy their presence, directly or indirectly, will continue to affect the societies in which they

operate. Yet if transnational businesses even could be the ethical arbiters of the world, should they replace the role of government, civil society and multi-lateral institutions in doing so? Could or even should businesses be responsible for solving all the social problems they confront within the sphere of their operations, especially if they exist beyond their remit? These questions are increasingly reiterated as businesses encounter local issues and dilemmas (particularly social and environmental) while trying to implement ethical business standards. Such persistent problems occur most usually where general, or overarching, standards and rights are weak or non-existent and, therefore, extend beyond their remit of accountability including cost (Kapstein 2001). Societal and development issues are complex and require resources and action by many different bodies for effective and sustainable improvement.

5.7 Measuring and Reporting on Corporate Ethical and Social Responsibility

After more than a decade of an exponential increase in this new generation of codes of conduct, it has become evident that the obstacle to implementing decent working conditions among those connected to global supply chains is not caused by a lack of codes. Ethical sourcing monitoring and verification, also referred to as “social auditing”, is what has been deemed as a way forward to determining whether codes of conduct are applied or just being used as marketing ploys (Sobczak 2003; Zadek 1997). Moreover, this form of auditing is considered a component to the “triple bottom line” in which a company can judge its (and its suppliers’) performance according to financial, social and environmental criteria (Zadek 1998). If businesses

are to gain credibility among a variety of stakeholders, including the more vociferous international civil society groups, they will have to demonstrate 'proof' that ethical business practices are occurring (Zadek 1997).

Such proof over the decade, however, has undergone a metamorphosis. Originally considered achievable through professional bodies (e.g. PricewaterhouseCoopers, Arthur Andersen), the legitimacy of this brand of independent auditing has been undermined by scandals such as Enron and by critics (Shah 2003; O'Rourke 2002). Moreover, by discussing the underlying assumptions encased in the practice of auditing, Rupesh Shah challenges whether any form of objectivity and, therefore, legitimacy can be reached through methods considered to be independent and scientific (Shah 2003). Michael Power describes this kind of proof as an obscure 'knowledge base' of the audit process that 'sustains the expectations gap'. Consequently, auditors try to overcome this obscurity by "appealing in the end to their own judgement in determining what is reasonable practice ... auditing remains at the level of folk art or craft" (Power 1997:9-10, 74-75).

Describing a post-modern state of pluralism, proof has been identified in current discourse as on-going multi-stakeholder consultation that is infused with forms of monitoring, verification and reporting against benchmarks based, not on one 'truth', but on a 'critical subjectivity' (Shah 2003). Thus, what renders this form of social auditing particularly legitimate is the degree to which a plurality of stakeholders are engaged including how early they are involved in the drafting and monitoring of the code (Sobczak 2003; Shah 2003). Although normative and universal, the credibility

of codes of conduct, therefore, rests with *how* they are monitored and by *whom* in addition to its content.

Nevertheless, concerns over accountability and legitimacy remain about the inclusion of non-business stakeholders in the process that renders an audit “independent” or legitimate enough. How many different voices legitimize a process? Should non-business voices have an equal or louder volume to describe business and its labor standards? Does the inclusion of workers’ guarantee them appropriate and sound benefits? Furthermore, often what is described as a ‘multi-stakeholder’ group consists solely of private actors (NGOs, business partners) and not public actors (government bodies) and ones comprised of international NGOs but not local civil society.

It is this uncertainty that may be why most businesses involved in CSR still often rely on their internal procedures and/or professional audit clientele. The reasons for this are manifold but generally reveal concerns over being rendered vulnerable -- often to those who are meant to participate in a multi-stakeholder audit. For example, such vulnerability could mean being unnecessarily exposed to adverse publicity, sabotage from competitors, as well as raise an ‘expectations gap’ among a plurality of stakeholders over what and how much can be done to rectify “non-compliances” and identify who is responsible. Thus, the underpinning reason for businesses to maintain internal auditing procedures, in lieu of a more transparent and accountable multi-stakeholder process, is one of the concerns in which the issue of trust is implicated.

In fact, the problem of trust appears to be a common thread running throughout a variety of strategies and proposals put forward – whether or not they are considered

voluntary or regulatory, individual or collective -- in which to monitor and report on codes of conduct. Because these codes – and the labor standards involved – are normative, they could be applied prescriptively without regard for how they should be described locally. This influence is enhanced if a heavy emphasis is placed on regulation and sanctions brought on by internal business/customer pressure, high profile naming and shaming, or robust legal enforcement all in the name of the need for “compliance”. As a result, a country’s capacity and/or company’s characteristics are not taken into account in accordance with the codes, rendering the ethical yardstick an instrument with which to impose a ceiling instead of a floor. The implications involved in such an application of monitoring methods are that the interdependent relationships, built on an earned quality of trust between producer and customer, are undermined. And the most likely result is that those “non-compliant” producers will find ways to paper over or drive such practices underground. Guy Standing emphasizes this copious yet pernicious side of code monitoring:

There are “certifying agencies,” “regulatory agencies,” and “umpire organizations,” as well as “compliance monitoring agreements” and “third-party social auditing.” The language is at best paternalistic. We are told RLS [Ratcheting Labor Standards] would use “public power,” and that “firms that fail to disclose their labor outcomes or monitoring methods should be presumed to have something to hide, and be punished.” (2001)

These concerns are based on the experience of what is already occurring around the globe as a result of the social auditing process (Interviews I & C 2001). For example, there are increasing reports that export producers are developing double books as a coping strategy in which to demonstrate a face of compliance that ensures a favorable and continuous business relationship with their customers (Interviews I 2001/2002). Another example (Interviews I 2000) comes from Pakistan and Bangladesh where women, young adults, and children have been driven into less lucrative, more

hazardous forms of work or unemployment as a result of export producers' policies to prove compliance.⁴⁴

Another concern has been raised over the privatized function of the auditing process, in recent years. Many would agree that it is necessary to bring codes out of the private sphere into the form of transparent, public reporting but fewer suggest that the codes should be re-organized into a legal framework (Picciotto & Mayne 1999). This may be because integrating forms of legal regulation into voluntary privatized codes in this time of globalization are considered to be ineffectual or uncompetitive. Yet, some proponents for this merge are advocating for new ways of developing types of inspection, based on defining new roles for the private actors and public authorities (Sobczak 2003; Hess 2001; Sabel, O'Rourke & Fung 1999). This new way of interpreting regulation is one based on "reflexive law" (Hess 2001) in which public authorities could be considered responsible for particular roles in code application (e.g. training and monitoring inspectors) and be based on a country level, regional (e.g. EU, NAFTA), or international level. However, the challenges to transparent, public reporting tie into the trust and legitimacy issues raised in the auditing process whether they are private initiatives (both individualistic and collective) or legal (national or transnational).

* * * * *

⁴⁴ South Asian purdah compounds women's barriers to accessing lucrative export work since, as a result of the need to become more 'ethically' compliant, such work is now placed outside the home and into more easily monitored units.

So far, the concepts, origins and aspects of ethical sourcing have been discussed broadly and have included the actors and instruments considered to be involved in this phenomenon. Key points from this Chapter include:

To provide an *ethical*⁴⁵ form of governance, in which to apply labor standards upwards toward international agencies and trade blocs and downwards towards regional and other sub-national agencies of economic co-ordination and regulation, political will and action from diverse sectors and partners is required, especially locally. Global instruments, therefore, need to be interpreted according to the practical realities within specific societies and governments not so that these principles are diminished but rather to enable an active citizenry and government to uphold them. This is done by fostering an ethical space⁴⁶ in which local and different actors are involved: 1) in promoting responsible business behavior; 2) by strengthening existing laws and guidelines; and 3) by strengthening local capacity of the civil society, private and labor sectors.

In order to establish a symmetrical and sustainable ethical space, in which all actors have rights as well as responsibilities, each stakeholder implicated in the ethical sourcing process needs to establish a normative framework. A framework based on partnership building through which trust and local democratic associations and institutions can be developed. Thus, an ethical form of governance in this context would mean that actors, nationally and transnationally, should be fostering rights-based approaches through the three key principles outlined above that underpin this

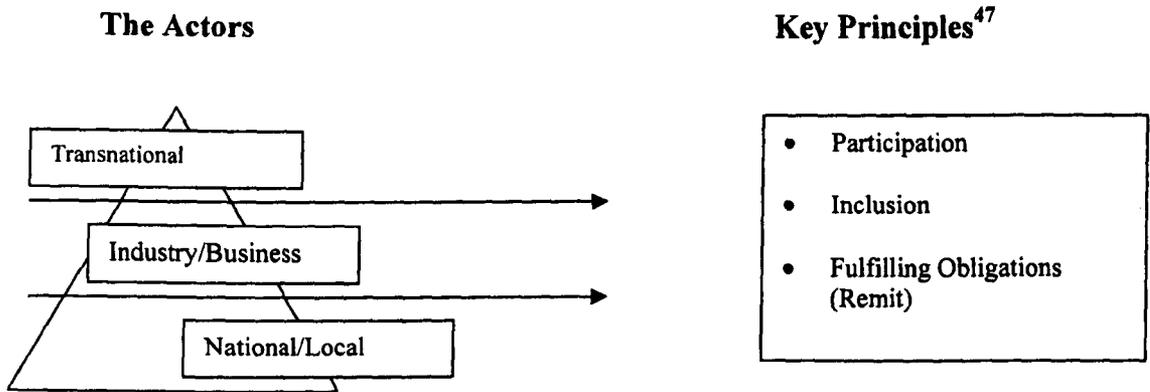
⁴⁵ Ethical as defined in this thesis as a composite of excellence and social responsibility.

⁴⁶ See Chapter One.

governance framework: participation, inclusion, and fulfilling obligations (remit).

Below an illustration is provided to exemplify this arrangement.

Ethical Governance



Continuing on the themes of this ethical governance model, Chapter Six will explore further the extent to which codes, even when combined with national legislation and international frameworks, address and do not address worker health conditions and issues. Moreover, human rights principles described by the better known frameworks according to worker welfare will be assessed according to their advantages and weaknesses.

⁴⁷ See Chapter One.

6. Governing Ethical Standards

6.1 Where and Who is the 'Gov' in Governance?

As ethical sourcing evolves, pressures placed on business to improve the standards within their supply chains increasingly are originating from private bodies or institutions (e.g. auditing firms, international NGOs) specifically involved in the management of ethical sourcing – actors mainly originating from Western, developed countries. And their focus primarily is placed on business activity occurring in developing or rapidly industrializing countries and regions in which regulation of business conduct is unapplied due to unengaged or weak governmental institutions and civil society groups. As a result, ethical sourcing activities focus mainly on privately negotiated and voluntary agreements between and among transnational firms and civil society groups but not business partners at a more local or supply level (I - Interviews 2001; participatory observation). Subsequently, transnational businesses and civil society groups have been assuming the role traditionally possessed by governments and local groups and institutions in addressing societal well-being concerns – a form of societal governance without government.

Despite this trend in which the transnational private sector (including both business and civil society) is encouraged and galvanized into expanding its governing role in providing and advocating for public goods on behalf of society, questions of whether it is within their capacity and remit to do so remain (I - Interviews 2001; participatory observation). Moreover, the increased activity and responsibility of private transnational CSR initiatives and its authority furthers the question over the

responsibility and capacity of national (public) governments and local civil society actors to develop and govern effectively in this ethical space. Without their direct local government and local civil society involvement, some regressive and unsustainable dynamics and arrangements may evolve (I - Interviews 2001; participatory observation). The overarching caveat is that, without legitimate public and local engagement, transparency and ownership of the ethical space remains elusive and undermines democracy. Furthermore, the probability of such a dynamic process as ethical sourcing in being sustainable is undermined if it is not contextualized within the local architecture and societal norms. Finally, private transnational CSR initiatives only address the highest-profile and transnational business links and, consequently, overlook a significant portion of the local economies where lower standards often predominate (I – Interviews 2001; participatory observation).

Subsequently, an exclusively private approach towards establishing a commitment to ethical sourcing will be, ultimately, ineffectual or partial if the aim is to promote a universal and sustainable labor rights agenda for both production and institutional policy architecture. Even if codes are established and implemented with the cooperation from all transnational stakeholders, any sustainable democratic system of private regulation is unlikely to achieve widespread realization for a few basic reasons:

- Applying a voluntary self-regulatory system of ethical standards transnationally without a local context of support (via national laws and infrastructure) is unlikely to achieve widespread realization of rights (I - Interviews & Observation 2001).

- Although many export countries have the legal framework to protect labor rights, few countries have (or do not utilize) adequate resources and services to monitor and support the implementation of this legislation (Interviews & Observation 2001).
- Many workers are not linked to formal or global enterprise networks and, therefore, work outside the *direct* remit of international standards (e.g. global supply chain codes of conduct, ILO or national labor standards). (I - Interviews 2001; Observation)
- There is an imbalanced power relationship involved in transnationally-driven ethical standards which, subsequently, have often meant that ethical codes are interpreted and applied according to *consumer* priorities and values over *producer*⁴⁸ driven ones. Whether such needs focus on product health and safety or tackling the ‘issues’ of developing country populations (e.g. elimination of what is often wrongly described as ‘child labor’), there is often an inclination for even the most ethical of terminology and practice to remain unattainable or sustainable within a local context. (I - Interviews 2001; observation)

Thus, two aspects required for the efficacy of codes and rights standards are that: 1) they are rooted in a local context of laws and infrastructure and 2) local and multi-stakeholder monitoring and support services are used, strengthened and resourced.

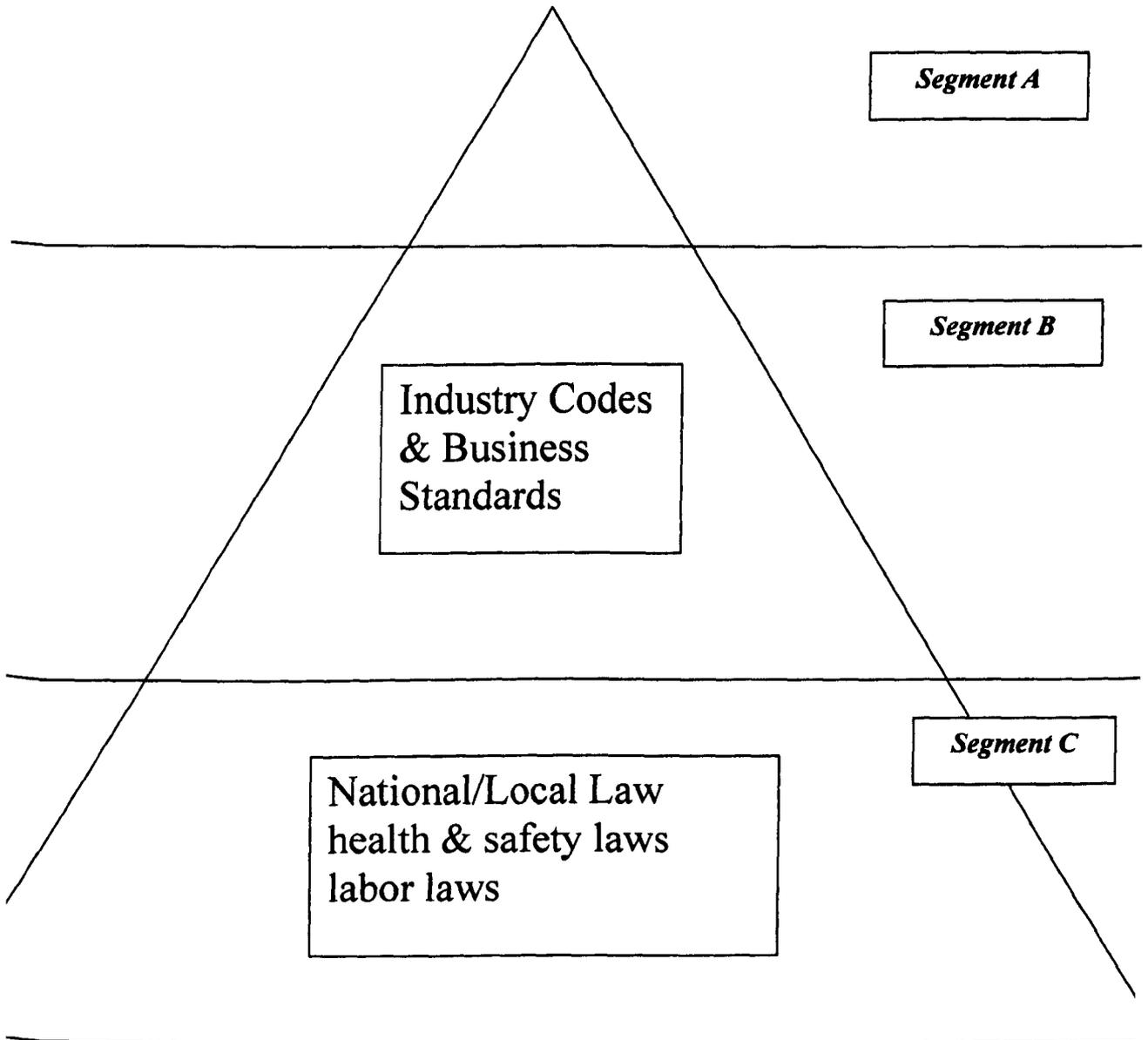
⁴⁸ Here specifically defined as both developing country workers and enterprises.

These aspects require both a local and transnational multi-strand approach if responsibilities are to be included (and shared) for this rights-based agenda.

The 3-Tiered ethical governance model (see Figure 1 – 6.1 below) can be applied to analyze labor standards in terms of matching context with overarching rights principles. Local laws often provide more detail on the *how* and *who* of labor and rights standards, outlined in the UDHR and its Conventions, and the ways in which they should be implemented. Local laws, however, can omit certain aspects or articles required in upholding human and labor rights and they can also linger below acceptable standards of ethical practice. In these cases, industry codes and guidelines should be the next base-line level in which to realize such standards. And when industry standards subsequently omit or do not meet ‘best-practice’ criteria, ILO and human rights standards provide the overarching conventions and articles in which to refer and apply. Below further explores the strengths and weaknesses from each tier.

Figure 1 -- 6.1: 3-Tiered Ethical Governance Model

Universal Declaration of Human Rights
ILO Conventions & Recommendations
Transnational Multi-Stakeholder Codes of Conduct



Segment A

6.1.1 ILO Conventions

The ILO conventions form part of the standards illustrated in Segment A of the governance model. Agreed through a tripartite process involving governments, employers and trade unions, the advantages of using ILO Conventions in codes of conduct are that they have been internationally negotiated. They also provide some basis for commonality across the plethora of codes that exist. However, there are three important limitations to using ILO Conventions as the basis of codes.

The ILO has lead the way in terms of drafting a comprehensive and iterative composite of Conventions and Recommendations covering many factors involved in ensuring a safety net for workers. These Conventions, however, require ratification by national governments to be enforceable and, therefore, meaningful for employees. Moreover, most ratified-status countries do not implement them (Braithwaite & Drahos 2000). This is because ILO conventions are voluntary agreements with no direct mechanism of enforcement. While ratification, means that the violations of workers rights may be challenged in national courts, their enforcement nonetheless relies on moral pressure on governments within the ILO.

Although there is evidence that ratification changes the conduct of developed states, this is not true for developing states (Braithwaite & Drahos 2000; Chayes & Chayes 1995; Strang & Chang 1993). With an increasing membership, standards that once made sense to developed manufacturing and producing nations are often unattainable

for developing nations. This suggests that the original members have set the 'minimum' standards at too aspirational a level. This can be costly for emerging industries, that have to compete in an increasingly saturated global market. They often find it difficult to maintain their competitiveness if they are compelled to bare the brunt of the costs in meeting these standards.

The Conventions are based on the notion that employment is full time and permanent, and their coverage of temporary employment is limited. Furthermore, there is a strong dependence on employees being represented in a collective bargaining agreement. Thus, in circumstances where women and men are employed on a permanent basis with collective bargaining, they will be well covered by codes based on these conventions. However, permanent employees are a small percentage of total employment in many economic sectors within developing countries.

Transnational multi-stakeholder codes of conduct, like the ETI and SA8000, often incorporate core ILO Conventions and Recommendations. Transnational companies (TNCs) also include these principles in their statement as well as specific industry standards to address in more detail key concerns pertinent to their economic sector.

Health is recognized and outlined in the Universal Declaration of Human Rights. As mentioned above, many aspects of human life and, the way it is organized within the UDHR, cover health status and are implicated in the spheres of work, social protection and remuneration. Health in the ILO Declaration and its Conventions are described similarly but through its labor standards. These labor standards are norms and rules that govern working conditions and industrial relations. Just as the UDHR,

they range from fundamental individual rights (e.g. freedom from slavery) to civic rights (e.g. freedom of association). But the ILO core principles also cover the specifics that include health and safety regulations, maternity leave or minimum wages. These standards, just as the UDHR's, may be formalized into national regulations, or at the international level through global or regional institutions. But labor standards may also be informal, established through norms and values in the 'living law' of institutions and communities. Thus, international conventions, regional and national laws can address more specific duties in decrees and regulations. Moreover, they can provide practical advice in codes of practice, technical standards, and non-legally binding training and guidance material. International conventions and national laws, however, often fail to address in sufficient detail key economic sectoral matters and concerns (e.g. agricultural OSH) comprehensively in, what are often, generalized standards.

Yet although some general labor conditions are considered fundamental human rights and, therefore, universal in application, many labor standards such as minimum wages are not deemed universal rights. Unlike with the Universal Declaration of Human Rights (UDHR) the conventions and recommendations from the ILO are adopted by states as and when they see fit. Nevertheless, states are required to consider adopting them and are required to submit reports on their practice relevant to conventions they have not ratified (Donnelly 2001). Nevertheless, it is generally recognized that the ILO's mechanisms for promoting labor standards are stronger on reporting and incentives than they are on sanctions (Pearson & Seyfang 2001). The existing international enforcement machinery ultimately relies on the willingness of a government to implement its own obligations. Thus, the primary legal responsibility

for enforcing labor standards and human rights lies at the national level, as states are named ‘duty-bearers’ in international legal instruments. Reflected in the fact that organized labor’s influence has since waned, ratified ILO conventions are far from universal. Few countries have ratified specific regulations contained in the most recent conventions on the extension of occupational health and safety, training and health services (Standing 1999). Nevertheless, despite this omission of non-ratification, as well as a lack of enforcement capacity, the ILO conventions have been used repeatedly in defining best practice benchmarks and minimum standards for voluntary codes of conduct.

The ILO’s Occupational Safety and Health Convention, 1981 (No. 155), among other key reports and directives⁴⁹, have had an impact on a number of sectors of economic activity, including agriculture. The result has been that many countries now have a key enactment that regulates OSH in an overarching way across a wide range of economic sectors, including agriculture, which have important consequences for this sector.

⁴⁹ These include “the Robens Report” and the “Safety Framework Directive”. The former has been influential in the UK and Commonwealth countries in that it calls for industry-specific safety and health legislation to be repealed and replaced by a framework statute covering all industries. The latter is a directive for EU members who are obliged to ensure that their OSH laws conform to its requirements.

Segment B

6.1.2 Business & Industry Standards

Industry standards can provide more specific regulations and statements (e.g. chemical bans, exposure levels, record-keeping, reporting requirements) than ILO Conventions or overarching codes of conduct. Furthermore, industry codes of practice can become an important mechanism of enforcement particularly if there is sufficient national legislation but with poor enforcement. These details are part of a package of codes of practice and their purpose, although not legally binding, is to provide employers with practical guidance on how they fulfil their duties. These business standards often overlap into providing a measurable form of care for workers (e.g. chemical hazard control and monitoring) but can just as well not cover key aspects of worker protection and health. Yet, some industry standards have adopted core Conventions and national legislation into their framework and include adherence to both international conventions and national legislation as a condition of compliance. Thus, where there are gaps in national legislation in protecting workers, the role of industry standards becomes instrumental in promoting worker rights within its sector.

In light of the emerging recognition of the need to develop and apply international ethics to international business practices (Bettcher & Yach 1998; Boatright 1997), new forms of transnational analysis are being used to view health problems in terms of health service provision and occupational health. Traditional views about global governance and regulation have expanded, or shifted, to cover the business sector's

role and influence on global and local health matters. What previously was analyzed as an individual nation state problem and responsibility has begun to intersect with other sectors (including business and civil society) which extend beyond increasingly permeable nation-state borders.

Business decisions can contribute to a population's health adversely and beneficially, as well as directly and indirectly. Such decisions may be made within an industry structure, economic dynamics and government regulation and can have great influence over policies in which health status is affected. Thus, even though the factors which influence health status may seem relatively simple, many factors and actors may converge to contribute (or hinder) health status. Without acknowledging these interlaced mechanisms and pathways, however, attempts to address health status and problems by targeting the immediate causes or one actor/sector over another may not be effective in promoting effective changes. Nevertheless, the role of the business sector has been regarded increasingly as a major contributor (or obstacle) to promoting a health agenda for vulnerable populations (Bettcher 1998; Kimani & Mwanthi 1995; Loewenson 1999).

Furthermore, industry codes can complement the broad duties of OSH laws and labor codes since the latter are usually of limited effect unless they are accompanied by more specific regulations and statements that specify exposure standards, record-keeping and reporting requirements, including other details. Such details are often found in sets of industry or business codes of practice and their purpose, although not legally binding, is to provide economic sector employers with practical guidance on how they fulfil their duties of care.

There has been a recent emergence of a plethora of codes of conduct developed by the business world in which to promote the health and well being of workers, although many still rely on quality assurance schemes directed more at consumer health issues. These codes of practice, in this sense, are stated values or implicit definitions of corporate social responsibility. And these codes have come to vary significantly in terms of scope and issues covered (Ferguson 1998). Scope in terms of the supply chains and the responsibilities of its actors (e.g. retailers, suppliers, licensees, sub-contractors, homeworkers, and other off-site workers) and issues regarding mostly labor standards.⁵⁰ Yet, as noted in Chapter Four, although there is often explicit coverage of health and safety issues in the codes, not all of them include a commitment to OSH standards beyond those set by local and national regulation. Neither do most codes make more than a general statement about commitment in applying health and safety standards (Ferguson 1998).

Segment C

6.1.3 National Legislation

National legislation can address both issues found in Segments A and B of the governance model by supplementing codes of practice and ILO Conventions and Recommendations with more extensive coverage and specific clauses. Moreover, the more detailed legal and social framework operating in a country can influence the position of workers within the labor force, Segment C of the framework, which

⁵⁰ The extractive industries have extended their codes to cover indigenous people's rights, political human rights and environmental issues (Ferguson1998).

underlies their conditions of employment. Hence the national context in which Conventions and codes are applied is an important factor influencing worker status, and codes need to be analyzed in this local context.

Yet, if national laws only encompass a broad or piecemeal regulatory framework, they will only be effective in perhaps paving the way for those actors proactive enough to develop detailed standards in the form of regulations, decrees, orders and codes of practice, etc. Additionally, only those employed under contracts frequently are entitled to the full protection provided under the legislation (e.g. maternity benefit rights, social insurance, OSH care and training) thereby often excluding entitlements from more 'casual' forms of employment and from the self-employed. Requiring compliance with national legislation can, therefore, provide codes with an important additional strength, but there is often variability between countries in terms of the extent to which codes and Conventions combined with national legislation can address working conditions.

Thus, where there is good legislation but poor enforcement, codes of practice can become an important mechanism of enforcement. But where legislation is weak, it is the industry codes (Segment B) and relevant Conventions (Segment A) that can set the standard and the provisions.

PART FOUR -- THE CASE STUDY

7. Kenyan Export Floriculture & The Efforts to Make it Ethical & Healthy

7.1 Floriculture: Its Roots and Growth in Kenya

Flowers are beautiful words and hieroglyphs of nature, with which she shows us how much she loves us.

Goethe

When you buy flowers, you are buying emotion.

Dutch saying

In Europe, North America and other developed world cultures, flowers are often used as part of everyday life. And in these cultures are intrinsic practices and histories which have incorporated flowers as a means to adorn (whether on the body for ceremonies or to decorate interiors) and as a form of gift giving for occasions including Mother's Day, birthdays and Valentine's Day (Goody 1993).⁵¹ Flowers have also been an expression of mourning but never as much until recently with what economists and commentators call the "Diana Effect" or "conspicuous compassion", respectively (Rivlin et al 1997). For the global mourning over Princess Diana not only brought the highest sales of flowers on record,⁵² it seems to have set a consumer trend in many en masse expressions of public grief. As flowers become linked to such public expressions as well as make the shift from being just a part of special

⁵¹ The focus of this thesis will be on those flowers produced for these types of practices rather than flowers grown for gardens and open spaces.

⁵² See 'Economy feels "Diana Effect"', The Sunday Telegraph, 7 September 1997.

occasions to playing an ubiquitous role in everyday consumer life, a lucrative niche market develops for a variety of enterprises extending beyond the traditional florist. Flower production, historically, occurred in the Netherlands where there has been a long history of flower cultivation and auctioneering (Walt 2001; Hughes 2000). Yet while floriculture, the industry term for flower production, began and still thrives in the developed world, and where the Netherlands retains its distinct role in the trade as cultivator and conduit of floriculture flow (see Appendices L, M, N), flower production is migrating to the developing world. The production of floriculture, has been emerging in developing countries around the globe to then be exported to consumers principally in the developed world, particularly in Europe, North America, and Japan.⁵³ In light of this globalizing trend in flower production, concerns have been raised mainly by the Western media (Lawrence 2003; Greer 2003; Green 2001; Watkins 2001) and rights campaigners (Econews Africa 1999; PAN 1998; Orton 1997) over the possible threats to working and environmental conditions, sufficient pay, and reasonable hours worked by a predominantly rural female workforce.

The developing countries first started to have an impact on international trade with floriculture in the early 1980's (Barrientos et al 1999; Hughes 2000; Barrett & Browne 1999; Barrett & Browne 1996; Maharaj & Dorren 1995) and are increasingly enveloping market production (see Appendices L and M). Hughes notes that:

So, while flowers are still grown on a large scale in the Netherlands, Italy, Spain and France, and are also on a smaller scale in the UK, the fight for market share is increasingly incorporating developing countries. Moreover, this competitive struggle is becoming progressively more intense amidst growing concerns in the trade that the market for flowers is becoming saturated; concerns that imply the shouldering of great risk and uncertainty on the part of individual producers (Hughes 2000:182).

⁵³ Detmers & Kortlandt, 1996; Maharaj & Dorren, 1995; Hughes, 1999; Schrijvers, 1995.

Additionally, Barrett et al describe this expansion into exports as a strategy to find new niches in the international market. In particular is the strategy for larger growers to develop 'value-added' products⁵⁴. The value added process has a considerable 'multiplier effect' (Barrett et al 1997) to production where, for example, the hand preparation and packaging of flower bouquets 'add value', i.e. increase the price to the export, in the country of production. This can, according to Barrett and Browne, "stimulate local industrial development, particularly the manufacture of paper and plastic packaging materials as has happened in Kenya and Zimbabwe" before these flower products leave their country of origin for the shelves of developed world retailers (Barrett et al 1997).

The trend in flower production occurring in developing countries has a few reasons. Growing flowers in developing countries means the cost of production is kept to a minimum (influenced by lower wage rates and an absence of tariffs) and favorable climatic conditions. For developing countries, the need to generate substantial employment (Dolan & Humphrey 2000; World Bank 1995) as well as foreign exchange through cash crops is a typical approach to pay off debt (Hughes 2001; Barrett & Browne 1997). Yet flower production is not a typical cash crop. There are a number of chains of actors connected to this industry that render it a more "complex, multi-stranded commodity network" rather than a simple vertical exchange relationship between workers on flower farms and consumers (Hughes 2001; Barrett et al 1997). Thus, the nature of this industry -- based on complexity and investment -- has helped developing country exporters upgrade their technical and managerial skills

⁵⁴ Value added is a processing strategy to increase the selling price of a product before export and/or closer to the origins of the product. For example, adding value to flowers could mean assembling them into a ready-made bouquet that is wrapped in plastic and includes a packet of powder to prolong the vase life of the blooms, which is all done at the point of cultivation.

(Dolan & Humphrey 2000; Jaffee & Morton 1995; Dunham 1995; Dijkstra & Magori 1995; Schapiro & Wainaina 1991). However, the development of suitable infrastructure and financing mechanisms in which to support this industry still remains problematic for some developing nations, including Kenya (Dolan & Humphrey 2001; Jaffee 1995).

There are several influential agents in different parts of the world who contribute in a number of ways towards the production process of flower producing economies in the developing world. For example, the technology of flower breeding and cultivation has become distinctively scientific and sophisticated (Hughes 2000; Maharaj & Dorren 1995) and most of the key laboratories for this task are located in developed nations such as The Netherlands and Israel (Detmers & Kortlandt 1996). Fashion design is another addition to the chain of relationships. The development of different styles of bouquet, color schemes, incorporation of new combination of flower varieties, are just a few ways that flowers are marketed in the ubiquitous trend of home and lifestyle furnishings. Thus, the trend is for flowers to supply a proliferating aspirational consumer audience and the kind of diversifying niche market mentioned above. Appendix N shows flower consumption patterns in a country comparison. And this type of trade has a significant influence over the relationships between producers and consumers of flowers (Hughes 2000). Increasingly, it is the retailing sector of the supermarkets that shapes and influences the kinds of demand and supply of the cut flower and its trade.

Table 1 – 7.1: Kenyan Floriculture Exports to the EU

Netherlands	64%
United Kingdom	22%
Germany	8%
Switzerland	3%
Other	3%

Source: HCDA 2000

7.2 Retailers and the Cut-Flower Trading Network

Traditionally, cut flower distribution networks have been used by florists and sourced by a variety of agents. In this type of network of distribution, flowers are produced in their country of origin and are then usually sent on to the Dutch flower auction where they are sold to an importer mainly from a developed country such as the UK. These flowers are then sold to a wholesaler before eventually ending up in the florists' shop (Walt 2001). Large retailers, especially supermarkets, however, are increasingly involved in the sale of cut flowers and are forging more direct links with the flower producers (DFID 2001; Barrett et al 1999, 1997; Hughes 2000; personal interviews II 1999).

Although the trade distribution of flowers to the Dutch flower auction remains a substantial part of the intricate trading network, retailers are playing an active and increasing role in shaping the character of the international cut flower trade (DFID 2001; Barrett et al 1999, 1997; Hughes 1999). This shift in the global commodity chain may have to do with the nature of the market for flowers in that it is more market driven than producer driven (Gereffi 1994). Moreover, supermarkets, in particular, are playing a powerful role in influencing the nature of the production

process and forms of business relationships mentioned above. In fact, the proliferation of 'value added' flower products has been driven mostly by the supermarket chains in which they increasingly control or influence the whole value chain, define exactly what is to be produced and to what standards (DfID 2001).

These retailers have been mainly responsible for generating the niche market in "ready for the shelf" cut flowers in which the preparation and packaging is done in the country of origin using high quality locally manufactured materials. Thus, whereas once mostly smallholder producers were used for export trade twenty years ago, the larger flower producing firms, due to their technological and scale advantage, now dominate export trading arrangements (DfID 2001).

The impact of the supermarket chains on the cut flower market is bound up in the overall increase in economic power of these retail corporations, their strategies of diversification and their growing involvement in regulating consumer interest (Hughes 2000; Orton 1997). According to Hughes, "[S]uch power over the sphere of consumption is matched by [supermarkets'] increasing control over distribution channels" (2000:176). As a result, supermarkets have been noted for playing a powerful role in shaping the business relationships that exist throughout the supply chain network (Hughes 2001, 2000; Orton 1997). This is particularly true in the case of the large floriculture growers of Kenya and their supply network to the UK retailers. Hughes notes:

UK retailers are having a massive impact on the dynamics of the cut flower trade, both influencing patterns of consumption in their favour and re-ordering the supply channels that serve them.... With respect to the retail trade through which cut flowers are sold in the UK, traditional florists dominated up until the early to mid-1990s. And, often trading through these florists were tele-sales organisations, such as Inerflora However, the retail multiples, particularly Marks and Spencer, Tesco, Sainsbury, Safeway and Asda, have cut dramatically into the market share of these traditional florists and tele-sales companies (200:181).

And some of the largest and most significant suppliers of cut flowers to the UK retailers who participate in this “fully-integrated” supply channel come from Kenya. Kenyan floriculture producers, especially the large growers, also export a diverse range of fruits and vegetables. The production of flowers for these growers, therefore, usually falls under the category of horticulture although they are often regarded and managed differently from fruits and vegetables. On the supply end, Kenyan horticulture is inextricably linked to the UK. And one of the most striking features of the development of horticultural *retailing* in the UK over the past thirty years has been the increasing predominance of large supermarkets. Currently, the six largest retailers control 80% of the UK market for horticulture products,⁵⁵ and an estimated 70% to 90% of fresh imports from Africa are sold through the major supermarkets (Barrett et al.1997).

7.3 Kenyan Floriculture

European settlers began flower production in Kenya in the 60’s and 70’s (Detmers & Kortlandt 1996) and, with their well-established commercial networks were also at a comparative advantage in Sub-Saharan Africa by having excellent growing conditions (Barrett & Browne 1996).⁵⁶ The industry has grown since mainly as a response to adjusting to the drop in prices of tea and coffee, both major exports of the country’s (Hughes 2000; Maharaj & Dorren 1995).

⁵⁵ The seven largest retailers are Tesco, Sainsbury’s, Asda, Safeway, Somerfield, Waitrose, and Marks and Spencer.

⁵⁶ Kenya provides a range of favorable growing conditions: radiation levels, altitude, and rainfall pattern, which favor all year round production of a wide variety of cut flower crops.

Horticulture (fruits, vegetables and cut flowers) is Kenya's second largest export after tea (Lawrence 2003). Kenyan floriculture exports, representing about 42% of the horticulture export market, earned US\$140 million in 1999 (Brassel & Rangel 2001). The production area of cut flowers stands at 1,410 hectares (1997), up from 1,204 ha. in 1994 (HCDA 1999). In general, expansion in cut flowers is outstripping growth in fruit and vegetable produce exports and occupying less than one percent of the total horticulture land (276,639 ha.) (HCDA 1999). In 1996, Kenyan floriculture generated far higher returns per hectare than vegetables and fruit (US\$ 50,000 compared to US\$ 1300) (Barrett et al 1997).

Kenya is in the top four producers of cut flowers for the European market (see Appendix L). Larger producers, particularly those with direct links to multiple retailers in the European market, have maintained their profitability by adding value through pre-packing and labeling bouquets. In Kenya, 800 hectares of land are devoted to floriculture production in which 75% of total exports are supplied by two dozen large or medium scale flower operations (Hughes 2001). Two out of the three largest farms occupy about 250 ha of land each (Hughes 2001). With 94 per cent of Kenyan flowers going to Europe (Hughes 2001), it is these producers which lead cut flower production in Kenya (Hughes 2001; personal interviews I1 1999), exporting mainly to Germany, the Netherlands, and the UK, with direct business with the UK retail chains. There are then around thirty medium-sized farms of varying sizes above 5 ha each and then several hundred smaller farms taking up less than 5 ha each. The three largest floriculture producers are situated around Lake Naivasha and attract thousands of migrant workers from all over Kenya in search of employment. For

many of these laborers, floriculture is their first entry into a paid labor force (Interviews I1,I2, C2 1999).

7.4 Floriculture Labor and Poverty Reduction

The latest government survey reveals that poverty in Kenya is significant (see Table 2 -- 7.4). An estimated 13.4 million Kenyans, just over half of the population, lived below the total poverty line in 1997 (Government of Kenya 2000). Rural poverty is predominant but urban poverty is on the increase (see Table 2 -- 7.4).

Table 2 – 7.4: The trend in poverty in Kenya between 1992 and 1997.

% of Total poverty in Kenya			
	1992	1994	1997
Nairobi	26.45	25.90	50.24
Rural	47.89	46.75	52.93
Total	44.78	40.25	42.32

Source: Government of Kenya (2000) Table 4.9

The World Bank (1989) reports that Kenyan horticulture cultivation employs about 20 per cent of the labor force (1.8 million people) during the harvest seasons. The Kenyan floriculture industry employs approximately 40,000 to 70,000 people on about 120 farms of which one, the biggest farm in the world, employs about 10,000 people (Brassel & Rangel 2001). In rural areas, floriculture exporters provide substantial employment on their farms and on sub-contracting farms. The majority of these workers are un-skilled or semi-skilled women⁵⁷ who are employed on a casual

⁵⁷ Human resource information (from the two large farms visited) indicates the majority of workers have had few educational opportunities.

basis or on short seasonal contracts (C1; I1 Interviews 1999). These export farm workers also are more likely to come from other rural parts of the country. They are also more likely to work long hours.⁵⁸ Although wages have been reported not to be remunerative (Majtenyi 2002), they are usually above the government set minimum wage (C1; I1 Interviews 1999). Since the majority (approx. 65%) of the floriculture workers are employed as casual laborers or as 'flexible', Kenyan law forbids them to join a trade union (Brassel & Rangel 2001). However, a new agreement recently has been implemented by the Flower Growers' Group of the Agricultural Employers' Association and the Kenyan Plantation and Agricultural Workers Union (KPAWU) which defines and shortens the contractual duration of temporary and seasonal work.⁵⁹ Moreover, casual and flexible labor arrangements also mean that most workers are not entitled (under Kenyan law) to maternity and other benefits enjoyed with longer-term contracts (C1; I1 Interviews 1999).

Horticulture schemes, whatever the mode of production, create rural employment opportunities for both women and men (McCulloch & Ota 2002; Meier 1999; Barrett & Browne 1996). This includes paid wage labor on commercial farms including permanent and seasonal work. Within peasant systems, it gives farmers opportunities to earn year-round income in highly seasonal agricultural systems. Horticulture production is very labor intensive and it has been calculated that 1 ha of horticultural crops creates on average 0.7 full-time and two seasonal jobs, one of the highest employment/land ratios in the agricultural sector Barrett & Browne 1996). As mentioned above, Kenya, among many sub-Saharan countries, has a comparative

⁵⁸ Approximately 8 to 10 hours a day on average and up to 12 hours a day at peak season (Interviews C1; I1 1999).

⁵⁹ On 7 February 2003, KPAWU signed a collective bargaining agreement with the AEA Flower growers, which covers 24 flower farms and addresses many of the issues of conditions of work.

advantage in horticultural production, based both on resources advantages and inequalities in the international division of labor. McCulloch and Ota, through their research of Kenyan households involved in the export horticulture sector, have linked export horticulture to poverty reduction (2002). Barrett and Browne have also highlighted that once a country has entered into this trade the economic benefits to government and households can be significant (1996). Subsequently, these economic benefits have been recognized by donors and international organizations who are actively encouraging both producers and governments to adopt export opportunities.

The reason that floriculture workers in particular often work on a 'flexitime' basis is that it allows for the larger floriculture businesses supplying the supermarkets to adjust their daily and seasonal outputs (I1; I2 Interviews 1999). This overall flexibility is needed since there are no formal contracts between the large growers and their customers (i.e. supermarkets) (I1; I3; I6 Interviews 1999). UK supermarkets email orders daily to the Kenya farms – which are determined by their till calculations -- specifying how many and what kinds of flowers they will need sent on the night flight from Kenya (a 4,250 mile journey by airfreight) (I1; I 2; I6 Interviews 1999). Thus, orders – and subsequently hours – can go up and down dramatically on a daily and seasonal basis (I1 Interviews 1999). Subsequently, most floriculture businesses in Kenya operate on a shift rota with performance related pay (PRP) in lieu of overtime pay (I1; I4; I5 Interviews 1999). According to interviews, this type of bonus scheme allows for the workers to be paid more than if their pay were calculated at an hourly overtime rate (I1; I5 Interviews 1999).

The essential component of Kenya's development strategy has been the pursuit of broad-based economic growth that utilizes the poor's most abundant resource – labor. Horticulture, particularly the cut flower industry, has absorbed labor by creating opportunities for employment and self-employment and producing an 'adoption' effect whereby smallholders are able to engage directly (via larger grower sub-contracting) in the production of export crops. Cut flowers entail a higher rate of absorption than traditional export crops, with the average cut flower demanding between 350-400 person days per hectare (Thrupp 1995). This employment generation has been a substantial contribution to a country affected by chronic unemployment⁶⁰ and few available safety nets (Kenya Economic Survey 1998; HCDA 1998).

Kenya is characterized by increasing land poverty and unemployment and the cut flower industry offers income-generating opportunity for land-poor people (McCulloch & Ota 2002; FAO 2002).⁶¹ Wages in the sector average approximately KSh. 100 per day, nearly twice the government minimum wage (I1; I2; P2 Interviews 1999). While small-scale agriculture remains the predominant source of income, both wage and off-farm incomes have become increasingly important over the last decade. In addition, the locations of cut flower plantations are dispersed throughout central and western Kenya, which is generating businesses and services in local economies (I1; I2; I5 Interviews 1999). It has been suggested by some analysts that the prevalence of this kind of rural growth (Naivasha specifically) can divert the trend in

⁶⁰ The jobs created by the domestic economy declined from 467,000 to 372,000 in 1996.

⁶¹ The average size of the landholdings in the smallholder sector declined from 2 hectares to 1.6 hectares from 1982-92 and the percentage of households having no land has increased (World Bank).

urban drift to the city and, therefore, offer alternatives in the development in the rural environs of production facilities (I1, P5 Interviews 1999).

7.5 Ethical Sourcing and Codes of Practice in Floriculture

As discussed earlier in the chapter, over the last decade retailers' practices have been scrutinized and have partially come under pressure to demonstrate their ethical purchasing policies. Many retailers within Europe (including the UK) and the U.S. have been grappling with the notion of CSR by attempting to improve conditions that occur throughout their supply chains. The instrument with which many businesses have used to claim this responsibility is through a set of codes of conduct (or more in-depth codes of practice) that can cover a range of consumer and civil society concerns including food safety, health and safety, labor rights, etc.

Retailers, especially supermarkets, are some of the key businesses that are developing ethical practices to meet these demands since they source a variety of products from a myriad of countries and regions. Subsequently, a plethora of codes of conduct, including health and social conditions, have proliferated both within Kenya horticulture (which includes floriculture) and externally through the supply chain (I1; I2; I3; I6; I8; C2; C5 Interviews 1999). Quality assurance, food safety and environmental protection codes and testing also have arisen as a response to meet European regulations (Lopez-Valcarcel 2001; Dolan & Humphrey 2000; I1; I2; I4; I6; C1 Interviews 1999; Kaferstein et al 1997). Furthermore, codes have been ushered in -- especially restrictions related to food safety -- by the UK supermarkets as a

mechanism with which to develop and cover their own brand name products and produce (I6 Interviews 1999). However, unlike fruits and vegetables, cut flowers do not need to be tested for agrochemical residues or have the same testing regimes for bacterial contamination (I1; I3; I4; I5; G1 Interviews 1999; FAO 2002; Smith 2003). Moreover, European regulations on agrochemical use and the costs of collecting output from multiple smallholders (small scale producers) gives larger farms the competitive advantage in that they are able to control for agrochemicals and test for contamination more consistently and carefully than the smaller farms (I1; I2; I3; I7; P1; P2 Interviews 1999).

The Kenyan floriculture sector is part of the global pattern of both generating and hosting local and transnational codes, respectively. Individual growers, the Kenyan horticulture sector and their world wide customers have all developed their own sets of codes. Although some sets of codes are similar, there is, nevertheless, considerable variation amongst them. These assorted codes have been adopted by a variety of actors who are involved in different parts of the supply chain including exporters, importers, local trade associations and supermarkets.

There follows a stakeholder analysis of the Kenyan floriculture sector that includes research findings that describe 1) the actors involved in (or linked to) the Kenyan floriculture industry and a description of their codes (if any); 2) their scope and involvement in the design and application of the codes; 3) the underpinning priorities and interpretations reflected in the design of their codes of practice; and 4) the role of international and national frameworks in the design and application of these codes.

7.6 Stakeholder Analysis

The floriculture/horticulture industry involves many actors, which probably reflects the considerable input that has been involved with this export sector in Kenya. Input in the forms of institutional and legal support in response to the considerable economic investment and output produced by the Kenyan horticulture class.

Subsequently, this response has led to an overlapping of stakeholder activity as well as conflicting remits among them. For example, the PCPB and KEPHIS are both responsible for educating growers on the safe use of agrochemicals. Furthermore, NGOs, such as the KSUP, also duplicate this effort and responsibility (with government funding) yet do not coordinate their activities with the PCPB or KEPHIS (I1; G1; I3; C1 Interviews 1999).

What this stakeholder analysis aims to achieve is described by Benjamin Crosby as a discernment of a sense of: 1) “policy legitimacy” and 2) an “adequate support marshalled” (Crosby 1997:262). Moreover, this stakeholder analysis is “directed at assessing the nature of a policy’s constituents, their interests, their expectations, the strength or intensity of their interest in the issue, and the resources that they can bring to bear on the outcome of the policy change” (Crosby 1997:263). Using this approach in the Kenyan floriculture context, the following criteria was used to examine legitimacy and adequate support in which to instill this ethical form of governance.⁶²

Following is a retrospective analysis of the stakeholders associated with Kenyan

⁶² Force-field analysis and political environment mapping – two follow up approaches for conducting a stakeholder analysis – were not used for this research. The former approach is used to assess support and opposition to an issue/policy. To undertake this analysis, at the time of the field research, would have been premature. Political mapping discerns where and from whom opposition might be expected. ‘Opposition’, in this sense, was assessed in the stakeholder analysis according to how well each stakeholder was engaged in terms of participation, inclusion, and remit.

floriculture codes of conduct and the types of exchanges they have with ethical sourcing activities according to:

Participation

Ways in which the stakeholder engages in the ethical sourcing process was examined. For example, whether the stakeholder engages in a multi-stakeholder dialogue in terms of the content and practice of the codes and working conditions. Their role was also assessed according to whether they have a key position in influencing labor standards. Attention was also given to whether they are included in the regular monitoring and verification site visits.

Inclusion

Stakeholder participation is assessed according to how interested or aware they are in the inception and application of the codes of conduct and/or workers' rights within the Kenyan floriculture industry. Familiarity of the codes' content and workers' issues and policies was also included.

Fulfilling Obligations (Remit)

How much priority – in terms of will, time and resources -- that is given to the codes and in addressing or promoting workers' issues in a stakeholder's activities. A stakeholder's underlying assumptions in how worker issues and 'health' standards are envisaged -- in the actual codes or in their interpretation -- may also be discussed.

7.6.1 Actors and Instruments and Links to Worker Health and Well-Being Standards

The general trade and policy aspects of the Kenyan cut flower industry involve several actors. Since the 1999 interviews, numerous other actors have become involved in the ethical sourcing process of the floriculture sector – most of them from civil society.⁶³ The following are descriptions (and classifications) of these actors directly linked to the floriculture sector in terms of codes of conduct and/or their activities in promoting ethical sourcing within this sector. Descriptions of the actors' codes (if any) are also given.

A. Floriculture Workers

An important aspect of the horticultural sector is the variety of laborers who work in it. These workers range from full-time employees working under contracts through to casual, temporary and seasonal workers who are only engaged at particular times of the year. There follows a brief description of the categories of production sites in which a variety of labor is found (type of employee to owner).

i. Farm Workers on Estates

In Kenya, large estates are increasing and dominating horticulture exports (Dolan 2001; Dijkstra 1997). Estates provide consistent work for many people throughout the country and codes often cover and are applied to this workforce. The majority of

⁶³ The KHRC and the AEA are the two most prominent actors that have emerged since 2001. A literature review was conducted on them and is reported in this thesis.

these workers are considered casual even though they perpetually return to their job after annual leave or after a low production period. As few as ten per cent of the estate workers are considered permanent (I1 Interviews 1999). The difference between these two terms is based on the kinds of entitlements offered to permanent and casual working status, according to Kenyan law.

ii. *Workers in Packing Plants*

Packing plants are often attached to large estates or operate at the airport where the final assembly of the product prior to export occurs. Women mainly work in the post-harvest packing plants (I1 Interviews 1999). This work can provide substantial income, housing, childcare and education where the large estate is likely to provide it (I1 Interviews 1999). Since packing plants are operated by the larger growers, codes often cover and are applied to this workforce.

iii. *Workers on Medium and Small Farms*

Workers can either be employed or have some form of ownership within this scale of floriculture. Wages can be more competitive on medium and small farms depending on how much ownership (e.g. as a family or cooperative member) the worker has in the venture (C1, C2 Interviews 1999). Family labor (often female and youth) is often not remunerated, however. Ethical codes are particularly absent from this group although there are some outreach strategies in place that attempt to positively affect health and well-being conditions regarding agrochemical management and safety (C1, C2, I1, G2 Interviews 1999).

A. Floriculture Worker	Participation	Inclusion	Fulfilling Obligations
i) Farm Workers on Estates	Low No involvement in the design or monitoring of codes & conditions. Most are not legally allowed to organize.	Low awareness of codes. Some reported awareness of OSH issues. No employer-initiated code education.	Reported problems with personal protective equipment (PPE) compliance. Except for medical care, lower priority given to health and well-being concerns.
ii) Workers in Packing Plants	Low No involvement in the design or monitoring of codes & conditions. Most are not legally allowed to organize.	Low awareness of codes. Some reported awareness of OSH issues. No employer-initiated code education.	Reported problems with PPE compliance. Except for medical care, lower priority given to health and well-being concerns.
iii) Workers on medium & Small Farms	Low No involvement in the design or monitoring of codes & conditions. Most are not legally allowed to organize.	Low awareness of codes. Some reported awareness of OSH issues. No employer-initiated code education.	Reported problems with PPE compliance. Except for medical care, lower priority given to health and well-being concerns.

B. Floriculture Business

i. Medium and Smallholders

Medium and small scale farms are important to the export floriculture industry in that they function as suppliers to larger farms and directly (or, more often, indirectly via brokers and collectives) to the Dutch Flower Auction. Contract farming has both benefits and disadvantages depending on an outgrower's relationship to traders and exporters. As both a supplier and an employer, medium and smallholders are expected to adhere to the expectations brought on by their own adopted codes of practice and the terms and conditions of their customers. Often, ethical standards and, more precisely, expensive interpretations of these codes by purchasers further up the supply chain, do not take into account the resource needs and limitations of these smaller scale producers (C1, C2, P2, I1 Interviews 1999). See FPEAK for further details.

ii. Large Farms/Estates

Large estates, especially those covering the Lake Naivasha area, export direct to the Dutch Flower Auctions or, increasingly, direct to European retailers, especially UK supermarkets. As a result, they were the original actors to adopt codes of practice that, at first, imposed cosmetic and traceability⁶⁴ standards and now increasingly call for the installation of ethical standards for their workers. A few key farms have adopted leadership roles that have extended beyond their remit to cover the on-going

⁶⁴ The capacity to describe and follow the life cycle and inputs that go into the development of a product is called traceability.

costs of building and running community schools and hospitals (I1; I4; I5 Interviews 1999). These activities have built up partnerships with the Kenyan Ministries of Agriculture, Education and Health, as well as the WHO Kenya office. The large estates often cover the entire cost (I1; I4; I5 Interviews 1999). See KFC for further details.

B. Floriculture Business	Participation	Inclusion	Fulfilling Obligations
i) Medium/Smallholders (also see FPEAK)	Not included in the design of the codes.	High awareness of mandatory codes involving traceability & cosmetic issues. Medium/low awareness of labor standards.	Insufficient resources to cover costs other than traceability & cosmetic standards.
ii) Large Farms/Estates (also see KFC)	High & key involvement in design and application of codes.	High awareness of codes.	Cover most monitoring & verification costs, workers' support & services. 1 farm highly involved & key to developing & funding local schools & hospital.

C. Industry Associations

i. Liaison committee Europe -Africa- Caribbean-Pacific (COLEACP)

COLEACP is an association of exporters, importers and other stakeholders of the European Union (EU), Africa, the Caribbean, and Asia (ACP) horticultural trade established in 1973 to promote the export of horticultural produce from ACP countries. Partly in response to the need to demonstrate good social and environmental performance, and partly because of the confusion caused by a plethora

of different codes of practice, COLEACP has assisted African horticultural export associations to develop their codes according to a harmonized framework (I1, I2 Interviews 1999). The framework incorporates the priorities of local code developers and the needs of buyers and is the *only example to date* of international standards driven by developing country producers. However, the framework is really a guiding principle in that it establishes the benchmark against which more specific sectoral and local codes can benchmark their standards. At present the COLEACP Harmonized Framework contains a set of core criteria that cover environmental conservation; social responsibility including social welfare and workers safety; and food safety, food hygiene and traceability.

ii. *Fresh Produce Exporters Association of Kenya (FPEAK)*

FPEAK was established in 1975 to promote the export horticulture industry through business planning support, technical assistance and training for smallholders. It is a recipient of USAID funding and also supports itself through membership fees.

FPEAK represents approximately 80 cut flower producers, mostly in the small to medium category. The FPEAK code covers fresh flowers, as well as fruits and vegetables, and addresses labor health and safety regulations, agricultural practices, and environmental protection. It is based on the Universal Declaration of Human Rights, and exceeds the minimum standards established by the COLEACP Framework, as well as EUREP guidelines. FPEAK has involved technical organizations (KARI, PCPB and COLEACP) in the design of its codes. The FPEAK code is used by internal auditors without external assistance from NGOs, trades unions, or independent auditors (e.g. SGS, Bureau Veritas).

iii. Kenya Flower Council (KFC)

KFC was formed in 1994 by six of Kenya's largest producer exporters, who were concerned about the reputation of the industry in overseas markets. KFC, in 1999, had 30 members, which account for over 60% of Kenya's total cut flower exports. While the code originated as a technical standard addressing primarily environmental and pesticide related issues, recent editions of the code have been much more comprehensive in their coverage of worker health issues. The KFC consulted three large flower growers, the Kenya Safe Use Project (KSUP) and ICIPE in the design of its code of conduct. The KFC code is used by internal auditors, with the annual aid of a professional independent auditor (Bureau Veritas) but without external assistance from government inspectorates, NGOs, or trades unions. Although specified and not legally binding, the KFC code outlines the objectives, procedures and requirements for member compliance. Compliance is rewarded with different tiers of "friendly" KFC logos (e.g. gold and silver standard) after being evaluated through its internal auditing procedures. Any subsequent non-compliance will result in withdrawal of the logo. Yet, many large and mostly all medium to small sized growers are not members of the KFC and, therefore, do not need to go through any ethical assessment before export.

C. Industry Associations	Participation	Inclusion	Fulfilling Obligations
i) COLEACP	Provides only guidance in developing <i>industry</i> information & Codes. Interest in harmonizing standards for developing nations that produce export horticulture.	Comprehensive set of codes that cover social, environmental, OSH and business contract concerns.	No involvement in monitoring or verifying codes.
ii) FPEAK	Involved in developing own code. Uses only internal auditors.	High awareness of codes in terms of 'safe' product (fruits and vegetables) promotion. ⁶⁵ Some awareness that its code covers UDHR & ILO principles.	Require donor funding to cover technical and training costs to meet traceability, cosmetic & some OSH standards.
iii) KFC	Key player in developing and instigating ethical sourcing process. Uses only internal auditors.	High interest in developing a high standard according to the codes. Lead the way in establishing & providing resources for code compliance. Certain points of code, however, are emphasized more than others. ⁶⁶	High amounts of will, time and resources in promoting codes and their application and additional programs for workers.

⁶⁵ Safety according to customer concerns involving agrochemical residues.

⁶⁶ Attention to OSH aspects provided but not ant-discrimination matters.

D. Kenyan Government

i. Horticulture Crops Development Authority (HCDA)

In 1967, the Kenyan government in 1967 established the HCDA as part of an export development scheme. It is a statutory board for the Ministry of Agriculture. The HCDA board of directors is comprised of public and private sector actors and obtains revenue from the levy charged on horticulture products. The HCDA's stated aim is to create an enabling environment for all stakeholders to develop a viable and sustainable horticulture sector. This aim guides sectoral policies in the cut flower industry that cover investment, sustainability, protection of the environment, investment in technology, increase in sea freight, employment, income and foreign exchange generation.

In 1999, the HCDA code focused on the buyers and sellers of horticulture produce. The buyers are defined as exporters and/or processors and the sellers, individual growers or smallholder schemes in the horticulture business. Subsequently, there are listed obligations for both the buyer and seller that combine fair business practice along with environment and some OSH and worker health concerns and benefits. The codes cover mainly the former in that guidelines involving procurement, technological support, Kenyan license law, arrangement of legal contracts, payment terms, and business ethics are covered extensively. Health and environmental guidelines cover information on banned or restricted agrochemicals (according to Kenyan law), pesticide hazard and contamination risk control, a general statement on medical checks for workers, pesticide disposal parameters, and lists of maximum EU and UK

residue levels for 'green beans'. Although many horticulture growers produce flowers as well as fruits and vegetables, no specific mention is made of how to manage cut floriculture in terms of managing the business contract, environment or worker health. Even though Kenya has ratified the ILO Labor Inspection (Agriculture) Convention No. 129 and its Recommendation No. 133, as of 1999, the HCDA's role was that of issuing export licenses and was not involved in regulating the horticulture industry in terms of labor inspection as well as marketing or distribution.⁶⁷

ii. *International Centre of Insect Physiology and Ecology (ICIPE)*

Established in 1970, ICIPE is an intergovernmental research organization with a remit to "improve human, animal, plant and environmental health" with an overarching aim to "promote scientific capability and a scientific technical culture in Africa". Its activities, therefore, involve mainly research and development on human health, livestock, food security and biodiversity, which receives United Nations, government and private funding. Its activities within the Kenyan floriculture sector, however, primarily involve an advisory role in providing information on affordable pesticide technologies (G1; I1 Interviews 1999)

⁶⁷ In 2001, the Kenyan Horticulture Bill was introduced as a means to strengthen the HCDA by allowing it to collect taxes on producers' income in order to finance the development and management of the industry, including labor inspection. FPEAK and KFC were among some of the stakeholders, however, to resist this bill arguing that most of the proposed initiatives of the HCDA are already in place and that HCDA involvement would be a duplication of effort.

iii. KARI

The research component to the Kenyan Ministry of Agriculture is the Kenyan Agricultural Research Institute (KARI) in which research is carried out on livestock, crops, soil and water. KARI has established a program to do further research into horticulture and seeks to link private research with the public sector (Interviews 1999). The PCPB is part of KARI and, as stated above, is responsible for regulating the import, export, manufacturing, distribution and use of products used for pest control.

iv. Kenya Plant Health Inspectorate Service (KEPHIS)

KEPHIS' remit is to manage pest and disease control measures, including inspection, testing, certification, administer plant breeders' rights, and education of safe use of agrochemicals. Established in 1996, KEPHIS' mandate is to coordinate all of these matters and is primarily more involved with horticulture growers' residue and traceability issues with regard to fruits and vegetables (G1; I1; Interviews 1999).

v. Kenya Safe Use Project (KSUP)

KSUP was established in 1991 and is involved in training horticulture farmers (medium and smallholders) and the business community in the safe and effective use of agrochemicals. Training is not geared to horticulture workers on large estates.

vi. *Ministry of Health (MOH)*

The MOH's involvement with the horticulture sector has primarily involved the promotion of food hygiene inspection and hygiene protection within this market (G1; I1; I4 Interviews 1999)

vii. *Pests Control Products Board (PCPB)*

The Pests Control Products Board (PCPB) is linked with several other bodies. The PCPB is part of KARI (see above) and is responsible for regulating the import, export, manufacturing, distribution and use of products used for pest control. It is also has a program named KSUP (see below) responsible for training horticulture farmers in best practice pesticide control and management.

D. Kenyan Government	Participation	Inclusion	Fulfilling Obligations
i) HCDA Part of the horticulture industry & Ministry of Agriculture (MoA).	Involvement in design of codes but not monitoring or verification. Provides guidance on how producers should conduct business and develop contracts according to Kenyan law. Also interested in taxing export production.	No mention of floriculture in its own code. Guidance is given in which agrochemicals should and should not be used. Considers the importance of fair business relationships over fair employer/worker relations.	Not applying labor inspection remit (according to ratified ILO convention). Provides business-related workshops & guidance for producers.
ii) ICIPE	Provides affordable agrochemical technology & management expertise. Advised on codes of practice.	Awareness of codes related to agrochemical usage & relevant OSH matters.	Research & development concentrates on commercial agrochemical aspects of floriculture.
iii) KARI	Research arm of the MoA. Floriculture focus emphasizes market-driven product needs.	Low awareness	Assistance does not cover codes' issues. Interested in developing added-value technology to product rather than interested in furthering CSR. Does not function as an inspectorate.
iv) KEPHIS	Research arm of the MoA. Floriculture focus emphasizes market-driven product needs.	Low awareness	Assistance does not cover codes' issues. Interested in developing added-value technology to product rather than interested in furthering CSR. Does not function as an inspectorate.

D. Kenyan Government	Participation	Inclusion	Fulfilling Obligations
v) KSUP	Active in training smaller holders in safe use of agrochemicals. No training for workers.	Low awareness of codes & other labor issues. Sees itself as important to promoting key OSH standards for smaller holders.	Instrumental to providing safer agrochemical practice to small holders but not its workers.
vi) MOH	Active in training smaller holders in safe use of agrochemicals. No training for workers.	Low awareness of codes & other labor issues. Sees itself as important to promoting key OSH standards for smaller holders.	Instrumental to providing safer agrochemical practice to small holders but not its workers.
vii) PCPB	Has provided monitoring and verification assistance for industry. Does not effectively function as a regulator.	MoA. Sees itself as the key pesticides regulator according to industry standards.	Regulates pest control imports, exports, manufacturing, distribution and use. Serves more as a technical advisor rather than as an auditor solely for pesticides.

E. Civil Society

i. International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations s/Kenya Women Workers Organization (IUF/KEWWO)

The IUF has a chapter in Kenya and was one of the principle actors involved in the proposed International Code of Conduct of Cut Flowers (ICOCPCF). The IUF in Kenya, with regard to the cut flower industry, is mainly known as KEWWO (Kenya Women Workers Association) in that it advocates for the rights of a largely female workforce. Established in 1991, its aims are to represent workers within the cut

flower industry and to negotiate with the appropriate authorities to secure better working conditions. It also aims to establish more female representation on relevant government boards and committees involving labor, government and trade. KEWWO is part of the labor reform process underway in Kenya and is responsible for mainstreaming gender issues into government policies. KEWWO carries out public campaigns for better wages and conditions for both floriculture workers and the self-employed.

ii. NGOs or Community Based Organizations (local and international)

A few large estates have directly collaborated with local and international organizations to promote health objectives for their workers. Map International Kenya, AIDS NGO Consortium, Family Planning Association of Kenya, National Council of Churches Kenya (NCCCK), John Snow International as well as multilateral agencies such as WHO and UNESCO have collaborated on health education initiatives involving HIV/AIDS awareness and reproductive health. Additionally, established after this study's field research, is the Kenyan Human Rights Commission (KHRC). The KHRC is not a government body but a campaigning organization primarily focussed on workers' welfare in the horticulture sector. Its cut flower campaign officially began in 2001 and has brought the issue to attention in both local and international media . It has been linked to developed country campaigning organizations such as Women Working Worldwide (part of the Clean Clothes Campaign).

E. Civil Society	Participation	Inclusion	Fulfilling Obligations
i) IUF/KEWWO	Not involved in code design, monitoring and verification. Keen interest to represent growing numbers of prospective members.	High awareness of codes and worker issues.	Functions primarily as campaigning organization linked to European-based advocacy groups.
ii) Others & KHRC	1) Not involved in code development. 2) KHRC, however, wants to be involved as a legitimate stakeholder in ethical sourcing process.	1) Mixed awareness of codes and labor issues. 2) KHRC aims to organize female floriculture workers and female small-scale producers.	

Transnational Actors and Codes

Transnational codes are independent social codes from any other codes of practice.

They can reflect core principles from the UDHR and ILO Conventions but more often comprise quality assurance measures.

F. Importers

UK importers have also adopted company codes of conduct that apply to their suppliers. Their codes normally comply with those of the UK supermarkets, for whom they are agents. Regulatory requirements (e.g. The Food Safety Act 1990) are becoming increasingly restrictive. Subsequently, importers and supermarkets are

consolidating their horticulture supply base, which more often than not includes floriculture, as part of an investment scheme to raise standards amongst a cluster of large growers who can be more attentive to the conditions in which their supply is produced. These measures inevitably favor larger farms over medium and smallholders (C1; C2 ; P3Interviews 1999).

Where an importer is acting for a specific supermarket, they will be required to apply the supermarket code rather than their own as a minimum standard. As a result many UK importers acting for different supermarkets will aim to have codes that meet their clients' combined requirements. This provides some commonality to company codes, reducing the level of divergence between codes faced by growers.

F. Importers	Participation	Inclusion	Fulfilling Obligations
i) Importers	Provides monitoring & verification. Drives codes according to own customer standards.	High awareness of codes (MPS or supermarkets').	Not interested in labor standards in lieu of profit & product quality.

G. Retailers, ETI & SA8000 codes

i. UK Supermarkets

Most companies implementing codes have some form of auditing procedure. Supermarkets use a combination of methods to audit their codes. In Kenya, the application of supermarket codes in the flower sector is less well established than

other African countries. Most of the major UK supermarkets accept the Kenya Flower Council code of practice as the standard for the flower industry (I1; C3; P1; P3 Interviews 1999). Nevertheless, since those UK supermarkets that are members of the ETI account for 80% of the UK food retail market, codes that incorporate the ETI line cover a significant number of growers/exporters supplying the UK (USDA 2000). Most of the supermarkets are using some form of auditing or inspection process to verify compliance with their company codes, and therefore the ETI line code is being incorporated into an auditable process.

ii. *The Ethical Trading Initiative (ETI) and Company Codes*

Although not a directly auditable standard, the ETI Base Code (see Appendix D) has had an important influence on the evolution of auditable codes within horticulture in sub-Saharan Africa. All companies participating in the ETI, which include seven of UK's largest retailers, have agreed to incorporate its line code as a minimum within their own company codes of conduct.

iii. *SA 8000*

The SA 8000 standard (see Appendix E) can be used as a directly auditable instrument. Independent auditors, such as Bureau Veritas, draw on the principles and details of this standard when applying their auditing. KFC has also directly drawn on many of the guidelines in this standard. Including the key principles of the UDHR and the core ILO Conventions, aspects of the standard cover OSH and other worker health and well-being issues and describe the key inputs into how to effectively

manage, monitor and verify these standards. Civil society actors are mentioned as part of the auditing process but not government inspectorates or other relevant government or local institutional bodies.

iv. *EUREP/GAP*

The Euro-Retailer Produce Working Group (EUREP) which represents the major retailers in Europe issued its first official version of its Good Agricultural Practice Protocol in 1999, following consultation with growers, produce marketing organizations, verification bodies, agrochemical companies, farmers organizations and scientific institutions. The protocol (EUREPGAP) is primarily technical and is very comprehensive on Integrated Pest Management (IPM), and Integrated Crop Management (ICM) practices, and encourages the use of Hazard Analysis Critical Control Points (HACCP). Most recently EUREP incorporated environmental, health and safety, and employee welfare criteria into the code, which has been adopted by increasing numbers of suppliers of African export horticultural produce, largely due to the prominent role of supermarkets in the development of the code.

G. Retailers, ETI & SA8000	Participation	Inclusion	Fulfilling Obligations
i) UK Supermarkets	Key driver in promoting all types of standards and their monitoring & verification.	High awareness of codes but priority rests on traceability & cosmetic standards. Additional social interest in promoting codes that raise working standards for workers if an ETI member.	Commitment to ethical sourcing codes depends on attitude and will of each retailer. Ample resources available.
ii) ETI	Supplies Base Code (see Appendix D) and could provide support in monitoring & implementation.	Comprehensive coverage of and stake in labor rights principles.	Pilot project underway (2004) to coordinate civil society and business stakeholders in improving labor conditions.
iii) SA8000	Provides standards and are used by independent auditors.	Comprehensive coverage of and stake in labor rights principles.	
iv) EUREP/GAP	Coordinated effort driven by EU retailers but involving consultation with local growers, agrochemical companies, farmers' organizations & scientific institutions.	Consumer health driven but just recently incorporating OSH, environmental & employee welfare criteria.	Consolidated effort by major European retailers to address agrochemical concerns and standards.

H. Other Transnational Sectoral Codes

Some sectoral codes have their origin in developed countries, and are being adopted by producers in Kenya either voluntarily or as a requirement to supply certain buyers. There are a number of sectoral codes for growers and firms supplying the UK or the rest of the EU that have been generated apart from the ETI and supermarkets and were already in existence prior to the introduction of sections covering social, worker health and well-being factors. Most of these sectoral codes are an extension of standards covering production, pesticide and environmental conditions. These former standards were an important element in ensuring safety to the consumer, especially in the case of edible fruit and vegetables. Codes relevant to the flower sector have been strong on environmental concerns.

i. Milieu Project Sierteelt (MPS)

The Floriculture Environmental Project (MPS) is an international, environmental standard founded in 1995. The MPS is the code instrument used by the Dutch Flower Auction for all incoming flowers and at the auctions, buyers have the option to buy flowers according to an MPS rating (Black 2004). And MPS growers now account for more than 65% of the turnover at the Dutch flower auctions, the largest outlet for cut flowers globally. Yet, once the MPS status is displayed at the auctions, such knowledge usually is not passed down to wholesaler and then onto retailer (Black 2004).

The MPS rating primarily covers technical environmental standards and is now just starting to adopt health and social provisions specifically related to workers (P2; I1 Interviews 1999). These new additions are based on the UDHR and ILO Conventions. The Social Chapter, developed by the Dutch consultancy organization CREM, addresses three main areas: health, safety, and employment issues. Over 12 Kenyan floriculture farms have implemented MPS (P2; I1 Interviews 1999). Since 1997, overseas suppliers have been encouraged to participate in MPS and several growers from Africa, Israel and South America have joined in the last few years. In contrast to growers in Europe, all MPS members in developing countries must meet the health and safety requirements of the Social Chapter.

The process of auditing sectoral codes varies. In the MPS system, all new participants undergo an initial audit before they have received their first qualification. This audit is geared toward assessing whether new participants have carried out the registration correctly, and examines initial compliance with environmental and social criteria. In Kenya, the initial audit of social criteria only covers health, safety and documentation issues, not the broader employment related criteria. The local MPS representative, who visually audits different aspects of production and conducts interviews with safety officers, nurses/first aid personnel, sprayers and storemen, conducts this audit. The representative does not generally speak with any of the employees. The verification process is still evolving and is currently conducted by an independent professional auditing company. This company audits via checklist and interviews a selection of employees confidentially on each farm. All professional auditors have relevant local language skills yet at the time of this study there were no female auditors (I1; P1 Interviews 1999).

H. Other Transnational Sectoral Codes	Participation	Inclusion	Fulfilling Obligations
i. MPS	Designed code used by Dutch Flower Auction. Assess 65% of flower turnover at auction. MPS system mainly used by larger growers.	Covers technical and environmental concerns. Beginning to address health and social provisions related to workers.	MPS representative conducts audits.

I. International NGOs

i. Econews

In conjunction with Action Aid, its aim with regard to Kenyan horticulture involves “food rights” and trade policy. It produces a regular newsletter on the problems and misuse of pesticide usage within this sector, with particular emphasis on worker and environmental health. Over the past decade, Econews has raised the alarm to European consumers and campaigners over the dangers of agrochemical misuse and poisoning.

ii. *International Code of Practice for Worker Welfare in the Cut Flower Industry (ICPWWCFI)*

This code has been developed by a group of eight European NGOs and trade unions, and is being tested in Kenya by IZNET, a Dutch organization lobbying and research organization. It sets out labor, human rights and environmental standards for the cut flower industry. In Kenya, the code is associate with the German NGO, FIAN.

FIAN initiated the flower campaign from Germany as part of a civil society movement comprised of trades unions⁶⁸ and European NGOs⁶⁹ concerned over the working and environmental conditions of flower farms in Kenya. Their result was an International Code of Conduct for the Production of Cut Flowers proposed in 1998 principally to the large horticulture producers in Kenya but as well to the Dutch importers. The code provides a preamble stating that companies should pledge to require their suppliers, contractors and sub-contractors to observe the standards laid out in the document. The code also calls for an independent body to provide independent verification of compliance. The company, in observing this code, also has to pledge to observe the core ILO standards, the UDHR, and basic environmental standards in which the code is based. Thus, the code covers: freedom of association, equality of treatment, living wages, working hours, health and safety, pesticides and chemicals, security of employment, protection of the environment, child labor, and no forced labor. There is also a statement on the process of code implementation that covers independence and transparency. See Appendix I for code details on worker health.

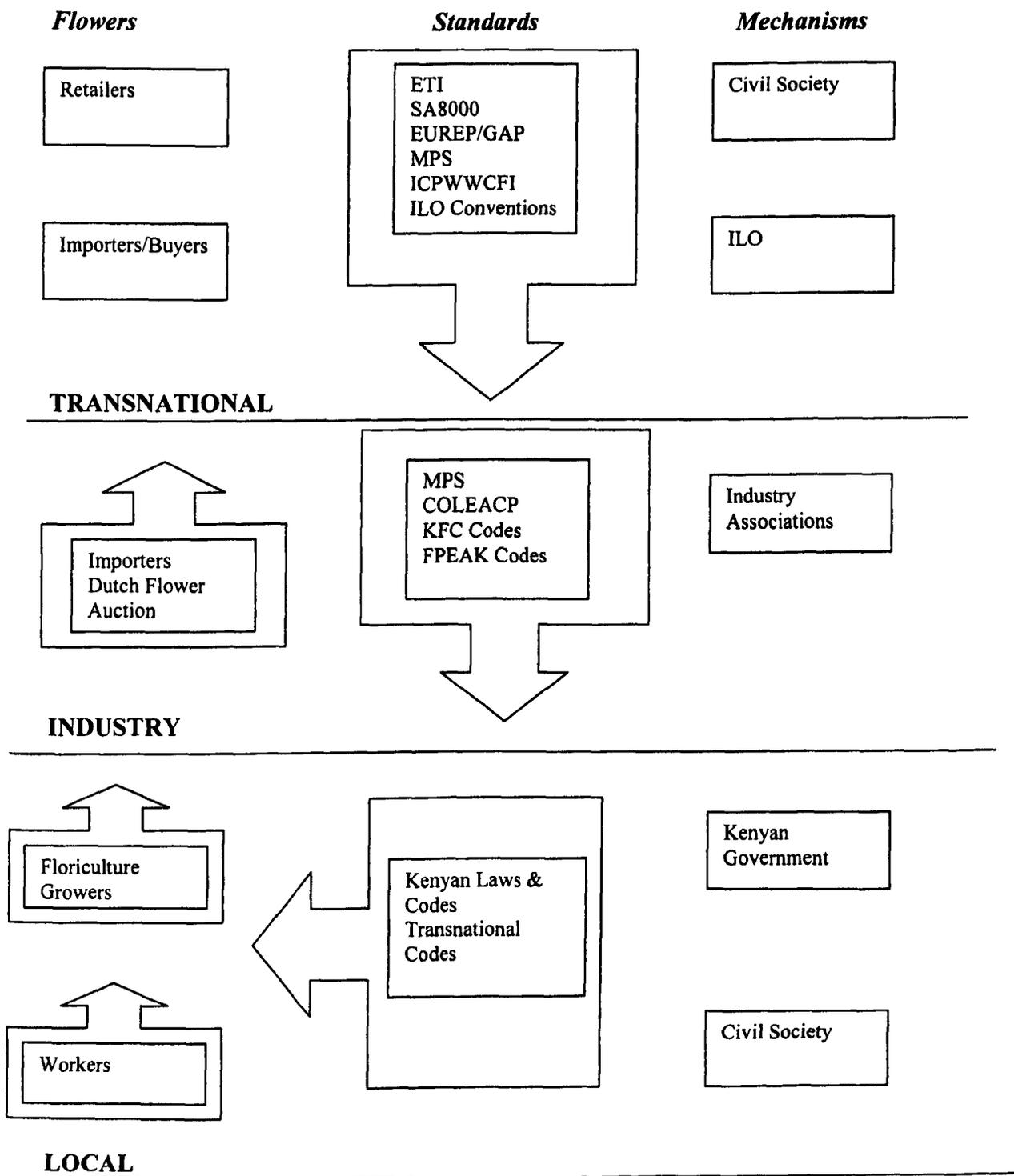
⁶⁸ IUF, IG BAU & FNV

⁶⁹ OLAA, INZET, Fair Trade Center, Flower Coordination Switzerland & Christian Aid UK

The stated opinion in the preamble claims that the code reflects minimum standards that ‘must not be used as a ceiling’. National laws and legal regulation are also mentioned and, if they address the same level of standard in the codes, they must be adhered to. There is also mention that the code should be displayed to workers in the appropriate language and that there should be a mechanism for workers’ to complain of code violations in a confidential manner.

I. International NGOs	Participation	Inclusion	Fulfilling Obligations
i. Econews	Main focus of activity on horticultural agrochemical usage.	Covers environmental, consumer & worker health issues involving agrochemicals.	Campaigning via media coverage mainly in Europe.
ii) ICPWWCFI	Designed codes. Not involved in monitoring & verification.	High awareness of codes.	Campaigning function rather than pragmatic function.

Figure 2 – 7.6: Stakeholder Code and Supply Chain Map



7.6.2 Results of Stakeholder Analysis

The stakeholder analysis is a snapshot of a dynamic and evolving process (see Figure 2 – 7.6) underway within the Kenyan floriculture sector and among different stakeholder sectors (e.g.. civil society, local government, business). The ethical sourcing activities at the time of this thesis' research was in an experimental phase in which a limited sectoral range of stakeholders was engaged.⁷⁰ Nevertheless, the issues raised in this analysis remain pertinent to what remains an iterative process of integrating and applying core labor standards into 1) the sets of codes listed; and 2) activities and remit of each stakeholder. Following is a brief summary of the key issues arising from this analysis in respect to stakeholder participation, inclusion, and remit.

⁷⁰ The ETI recently began a pilot project involving member UK supermarkets, UK NGO, international trades unions and Kenyan counterparts and partners in order to improve upon the application of these codes within the Kenyan floriculture industry.

Participation

Ways in which the stakeholder engages in the ethical sourcing process was examined. For example, whether the stakeholder engages in a multi-stakeholder dialogue in terms of the content and practice of the codes and working conditions. Their role was also assessed according to whether they have a key position in influencing labor standards. Attention was also given to whether they are included in the regular monitoring and verification site visits.

The KFC (C.iii), through its tiered membership scheme, has been instrumental in driving the codes from development to practice among its members. Through this process, Kenyan government stakeholders have become engaged by contributing technical expertise [e.g. ICIPE (D.ii), KEPHIS (D.iv), KSUP (D.v), PCPB (D.vii)] providing mainly agrochemical management advice and support. And transnational business-related stakeholders [e.g. COLEACP (C.i), retailers (G.i & G.iv), importers (F.i), MPS (H.i)] have participated either by developing their own detailed standards and/or requiring that these standards be met before they pass on the flowers to the next buyer. Representing smaller growers, FPEAK (C.ii) has also involved technical expertise [KARI (D.iii), KSUP (D.v), PCPB (D.vii), COLEACP (C.i)] in the design and monitoring of its codes and has recently sought support from donors to provide training for its members.⁷¹ At the time of the field research, however, FPEAK was contending with management/member in-fighting which resulted in low levels of participation with regard to instructing its members on labor standards. Priority instead was being given to concerns involving traceability and cosmetic product standards. Workers from FPEAK members (A.iii) were not involved in providing input into the development of the codes. Workers hired on a casual status – those without an annual contract and the majority of the population – are not allowed to organize or collectively bargain according to the parameters of Kenyan labor law. (C1; C2 Interviews 1999).

⁷¹ USAID has begun to support training initiatives for FPEAK members.

Even though transnational civil society stakeholders (I.ii) were involved in the drafting of the codes of conduct for the floriculture sector, they have not yet (at the time of the field research) directly participated in the monitoring and verification of these codes. Nor have they provided detailed, practical expertise on how to implement or improve labor standards.

Kenyan government stakeholders [HCDA (D.i), ICIPE (D.ii), KARI (D.iii), KEPHIS (D.iv), KSUP(D.v), PCPB (D.vii)] participate mainly by providing technical expertise (agrochemical management and product testing) and business-related services and training. Participation – either through code development or elsewhere -- related to ensuring workers' rights and safe conditions is minimal if not non-existent (I1; C1; C2 Interviews 1999).

Inclusion

Stakeholder participation is assessed according to how interested or aware they are in the inception and application of the codes of conduct and/or workers' rights within the Kenyan floriculture industry. Familiarity of the codes' content and workers' issues and policies was also included.

Most general codes from the private sector (business and NGO) encompass or refer to human and workers' rights [COLEACP (C.i), FPEAK (C.ii), KFC (C.iii), ICPWWCFI (I.ii), UK Supermarkets (G.i), ETI (G.ii), SA8000 (G.iii)]. Discrepancies only begin to emerge as more detailed codes and management approaches are spelled out in the way these principles are interpreted – if interpreted at all. Detailed, hands-on participation of code interpretation among the Kenyan and transnational business sectors [KFC (C.iii), FPEAK (C.ii), COLEACP (C.i), Retailers (G.i & G.iv), importers (F.i), MPS (H.i)] has resulted in codes of practice emphasizing traceability

matters for the product and consumer over working conditions beneficial to workers' rights. This 'lop-sided' or asymmetrical interpretation of key yet general rights-based principles is partially the result of little, if any, direct involvement from civil society (local and transnational) stakeholders in the interpretation and application of these codes. Thus, workers' needs and priorities are often not considered in the more detailed practice of the codes or the managerial agendas of those responsible for implementing them.

Fulfilling Obligations (Remit)

How much priority – in terms of will, time and resources -- that is given to the codes and in addressing or promoting workers' issues in a stakeholder's activities. A stakeholder's underlying assumptions in how worker issues and 'health' standards are envisaged -- in the actual codes or in their interpretation -- may also be discussed.

Despite all the activity with regard to code development and its monitoring and verification, some key issues arise when considering how each stakeholder fulfills its obligations in promoting an ethic that enables a rights based program to manifest.

These issues include:

Even though Kenya has ratified the ILO Labor Inspection (Agriculture) Convention No. 129 and its Recommendation No. 133, as of 1999, the role of the HCDA (D.i) was that of issuing export licenses and was not involved in regulating the horticulture industry in terms of labor inspection as well as marketing or distribution.⁷² Moreover,

⁷² In 2001, the Kenyan Horticulture Bill was introduced as a means to strengthen the HCDA by allowing it to collect taxes on producers' income in order to finance the development and management of the industry, including labor inspection. FPEAK and KFC were among some of the stakeholders, however, to resist this bill arguing that most of the proposed initiatives of the HCDA are already in place and that HCDA involvement would be a duplication of effort.

the HCDA interprets its role as that of promoting fair business relationships instead of fair employer/worker relations.

There is duplication and no coordination of responsibility among the Kenyan government stakeholders [HCDA (D.i), ICIPE (D.ii), KARI (D.iii), KEPHIS (D.iv), KSUP (D.v), MOH (D.vi), PCPB (D.vii)] especially involving educating growers on the safe use of agrochemicals. (I; C; G Interviews 1999)

In partnership with Kenyan government and transnational bodies, some larger floriculture growers have been financing community schools and hospitals. These activities exemplify the more charitable definition of corporate social responsibility (see Glossary) and reveal the beneficial role business can play in community development. Whether this effort, however, should or could be sustained *solely* by business and whether this support could extend to capture a larger Kenyan population without government and other stakeholder involvement and finance is a key question to ask.

This stakeholder analysis has analyzed ethical sourcing initiatives relevant to the Kenyan floriculture industry according to the three key principles outlined above that underpin an ethical governance framework: participation, inclusion, and fulfilling obligations (remit). Asymmetries were discovered in the application of each principle instrumental in promoting an ethical form of governance:

- little coordination and an over-concentration of few or tangential areas of activity;
- minimal comprehensive coverage of the core ILO Conventions in most of the sets of codes and/or skewed interpretations of those rights;
- inhibited access and/or support for some stakeholders in fulfilling obligations or remit
- lack of political will, ethic or awareness in a stakeholder fulfilling its remit.

* * * * *

Ethical sourcing is a recent phenomenon in which notions of ethics and human rights are being applied. How ethics and human rights are envisaged and practiced within the realm of working populations and, more specifically, within the emerging sector of Kenyan floriculture was illustrated and assessed by conducting a retrospective stakeholder analysis based on material obtained through field research interviews and document analysis. Further analysis of the themes and issues raised in this chapter follows in terms of the possibilities and challenges in governing such notions of ethics and human rights – particularly in promoting a human rights ethics for worker health. Before this, however, attention needs first to be drawn to the ways in which worker health is explained (and not explained) as a human right within the Kenyan floriculture sector.

7.7 Worker Health and Well-Being Implications of Floriculture Production

So far, this thesis has explored generally how worker health is influenced by an array of factors including job security, wages, work environment, housing conditions, as well as the provision of public health and educational services. Moreover, depending on the type and nature of the work, health concerns and systems usually will be defined and adapted according to some real, as well as perceived, risks.

Subsequently, these two approaches were considered when delving into the realm of worker health in the context of the case study: Kenyan floriculture. The study found that considerable concern has been given to the risks associated with agrochemicals in this sector in Kenya (I;C; G Interviews 1999; Econews 1999; Ohayo-Mitoko 1996; Kimani & Mwanthi 1995; Maharaj & Dorren 1995). Concerns raised by campaigners and academics focussed mainly on the risk of exposure to the worker as well as surrounding communities (I, C Interviews 1999; Econews 1999; Ohayo-Mitoko 1996; Maharaj & Dorren 1995). And those within the sector considered health care as a means to treat and monitor worker health in which provision focussed on agrochemical exposure, pregnancy and infectious diseases (Interviews 1999; Lopez-Valcarcel 2001; Kaferstein et al 1997). Following are issues identified during the case study research involving interviews with key informants and observation:

Work Environment

Through the interviews, there was general agreement that the production of cut flowers is physically demanding, involves repetitive singular tasking⁷³ and can thus generate health concerns for employees, especially in those jobs deemed hazardous (e.g. responsibility for handling agrochemicals) (I1; I3; I4; I5; I6; I7; C3; C4 P3 Interviews 1999). Furthermore, certain conditions were noted by some interviewees who cited that the nature of the work means having to stand for considerable periods of time at packing tables or while cultivating flowers in greenhouses (an enclosed environment that can get hot) (I4; C3; C4; P3 Interviews 1999). Continuous standing may also occur while mixing bouquets in rooms that are cool, particularly for roses. When asked to rank work environment concerns in terms of importance and prevalence, the majority cited the risk of exposure to agrochemicals (I1; I2; I3; I4; I5; I7; C1; C3; P2 Interviews 1999). Exposure was described in terms of unsafe handling and contact to residues such as entering the greenhouse soon after agrochemical spraying of roses (I1; I2; I3; I4; I5; I7; C1; C3; P2 Interviews 1999).

Ergonomics are not mentioned specifically in any of the industry codes of practice or Kenyan law although the issue could be brought up through the mechanism of worker consultation that is mentioned by both instruments. Neither is The Occupational Safety and Health Convention, 1985 (No. 161) – most pertinent to ergonomics -- ratified by Kenya.

⁷³ This type of work has been described as 'Fordist' in that it involves a worker to be responsible for a single task or movement in the assembly process. A task that contributes to the assembly of a mass-produced, stream-lined product. This type of work has been described as 'rote' and 'deskilling' (Ackerman et al 1998).

Agrochemicals

The use of agrochemicals in cut flower production potentially exposes workers to toxicity risks and exposure to toxins has been associated with a variety of physical impairments ranging from headaches and fever, to neural damage and death (Repetto & Baliga 1997). While the toxicity levels of agrochemicals can vary and robust and consistent safer handling practices can curtail overexposure, the problems faced by chemical safety are formidable (Lopez-Valcarcel 2001). For example, concentrations in the air upon workers re-entry into a greenhouse can still be over the safety level. Moreover, agrochemical workers working overtime or exceeding the time frame allowed for safe exposure levels should also be considered. Nevertheless, there is limited information on the long-term repercussions of agrochemical exposure and concerns remain about practices on horticulture farms (Ohayo-Mitoko 1996; PAN 2003). And improved enactment and enforcement of agrochemical legislation and safe use practices on farms has been emphasized (Lopez-Valcarcel 2001; Mbakaya, Ohayo-Mitoko & Simwa 1998).

In terms of Kenyan regulation, ILO Conventions No. 170 (for Chemicals) and No. 139 (for Occupational Cancer) (see Appendix H) have yet to be ratified and this is reflected in the country's minimal legislation (see Appendix H). Yet, the key floriculture codes (KFC and FPEAK) extensively cover risk management, training, education and supervision aspects with regard to agrochemicals. Their application, however, varies according to the scale of the farm, generally. The larger the farm, the more support and resources there are to implement such management and training programs. The KSUP is attempting to cover all the medium and smaller scale farms

with training in how to manage agrochemical risk, but resources are minimal for both this organization and the medium to smaller scale farmer.

The KFC code of practice (see Appendix F) with regard to agrochemicals is well articulated and all KFC members are instructed to test employees employed in applying agrochemicals for pesticide exposure at three month intervals. However, the data from my interviews indicates that there was some doubt over whether workers who exclusively work with cut flowers (as opposed to those who also or exclusively work with fruits and vegetables) are tested for pesticide exposure (I1; I4; I5; P2 Interviews 1999). Many farm policies also indicate that workers who repeatedly test positive for pesticide exposure are automatically sacked as a means to promote a particular interpretation of the health and safety standard (I1; I4; I5 Interviews 1999). In my interviews and through observation, it was noted that the testing of workers for agrochemical exposure was the only procedure in place to ascertain whether those workers complied with wearing their personal protective equipment (PPE) (I1; I4; I5 Interviews 1999). Furthermore, the agrochemical part of most of the Codes of Practices, particularly KFC's, state that women should not hold jobs that handle agrochemicals. This overarching policy was crafted, as explained in my interviews, as a measure to prevent female fertility and reproduction from being exposed to hazardous agrochemicals (I1; I2; I4; I5; P1 Interviews 1999). This fetal protection policy (FPP) measure did not, however, consider male fertility and reproduction. Although this policy was interpreted as benign and one which, quite rightly, avoids risk, the policy can have discriminatory aspects. As jobs that handle agrochemicals are often more remunerative than other less hazardous jobs (I1 Interviews 1999), men are at an advantage to earn more than women. Furthermore, this type of policy seems

not to take into consideration the effects of agrochemicals on men's fertility and reproduction. Thus, this FPP's adverse effect is two-fold.

The Role of Health Care Provision

This study found that the large growers provide health facilities for their workers, and in some places facilities offer services and treatment that surpass what is available locally. At least one company provides, for instance, screening, ante natal care, birthing facilities, and counseling (including HIV) as well as consultation and medicine. Some of their well established screening services, however, place more of an emphasis on controlling for food safety within the supply chain instead of aiming to ensure the efficacy of worker health and safety initiatives and job security (I1; I4 Interviews 1999).⁷⁴ Therefore, mandatory testing for contagious diseases (e.g. cholera, dysentery) were conducted to ensure that transmission would not occur to the consumer (I1; I2; I4; I5 Interviews 1999). No evidence of OSH training for medical staff and no evidence of occupational disease and accident monitoring systems or reporting were in place (I1; I4; I5 Interviews 1999). Nevertheless, there was a stated awareness or suspicion of OSH-related maladies by certain staff members on one large farm who noted the occurrence of a constellation of signs and symptoms corresponding to high peak production patterns.⁷⁵ Yet no mechanisms were in place for OSH related staff to investigate these patterns further.

⁷⁴ One visit to a large horticulture producer revealed that samples were taken from workers to monitor infectious diseases and pesticide exposure in order to control for possible food safety problems arising at the other end of the supply chain in developed countries. It was also noted by a few different sources that workers who tested positive twice were sacked.

⁷⁵ Nasal discharge, oral drool, small pupils, chest tightness, wheezing, breath shortness, sweating, abdominal cramps, & diarrhea were noted signs and symptoms.

Although industry codes and standards have influenced larger farms to develop health facilities for workers, the provision of health care addresses meeting food safety or traceability guidelines over UDHR and ILO principles involving worker health and well-being. For example, workers are tested for those hazards and illnesses that can be passed on to consumers but not others which remain in Kenya. This has meant that the actual services available to workers on these larger farms result in medical checks that focus on agrochemical exposure (ultimately of the consumer) for fruit and vegetable but not floriculture workers. And 'reproductive health' services are interpreted to mean pregnancy testing of prospective workers to screen out those who are already pregnant and, therefore, eligible for maternity benefits if employed. Kenya has yet to ratify the Occupational Health Services Convention, 1985 (No. 161) and its Recommendation No. 171 that stress that occupational health services be employed to maintain and healthy and safe working population.

Housing

A large number of the cut flower workforce are migrants from other parts of Kenya and are, therefore, in need of housing and other amenities, which places pressure on the resources of the rural towns where many workers live. In particular, Naivasha has witnessed tremendous growth within the past five years. The influx of over 25,000 wage employees to the area has incited growth in the town slums and a subsequent squeeze on public services such as housing, sewage, water availability and sanitation (I1; D1 Interviews 1999). There are also social repercussions to rapid development including the escalation of prostitution, crime and alcohol abuse (D1). Some growers

provide housing on their farms, and this is in line with principles encouraged by ethical trade and other approaches to social responsibility. Tied housing of this kind, was noted in most of my interviews, as a supported principle by NGOs, trades unions and others in the ethical trade movement even though it has been criticized as paternalistic for placing workers under such company control (I1; C3; C4; D1; P1 Interviews 1999). For workers without access to or need of tied housing, employers are required under the KFC code of practice (and national Labor law) to provide a housing allowance. Some interviewees noted that this allowance, however, often sets the standard for rents in the vicinity of the production unit regardless of the amenities provided (I4; C3; C4 Interviews 1999). Furthermore, there may be a tendency for workers to try to save the allowance by grouping together to live in undesirably small accommodation with consequent detrimental health outcomes (C3; C4 Interviews 1999). Finally, health and safety codes among the growers do not apply to on-site housing.

Gender

The particularly significant aspect about the cut flower sector is that it depends highly on the employment of women, who constitute approximately 75% of the work force in the labor-intensive tasks of planting, grading, and harvesting (I1; I2 1999). While the cut flower industry has increased the quantity of female waged employment, there is growing concern that women's economic participation is not being matched by the qualitative improvements in their working environment. Although it has been demonstrated that export horticulture can reduce poverty (McCulloch and Ota 2002),

other researchers assert that employment is often segregated into 'female' sectors and occupations that attract fewer rewards, higher turnover patterns, less job security and lower wages (Standing 1999; Barrientos et al 1999; ILO 1998). Furthermore, several of my interviewees noted that the seasonality of the industry can also lead women vulnerable to dismissal during slack periods and excessively long working days during peak periods. It has yet to be determined whether employment in this sector upgrades women's capabilities and contributes to the longer-term integration into productive economic activity (Barrientos et al 1999). But other studies have shown (Kabeer 2000; Pearson 1998) employment in labor intensive sectors provide women with greater opportunities for long-term security. Moreover, women's income is more likely than men's to be spent on food, healthcare and children's education and thus has a strong link with human development (Barrett & Browne 1996; Opena & Kyomo 1990). The strengths in the 'feminization' (Standing 1999) of the labor force depend on a mixture of economic, demographic, cultural and labor market forces.

Women face a variety of employment problems in the Kenyan cut flower sector (C1; C2 Interviews 1999). This mainly has to do with being concentrated in the more vulnerable forms of work which are considered to be less skilled and, therefore, at a lower wage rate, and provide a supplemental form of income rather than an income central to household well-being (Standing 1999; Barrientos 2000). Even when women are in jobs which take on the similar levels of tasks as those jobs done by men, women are paid less and not afforded the same employment benefited (Barrientos et al 1999).

Maternity leave, in accordance with Kenyan law, is mentioned in both the KFC and FPEAK codes. Pregnancy testing, however, remains a method with which to vet prospective employees for some of the farms (I1; I4 Interviews 1999). There is no mention of the need for a policy involving sexual harassment or other forms of abuse in any industry code or in Kenyan law.

HIV/AIDS

The Human Immunodeficiency Virus (HIV) which causes AIDS is one of the most severe global epidemics of modern time. Unlike previous epidemics, which affected people of all age groups, AIDS focuses its attention on the most productive groups, leaving the aged and children behind. Since it affects this group, reduced earnings subsequently occur as a result of the illness, along with increasing care demands, higher expenditures on health care and premature deaths. Early results of the on-going estimates by the World Bank suggest that the macroeconomic impact of HIV/AIDS may be significant enough to reduce the growth of national income by up to a third in countries with adult prevalence rates of 10 percent (Biswanger & Ayers 1999).

The public and non-profit sectors have, over the years, responded by mobilizing human and financial resources to combat the disease. In certain parts of the globe and within certain industries, the private sector is becoming aware of the direct impact HIV/AIDS is having on its workforce, production systems, markets and the local communities in which it operates (Financial Times 2003; Lim & Cameron 2003;

Rugalema 1999). Higher morbidity and mortality as a result from HIV/AIDS means that no sector, but particularly the Kenyan horticulture sector, of the economy is immune to the impacts of this disease.

In Kenya, the estimated life expectancy with and without AIDS by 2010 is 43.7 years and 69.2 years, respectively (World Population Report 1998). At Kenya's commercial plantations, medical costs were 300 to 400 per cent higher than projected, as a result of AIDS (Rugalema 1999). Comparative studies of East African businesses have shown that absenteeism accounts for between 25-54 percent of costs (Rugalema 1999). This increase in absenteeism is a result of employees becoming ill due to HIV and its associated opportunistic infections, the demands of caring for family members who are ill, and the need to attend funerals.

The level of impact varies according to the flexibility of production systems. But it also depends on the real level of absenteeism determined by other factors. These factors usually involve increased costs that are also implicit in morbidity and mortality rates from HIV/AIDS. Such costs can include: 1) recruitment and training; 2) insurance cover and pensions; 3) health management; and, 4) funeral costs. For the low-skilled casual workforce of the Kenyan cut-flower industry, one large grower usually covered training and health costs but not insurance or funeral costs (I1; I3; I4 Interviews 1999). One company provided information on a study done (Rugalema 1999) that showed that their medical expenditure as a result of AIDS rose to over 400 percent above that projected expenditure without AIDS. Subsequently, concerns were raised by staff from several farms that these increasing costs may ultimately affect the level of benefits businesses are able to provide (I1; I3; I4 Interviews 1999).

Furthermore, health care is not just a cost but is an investment that prevents or limits sickness/absenteeism and controlling workforce health risks. This is particularly relevant in countries where public health care provision is limited and private health care expensive.

Through interviews with industry representatives including large farms and their clinic staff, HIV/AIDS was noted as a significant health concern for horticulture employees (I1; I2; I3; I4 Interviews 1999). Of the large horticulture farms that were interviewed HIV testing was provided but only one provided some form of counseling (I1; I3; I4 Interviews 1999). Through observation at one company clinic, HIV testing was done on a worker. The purpose of the test was not made known to her at the time. As of 1999, there was no company or KFC policy with regard to protecting HIV positive workers from discrimination or mechanisms in place to ensure they received disability services or long-term care for workers with AIDS. Since it is standard procedure for most of the horticulture workers to be on temporary or seasonal contracts, companies employ workers principally on the basis that they are well enough to do their job. Other actors, including the government could sponsor insurance and health schemes, as part of their remit in promoting health rights. Yet Kenya's health services are not equipped to treat HIV/AIDS patients, neither are its insurance schemes in accommodating these patients' disability and long-term needs.

In terms of education, one company, however, was active in promoting HIV/AIDS prevention education and its clinic provided condoms. This clinic was also involved with an international reproductive health organization in promoting (and testing) the use of the female condom as a STD-preventive device. Even though one large grower

provides counseling, the code does not provide guidance nor does it value this work in its promotion (I1; I5 Interviews 1999), and it is quite possible for KFC members to dismiss workers for being HIV positive without affecting their certification.

* * * * *

Ethical sourcing codes of conduct can provide an important basis for establishing minimum OSH and well-being conditions for workers, but there also needs to be greater harmonization and consistency – ethical symmetry. Furthermore, there remain key issues concerning participation, inclusion, and remit. The stakeholder analysis applied to the Kenyan horticulture sector has shown the variety and variability of the codes that exist and stakeholder involvement. This chapter covered the scope and priorities of instilling worker health rights generally and specifically within Kenyan floriculture. Models in which to view ethical governance and worker health comprehensiveness were provided in each of these chapters.

The extent to which codes, even when combined with national legislation and international frameworks, address and do not address worker health conditions and issues generally and across the Kenyan floriculture sector, in particular is explored in the following sub-chapter.

7.8 Governing Worker Health in Kenyan Floriculture

Codes of conduct for the Kenyan floriculture sector are numerous and represent an awareness of a need to promote worker health and welfare within the industry. Yet the differences between the codes, their omissions and the lack of distinction or connection to proper mechanisms can result in low levels of compliance and understanding of the key requirements and needs to establish sound worker health and well-being policies (I - Interviews & Observation 2001).

Although many of these codes include adherence to both international conventions and national legislation as a condition of compliance, Kenya has significant limitations in its legislation and participation in promoting health and well-being for workers. Subsequently, the role of industry standards and international labor conventions can play an important role in highlighting the need to develop national and local instruments and actors with which to promote these standards.

Using the governance model discussed above, the Kenyan floriculture sector was assessed according to worker health and safety standards. International, industry and national instruments were examined according to their 1) mechanisms for application and enforcement; and 2) actor participation and responsibility.

Research Findings

Segment A

ILO Conventions

As noted above, the ILO core Conventions cover OSH and other health and well-being issues for workers (see Appendix B). These conventions are the key principles behind the standards illustrated in Segment A of the governance model, but are highlighted and specified further here to examine the Kenyan floriculture sector. These ILO Conventions provide some basis for commonality across the plethora of codes that exist. However, the caveats in using these Conventions, as described above, also apply in this case study:

- ILO Conventions require ratification by national governments to be enforceable. Kenya has not yet ratified most relevant conventions (see Appendix H) except for the Labor Inspection (Agriculture) Convention 1969 (No. 129), and its accompanying Recommendation (No. 133). Article 1 (1) of the Convention states that the term “agricultural undertaking” includes horticulture and means “undertakings and parts of undertakings engaged in cultivation ... including horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agriculture activity.”⁷⁶

⁷⁶ Report VI (1) Safety & health in Agriculture; 88th Session, 30 May – 15 June 2000, ILO.

- ILO conventions are voluntary agreements with no direct mechanism of enforcement. In the case of Kenya, workers' rights may be challenged in national courts but their enforcement has relied more on voluntary codes and from campaigners attacking the industry rather than the Kenyan government (Business Respect 2003). Floriculture work tends to be impermanent and flexible yet the Conventions are based on the notion that employment is full time and permanent. Thus, their coverage of temporary employment is limited in terms of social security and other employment-related benefits including maternity leave (I1 Interviews 1999). Specific ILO OSH Conventions stipulate, however, that temporary and seasonal work is entitled to the same provisions as permanent workers.
- ILO Conventions tend to rely on employees being represented in a collective bargaining agreement. If employed on a permanent basis, workers have better access to collective bargaining since they will be well covered by codes based on these conventions. However, permanent employees are a small percentage of total employment in the horticultural sector and they tend to be men (I1; I2 Interviews 1999). To affect the health and well-being conditions of more insecure workers, codes of conduct need to extend beyond the core ILO Conventions to include relevant health and well-being issues other than OSH.
- ILO Conventions usually illustrate the highest standards in which to adhere. This can be costly and emerging industries, such as African floriculture, have to compete in an increasingly saturated global market and often find it difficult to maintain their competitiveness if they are compelled to bare the brunt of the costs

in meeting these standards. Larger holders, such as the ones noted in Kenyan floriculture, are at an advantage over the medium and smallholders in being able to raise the level of OSH and worker health standards (I1; I2; P2 Interviews 1999).

7.9 International Codes of Conduct

At the level of Segment A of the governance model, are also the transnational codes including the ETI and SA 8000 base codes (see Appendices D & E). These ethical codes, which have been developed through multi-stakeholder consensus tend to be most comprehensive in their coverage of core UN and ILO conventions relating to minimum labor standards. Many company codes, especially in the UK food retail sector, are based mainly on the ETI base code, and (with some variability) include its main provisions. These codes are good at covering the scope or key issues facing workers while they are in employment, including OSH and worker welfare. However, they are less effective at covering temporary or insecure workers. Furthermore, they remain general, non-binding standards that do not outline specific duties or supply practical advice in crafting detailed codes of practice. Both sets of codes do require 'multi-stakeholder' participation that means the inclusion of civil society actors in the auditing and review of conditions. 'Multi-stakeholder' does not mean, however, including government bodies or institutional actors in the assessment. In any event, neither type of stakeholder had yet to be included in an SA8000 or ETI inspection at the time of this research. Furthermore, these codes are not enforced by national legislation.

Industry/Sectoral Codes

The sectoral codes examined are more varied, with some not covering core ILO conventions, and others extending beyond these conventions to include some specific employment related issues. Few codes in this study related to health and well-being issues beyond the workplace, such as OSH education, health services and benefits.

MPS (see Stakeholder Analysis) is primarily an environmental standard, into which a social provision has more recently been added. Its 'Social Chapter' is based on the Universal Declaration of Human Rights and ILO Conventions. Because MPS is based on the ILO Conventions, growers who adopt the full Social Chapter address Segment A of the Governance Model including OSH and worker welfare.⁷⁷ Yet, OSH is often construed to mean compliance with the Food Safety Act of 1990 that focuses on the health of the consumer over the worker and this interpretation has implication for the provision of services for workers (Interviews 1999).

As a guiding framework, COLEACP provides the most coverage and makes reference to compliance with all the core ILO Conventions, and covers specific employment issues including safety and hygiene, work hours, contracts and discrimination. Yet, there is no mention or guidance in developing a monitoring and verification process that includes a range of actors.

Both FPEAK and KFC codes stipulate compliance with the content of various ILO Conventions as well as adherence to national legislation. However, these codes, as

⁷⁷ MPS is an instrument of the Dutch flower auction rather than of a specific buyer.

well, are not enforced by national legislation (I1; I2 Interviews 1999). The FPEAK code has involved the participation of several technical organizations, but there has been very little input from civil society (I; C Interviews 1999). Similarly, while the KFC code was developed in consultation with representatives from three of the large flower farms, the Safe Use Project and ICIPE, there has been relatively minimal civil society participation on social issues (I; G; C Interviews 1999).⁷⁸ In both cases, the main agricultural trade union (KPAWU) is aware of both codes, but there has been minimal involvement of government or civil society (G; C Interviews 1999).⁷⁹

National Legislation

Where national legislation is good, this can supplement codes with more extensive coverage and specific clauses. Relevant legislation can address principles found in Segment A, but also industry related issues and detail in Segment B of the model such as agrochemical restrictions and control details. Moreover, the broader legal and social framework operating in a country can influence the position of health and well-being within different populations including the labor force. Hence the national context in which standards are applied is an important factor influencing worker health and well-being, and codes cannot be analyzed in isolation from this.

⁷⁸ This included the Pesticide Control Board of Kenya, Kenya Agricultural Research Institute, COLEACP, and GTZ.

⁷⁹ However, this may be changing as KFC is now participating in a consortium of NGOs and exporter associations in Africa as part of the COLEACP harmonization process. Similarly, MPS has recently made an effort to tailor the Social Chapter to local conditions, consulting with a range of stakeholders including several regional trade unions.

Although Kenyan law provides more detail into the application of standards such as OSH, national insurance, inspections of agricultural working conditions and maternity leave, its *scope* is limited in its coverage of all the relevant ILO Conventions. This is demonstrated in the country's non-ratification status of most of these Conventions. Moreover, many of the employment laws do not cover temporary or insecure workers. Thus, in a national context such as Kenya, where legislation is weak, the standards embodied in codes of conduct become particularly important vehicles for ensuring and improving upon the quality of worker's employment.

7.10 Creating an Ethical Space in Kenyan Floriculture and Beyond:

Addressing the Asymmetries

As discussed above, the ethical space involving workers' rights is limited by the scale of participation, inclusion and remit. For the Kenyan floriculture sector, as the stakeholder analysis reveals, there remains a lack of symmetrical *participation* and *remit* amongst all the stakeholders. Supermarkets, retailers, importers, some Western-based NGOs and consumer groups have been instrumental in instigating codes for the Kenyan horticultural industry more than other rights related or locally based stakeholders (I; C - Interviews 1999 & Observations). As a result, the *inclusion* of key rights principles have been ignored or skewed by policies based on traceability – encompassing concerns interpreted to benefit consumer not worker health. And these imbalanced policies have been ratified and adopted by Kenyan horticulture producers and exporters reflecting a global trend throughout the agricultural industries (Lopez-

Valcarcel 2001; Kaferstein et al 1997). Traceability policies⁸⁰, in turn, have impelled export companies to adopt mandatory testing procedures for both their products and their workers (I - Interviews 1999; observations). Subsequently, company health services have been designed according to the objectives of these traceability guidelines (I - Interviews 1999; observations). Although these procedures can cater to some of the health needs of the workers (e.g. agrochemical exposure and gastrointestinal diseases) yet their intent is to treat the worker more in terms of product safety than as a complete human being. As a result, the Kenyan horticulture industry has described its health concerns and policies specifically in terms of what is ingested by the consumer (e.g. beans, fruit, prepared salad) and does not include those products which are not ingested (e.g. flowers). Thus, traceability procedures often 'forget' to include relevant health testing for the majority of *floriculture* workers (I - Interviews 1999; observations). Furthermore, such procedures also can become discriminatory in that they are used to identify fault principally with the worker over other, and possibly more direct, determinants (I - Interviews 1999; observations).

This research has also found that the same market-driven interpretation of health has shaped and limited other medical services: pregnancy testing and fetal protection policies (I -- Interviews 1999 & Observations). Pregnancy testing is not being used as a health service that benefits the worker. It is imposed principally for the employer to avoid paying maternity benefits (I - Interviews 1999). Other services may be provided at the on-site clinics, including testing for STDs including HIV/AIDS, but no confidentiality and anti-discriminatory procedures were in place to protect and help those affected (I - Interviews 1999). Furthermore, an overarching fetal protection

⁸⁰ Those management and medical actions discussed above that cater to consumer concerns and health through product and worker testing and risk management.

policy (FPP) was in place for KFC members that required them not to employ females in the more lucrative jobs of agrochemical handling and spraying. Although this may initially be regarded as an ethical measure, no consideration is being made to the agrochemical effects upon male health and fertility. Moreover, this protection policy prevents women from obtaining the more lucrative positions within the sector.

Ethical space can also be envisaged in ergonomic terms. In interviews and observations, issues involving ergonomics were raised. Fordist production models⁸¹ such as the ones used in the horticulture industry in Kenya inevitably raise ergonomic concerns over the way labor is divided into specific, repetitive and efficient tasks.

Summary

This summary of the sectoral codes applied to the Kenyan horticulture sector has shown the variety and variability of the codes that exist. All the sectoral codes discussed above include OSH provision as an extension of existing management, production and environmental standards.

Even though Kenyan floriculture codes provide an important basis for establishing minimum OSH and well-being conditions of workers, there are some limitations. Firstly, there needs to be greater harmonization and consistency of the plethora of codes facing Kenyan floriculture producers, particularly when ethical codes are considered in the context of the many management, production and environmental

⁸¹ Fordist production models involve streamlined assembly processes in which jobs (and workers) are delegated specific often narrowly defined repetitive tasks.

standards they are also required to meet. Secondly, there remain key issues concerning scope (ethical symmetry) and sustainable governance. These key issues influence the extent to which codes, even when combined with national legislation, can address worker health conditions across the sector. Although requiring compliance with national legislation can provide codes with an important additional strength in terms of their relevance on the ground and their scope across the sector, there is often variability between them in terms of an acceptable level of standard and in their strength of application.

Furthermore, the stakeholder analysis revealed that participation in the formulation and application of codes to be imbalanced, especially in terms of worker involvement. There was also low capacity or inclusion by some government and civil society in the design and application of these codes. Since the degree of stakeholder participation largely depends on the number and capacity of stakeholders in existence at a local level, there was little or no means for government and civil society involvement in the monitoring and verification of codes that articulate workers' health and well-being in Kenyan floriculture.

PART FIVE – Towards A New Framework in Which to Instill Worker Health Rights

In this thesis, key issues have been mapped and discussed that address how health and well-being standards within the globalized world of work⁸² are governed and interpreted. Principles and standards that are governed according to levels of stakeholder *participation*, *inclusion* of core universal principles, and fulfilling of obligations (*remit*).⁸³ For public health, this study has shown that interpretations of worker health more frequently describe *consumer* health concerns than they describe or address *producer* needs and concerns. Furthermore, from a human rights perspective, worker health is often circumscribed by health and safety approaches according to systems of production over the quality of existence for the worker. Thus, a framework that aims to level both of these imbalances –according to ethical governance and worker health rights -- would be useful in analyzing current ethical sourcing schemes that attempt to implement and maintain decent working standards.

For this thesis such a framework (see Figure 3 – 8.0) has been developed to analyze ethical sourcing initiatives addressing worker health.

⁸² Work that often involves *producing* for a consumer base that is significantly set apart from the points of production by thousands of miles.

⁸³ See Graphical Presentation of Research Study.

8. Fulfilling Worker Health Standards

Before the health rights framework is presented, a background of each segment is explained. Public health standards for workers are detailed in terms of a) risk; b) services and education; and c) well-being.

8.1 Managing Risk

If priority is to be given, any worker health and well-being approach would first have to address the challenges involved in reducing and managing risk within the working environment. And usually it is the first perception of the need for action on the work environment to protect workers' health. Risk management has been practiced mainly in the region by the provision of personal protective equipment (PPE), which in fact should be the last line of defense. More effective risk control is obtained by putting a greater emphasis on the work environment (engineering) and work organization (administration) controls. OSH experts state that there is an underpinning need to identify priority areas for risk management and promote safe technologies and improved work procedures for effecting risk management. This could be promoted as part of the core business of planning and implementation production investments, and not simply addressed by inspection after the equipment and work processes have already been designed.

Another hindrance to promoting preventive risk management is when concern for workers' health does exist, but it usually is limited to medical interventions.

Moreover, health services (e.g. on-site clinics) often do not include comprehensive

occupational hygiene expertise and surveillance. Often in cases when an occupational health understanding is applied, it is left to the remit of the clinic or medical workers to apply a “preventive” approach which relies solely on medical surveillance – including biological monitoring, early detection, or diagnosis of occupational diseases. These may be indispensable adjuncts to primary prevention, but can never replace it since they can only confirm exposure or disease. “Early” is already too late for the detection of such irreversible impairment as occupational hearing loss, silicosis, and occupational cancer.

In the history of occupational health, however, there has been a shift from a purely medical approach to the understanding that prevention should start at the workplace, and not the clinic, in order to eliminate or control hazards before health impairment occurs. This approach, known as occupational hygiene, changes the focus from the “sick worker” to the “sick environment.” This shift, however, has not yet taken place in many parts of the world. In some countries, the only officially recognized occupational health professions are occupational medicine and safety engineering. This has often been reflected in limited or inadequate attention to the field of primary health hazard prevention in the workplace. For example, experts can install state of the art ventilation system, but no consideration may be made for who and how it shall be maintained and routinely checked.

Thus, another problem in the perception of occupational health, even when applied to the work environment, is that it is highly technical and thus a “science”. Occupational experts are seen by some as those who “measure” with the implication that what is done with the results is outside their scope of action and that the interpretation of

obtained data should be left to the bio-medical personnel and the control measures to the safety engineers. Furthermore, lack of understanding of the professional ethics and commitment involved in the practice of occupational hygiene has generated suspicion among workers that occupational hygienists may be biased towards the employers and vice versa.

In terms of scope, particular OSH risks can be organized into specific categories according to their health impacts. At a 1997 WHO/ILO meeting on the health impact of occupational risks major occupational exposures at a global level were identified. Table 3 – 8.1 illustrates these categories but has been modified to address specifically the agricultural sector (Loewenson 1999).

Table 3 – 8.1: Major Categories of Occupational Exposure

Major Category of Risk	Specific Important Risks
Chemical	Agrochemical dusts, liquids & other agents
Biological	Infectious/non infectious agents
Physical	Heat, Cold, Wet, Noise
Ergonomic/Physiological	Heavy lifting; repetitive bending; long-term standing
Safety/Mechanical	Sharp tools, equipment; traffic
Psychosocial	Harassment; violence

The management of each category of risk listed above can be further defined and applied according to systems (administration) and procedures (engineering) that conduct:

- Hazard identification
- Workforce OSH status surveillance
- Safety measures
- Risk measurement and assessment
- Control measures
- Record Keeping

8.2 Implementing Services and Education

It is recognized generally that workers require OSH-related training and information to enable them to perform their work safely, but often the 'H' is missing from OSH training and information given to workers. Awareness raising, training and implementing services to capture both OSH and other health and well-being needs of workers has a few different effects. A comprehensive health service can supplement the narrow scope of service delivery (e.g. biological monitoring for traceability or agrochemical exposure) with a worker-centered (instead of consumer-centered) treatment program. Furthermore, OSH training of health care providers could support occupational health monitoring of workers with the aim to prevent and treat any occupationally linked accidents and diseases. Awareness raising and education of workers that aim to engage them into participating in their own prevention of occupational and other health and well-being problems is also instrumental. Aspects of an OSH/Health services and education program should include:

- Services that can be linked to other production sites

- Services integrated into national health systems for primary health care (PHC)
- Regular comprehensive medical exams
- Clinic staff training for signs and symptoms of OSH illness
- Service coordination with trades unions and management teams
- Specific health/OSH awareness raising, counseling and education for workers
- Worker training in outreach health awareness
- Gender sensitive care/Reproductive health care
- First aid and emergency treatment and training

The predominance of illiterate, casual and migrant workers in many economic sectors also means that any training or education should take into account ways to adapt to written, cultural, language and other relevant differences or barriers that impede workers from understanding the information and messages.

8.3 Defining and Addressing Worker Well-being

It is this segment – the well-being of the worker – that is influenced most by the social, economic, cultural, and specific health needs and reasons of the context in which the production is in. Awareness and knowledge of the problems that hinder and affect worker welfare may be known but national and business priorities/values/resources may differ and will more likely influence the perception of importance of workers' health within the context of these priorities.

The priority of contending with poor, usually government, welfare provision or inadequate services and treatment of key health problems (i.e. HIV/AIDS, reproductive health, TB, Malaria), by government or business, may easily be placed on the back burner. This is particularly relevant when there is a perception that there are more pressing issues which threaten working conditions and commercial priorities or when political will and commitment, in the form of remit and resources, is absent. Nevertheless, such a result often means that the consequences for not addressing worker health and well-being needs are that they are seriously underestimated and not seen to be undermining the OSH and production realms. Thus, specific policies and programs adopted by both business and government that address these overarching and relevant worker health and well-being needs are a key step towards recognizing the need to address this final dimension to creating a health rights framework for workers. Such policies and programs should include but not necessarily be limited to: insurance schemes, workers' compensation, maternity benefits, non-discrimination, and rules and procedures on harassment and complaints.

8.4 Governing Human Rights & Democracy

Stakeholders include both the employers adopting the codes, national civil society and government actors as well as and the workers to whom the codes apply. If worker health is to be addressed comprehensively reflecting the needs of each tier of health needs (i.e. risk, services and education, and well-being), partnership building and coordination is necessary in order to start fulfilling this goal. As explained above, the business sector is a crucial actor in facilitating the achievement of this goal but it is

not entirely – or solely – responsible especially for activities that extend beyond the remit of managing OSH risk. Civil society has a part to play in organizing those workers who are the most under represented and vulnerable so that they can start to take on an active part in meeting and shaping the kinds of policies that aim to address their own health needs. Moreover, government’s role is critical in legitimizing rights-based standards in terms of worker friendly laws and codes, regulation and inspection, and supporting OSH and other relevant health services that meet workers and their families needs.

8.5 Ethical Space – Rights & Duties

Fostering a well-aligned ethical space so that health codes of practice reflect worker health needs for the sake of their own lives and not just for the sake of the consumer is an essential consideration. Ethical labor initiatives also need to apply to ‘flexible’ and informal workers including seasonal, temporary, casual or part time workers, subcontractors and homeworkers. Ethical asymmetries created when too much focus is placed on how suppliers treat their workers in lieu of how buyers treat their suppliers can create problems between finding realistic and sustainable solutions that make business sense and foster decent working conditions. In a larger context, the impact and scope of ethical sourcing will be curtailed if ethical initiatives are driven by a single or few stakeholders and from the top down. The challenge is for the business, local civil society and government sectors to integrate their own ethical modus operandi into a coordinated effort that stimulates and facilitates more widespread change, beyond the ethical islands of ‘compliance’ driven production.

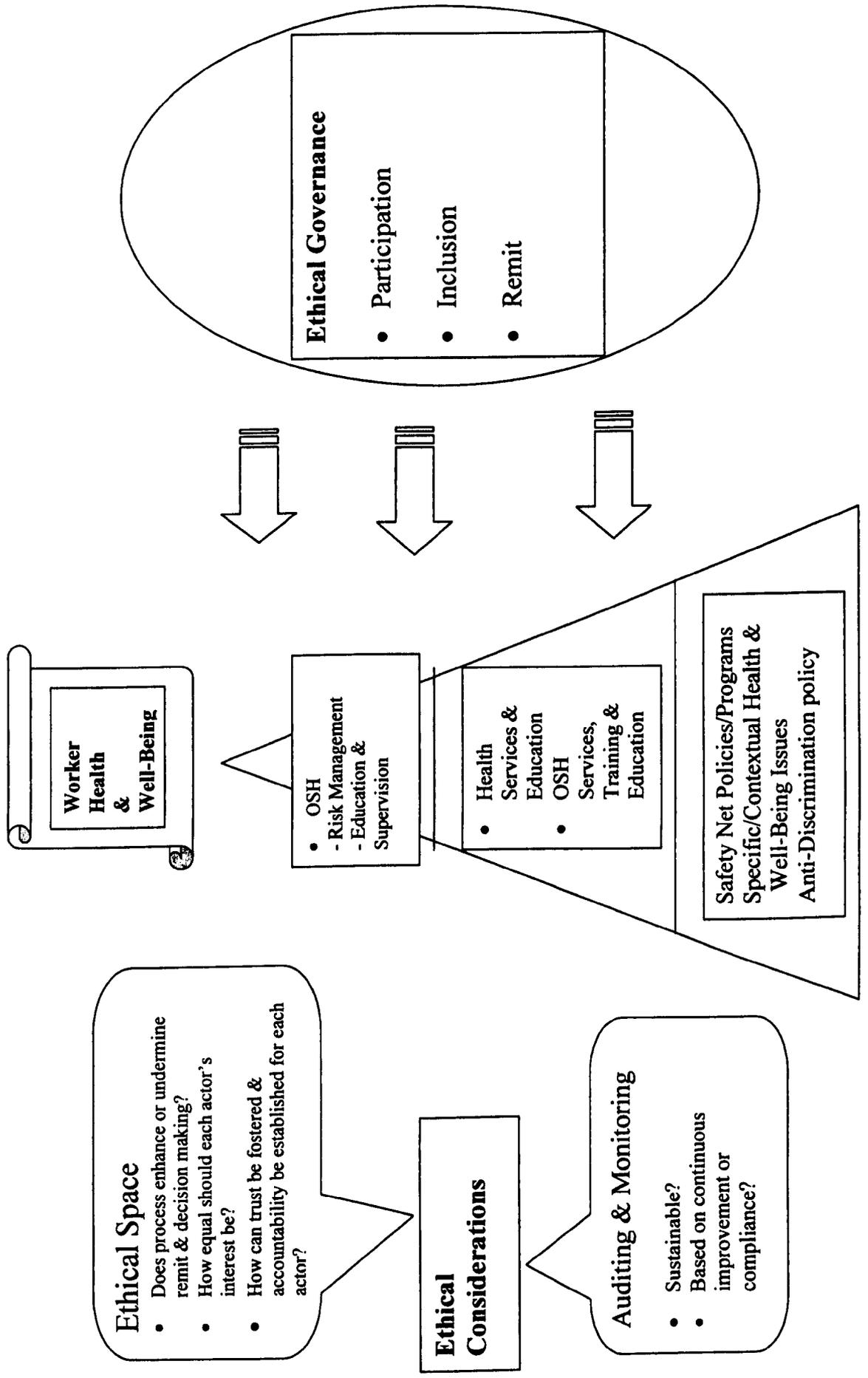
8.6 Auditing – Codes & Measurement

Methods of checking and verification are diverse, sometimes perverse, sometimes burdensome, and always costly.... Trust releases us from the need for checking.

Michael Power

Formal written codes themselves are only one aspect of ethical sourcing and can be limiting if they do not encompass a full range of worker rights. Moreover, even if the content of codes includes principles set out by the UDHR and ILO Conventions, they will remain relatively meaningless if this priority is not implemented in practice. Implementation relates both to the methods of auditing, monitoring and verification adopted, and the extent of a variety of stakeholder participation. Audits tend to insist on immediate, strict compliance, which can result in suppliers becoming dishonest by, for instance, presenting false records or respond with detrimental regressive policy actions. Furthermore, an over reliance of audits can divert resources that are better suited for the proper management of the business that aims for continuous improvement of conditions. Instead, a process in which trust is fostered and one that encourages continuous improvement is what can facilitate honesty and progress. Auditing and imbalances of power in the supply chain can erode trust between suppliers and purchasers if expectations of ‘compliance’ are not aligned with the willingness to work together on implementing new ideas that require the fulfilling of remits from a variety of stakeholders. Furthermore, an over-reliance of codes can result in reduced pressure on governments for legislative changes. Finally, audits more easily cover simple organized production sites instead of more complex supply arrangements including smallholders, homeworkers and other ‘flexible’ workers.

Figure 3 – 8.0: Towards a Health Rights Framework for Workers



CONCLUSION

This study has highlighted the benefits, opportunities and limitations involved in promoting an ethical sourcing agenda for worker health within global supply chains. Yet, if the key principles outlined in human rights declarations, conventions and codes of conduct are to have a sustainable, comprehensive and wide-ranging impact, an *ethic* in promoting such standards needs to be instilled among all actors, especially local, including business, civil society, and government. This ethic has been explained as comprising participation, inclusion, and remit by all sectors of society so that an ethical space can accommodate those workers who are presently left offshore the ethical 'islands of excellence'. Furthermore, the responsibility of promoting worker health extends beyond the production site and, therefore, requires other actors to become involved in addressing what often are complex problems and issues that involve several inputs and that one actor alone cannot address effectively.

The function remains for a nation to provide this ethical form of governance, upwards toward international agencies and commerce, and downwards towards regional and other sub-national agencies of co-ordination and regulation. Opportunities in understanding how the state remains an essential institution in promoting these health rights is a critical task and one that has and should be explored in particular contexts. Additionally, approaches need to be explored in how to strike the right balance of stakeholder engagement that 1) does not reduce the responsibility of the state; 2) instills core human rights principles for all and not just an enclave of workers; and 3) offers a sustainable plan in which cost and responsibility are shared. These approaches should include:

- Supporting workers' rights and labor standards through equal access to labor laws. Upholding the right to organize and collective bargaining, including workers within *informal* economies. Efforts to broaden labor unions' scope of activity to include informal sector workers and innovative ways in which to create new alliances.
- Mechanisms for business associations to share good practice and provide peer pressure. The effective transfer of good management practices vertically throughout a business production/supply chain or horizontally within a sector has a limited yet instrumental effect. It is this section of global capital that increasingly has responsibilities particularly since some transnational enterprises are more powerful and wealthier than the countries within which they operate. However, there are numerous other enterprises, transnational and those operating in the middle of the supply chain, which also have responsibilities to ensure labor rights that include their investment and purchasing practices as well as their directly managed operations.
- Technical assistance and capacity-building in which specialist local intermediary organizations can provide coordinated occupational and worker health advice and support to an array of actors including business and local government. Programs that can set, implement and monitor effective OSH standards and other health issues can enable developing economies to address key health concerns.
- Civil society organizations that can not only encourage corporate responsibility locally, but find ways to coordinate efforts that address OSH and other worker

health concerns. Moreover, it is important to engage with trades unions and non-governmental organizations that are committed to broadening their interests' to include workers and populations typically outside of their arenas (e.g. women, minorities, informal workers, migrants).

- **Developing multi-stakeholder dialogues, at local, national and international levels, which aim to find solutions for sectoral or cross-cutting issues involving OSH and health matters affecting workers. Strategies engaging the business, intermediary and civil society sectors can promote the democratization of the ethical sourcing process.**

The outcome of this thesis is the development of a workers' health rights framework, to be developed further within particular contexts involving health and global supply chain initiatives. It is also a rights-based framework in which to instill an ethic while applying these health rights: an ethic that upholds a dynamic, comprehensive and liberal democratic process in promoting worker health and welfare.

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APPENDIX A

Universal Declaration of Human Rights Overview

Articles 23, 24 and 25 cite:

Article 23

- Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

APPENDIX B

ILO Conventions and Recommendations of direct relevance to safety and health in agriculture adopted since 1919

1. Plantations Convention, 1958 (No. 110), and its Recommendation (No. 110)
2. Guarding of Machinery Convention, 1963 (No.119), and its Recommendation (No. 118)
3. Employment Injury Benefits Convention, 1964 (No. 121), and its Recommendation (No. 121) [Schedule I amended in 1980]
4. Maximum weight Convention, 1967 (No. 127), and its Recommendation (No. 128)
5. Labor Inspection (Agriculture) Convention, 1969 (No. 129), and its Recommendation (No. 133)
6. Minimum Age Convention, 1973 (No. 138), and its Recommendation (No. 146)
7. Occupational Cancer Convention, 1974 (No. 139), and its accompanying Recommendation (No. 147)
8. Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), and its Recommendation (No. 156)
9. Occupational Health and Safety Convention, 1981 (No. 155), and its Recommendation (No. 164)
10. Occupational Health Services Convention, 1985 (No. 161), and its Recommendation (No. 171)
11. Safety in Construction Convention, 1988 (No. 167), and its Recommendation (No. 175)
12. Safety and Health in Agriculture, 2001 (No. 184)
13. Chemicals Convention (No.170), and its Recommendation (No. 177)
14. Prevention of Major Industrial Accidents Convention (No. 174), and its Recommendation (No. 181)

APPENDIX C

Other existing ILO Conventions and Recommendations relevant to agriculture adopted since 1919

1. Right of Association (Agriculture) Convention 1921 (no. 11)
2. Workmen's Compensation (Agriculture) Convention 1921 (No. 12) Most of its provisions are incorporated in Convention No. 110.
3. Social Insurance (Agriculture) Recommendations 1921 (No. 17)
4. Migration for Employment Convention (Revised) 1949 (No. 97) and its Recommendation (Revised) No. 86
5. Minimum Wage Fixing Machinery (Agriculture) Convention 1951 (No. 99) and its Recommendation No. 89
6. Maternity Protection Convention (Revised) 1952 (No. 103) and its Recommendation No. 95
7. Protection of Migrant Workers (Underdeveloped Countries) Recommendation 1955 No. 100
8. Tenants and Share-croppers Recommendation 1968 No. 132
9. Medical Care and Sickness Benefits Convention 1969 No. 130 and its Recommendation No. 134
10. Rural Workers Organizations Convention 1975 No. 142 and its Recommendation No. 149
11. Human Resources Development Convention 1975 No. 142 and its Recommendation No. 150
12. Labor Statistics Convention 1985 (No. 160) and its Recommendation No. 170
13. Indigenous and Tribal Peoples Convention 1989 No. 169
14. Promotion of Co-Operatives Recommendation 2002 (No. 193)

APPENDIX D: Overview of the Ethical Trading Initiative

The ETI was launched in recognition of the growing global influence of business, and largely as a response to consumers' demands for business to take proper account of the conditions and environments of all workers involved in the supply chain.

Clare Short -- Former Secretary of State for DfID

In the early 1990's came a new phase of thinking about how the business sector could be engaged and play a role in development and take on socially responsible approaches which benefited the workers and communities linked to its supply chains. By creating a mechanism in the form of voluntary codes of conduct, a company could be guided on how to make its money 'ethically' and be persuaded to understand that the 'win-win' notion does exist in that profit can be made from doing good. During this decade, businesses from a multitude of sectors developed codes of conduct with which to implement and be monitored and verified by as many different 'auditing' bodies and experts. Yet a danger was developing in that an array of different codes were emerging, along with a confusing range of labels, types of auditors, and operating monitoring systems and this whole area could deteriorate in terms of effectiveness.

As a response to this danger, some key rights campaigners and other concerned citizens in the United Kingdom established the Ethical Trading Initiative (ETI) in 1998. The ETI's strategy was to address the concern that the plethora of different initiatives this surge of creative energy, arising from the plethora of different initiatives, may be unnecessarily dispersed and wasted through a fragmentation of efforts and outputs.

The ETI's premise is that business, especially globalized, plays an integral role in the development process of an increasing proportion of countries and communities in the developing world. The working conditions of people employed by suppliers of companies selling products in European and other wealthier markets is therefore a factor in developing standards overall in labor markets in developing countries, as well as for the particular people directly involved. The ETI's aim of positively influencing these working conditions in the context of continued competitiveness of the suppliers and companies involved can therefore benefit the enormous labor pool within these supply chains, and others indirectly.

Therefore, the Ethical Trading Initiative's role is to identify and promote good practice in the implementation of codes of labor practice, including monitoring and independent verification of the observance of code provisions. The process by which it undertakes to achieve this aim is through a multi-stakeholder approach consisting of international trades unions, NGOs and companies and their respective partners and/or associates in the regions from where the products are made.

Helping to overcome the problem of a variation of codes of conduct by establishing a 'Base Code', the ETI business members adopt or integrate this code into their standards. The Base Code has full representation of all core labor standards and the longer range plan is for member businesses, with ETI's multi-stakeholder involvement, to implement effective monitoring procedures in which to assess the efficacy of the application of the Base Code.

APPENDIX D (con't): ETHICAL TRADING BASE CODE

(For a more detailed version of the Base Code, refer to www.ethicaltrade.org)

- Employment is freely chosen
- Freedom of association and the right to collective bargaining are respected
- Working conditions are safe and hygienic
- Child labor shall not be used
- Living wages are paid
- Working hours are not excessive
- No discrimination is practiced
- Regular employment is provided
- No harsh or inhumane treatment is allowed

APPENDIX E: Social Accountability 8000

Developed by the U.S.-based SAI (Social Accountability International), the SA8000 program serves as a tool in which to improve working conditions globally and is a universal standard based on the ILO conventions, the UDHR, and the United Nations Convention on the Rights of the Child. The standard can be applied in both developing and industrialized countries, as well as public sector organizations. The SA8000 program should be used as a means for engagement of companies, auditors, and interested parties to improve working conditions. Adherence to this standard aims to protect brand image and company reputation, as well as provide a competitive advantage to those production facilities meeting the SA8000 standard, or progressing toward meeting it. This is envisaged as done through the following approaches and procedures set out in the program:

- Compliance and improvements are based on an iterative management model and are certified if deemed 'compliant'
- Independent verification is conducted by accredited auditors
- Stakeholder involvement in the verification process includes workers and trade unions, among other sectors
- Public reporting is posted on the SA8000 (SAI) website
- Companies committed to applying the SA8000 standard are identified and supported

For businesses, the SA8000 guide should assist them in developing management systems, technical assistance and an increasing awareness of the practical issues involved in improving living and working conditions for their employees. Some of the beneficial outcomes from applying this standard could be: improved relationships with contractors and suppliers; more information, and therefore confidence for consumers; better supply chain management; and assurance for the company and its investors.

“Social Accountability”, as defined by SA8000, refers to addressing working conditions and concerns, including: child labor, forced labor, health and safety, freedom of association and collective bargaining, discrimination, disciplinary practices, working hours, compensation, and management systems.

APPENDIX E (con't): SA8000 Standards

Child Labor – no workers under the age of 15; minimum lowered to 14 for countries operating under the ILO Convention 138 developing country exception; remediation of any child to be found working.

Forced Labor – no forced labor, including prison or debt bondage labor; no lodging of deposits or identity papers by employers or outside recruiters.

Health & Safety – provide a safe and healthy work environment; take steps to prevent injuries; regular health and safety worker training; system to detect threats to health and safety; access to bathrooms and potable water.

Freedom of Association & Right to Collective Bargaining – respect the right to form and join trade unions and bargain collectively; where law prohibits these freedoms, facilitate parallel means of association and bargaining.

Discrimination – no discrimination based on race, caste, origin, religion, disability, gender, sexual orientation, union or political affiliation, or age; no sexual harassment.

Discipline – no corporal punishment, mental or physical coercion or verbal abuse.

Working Hours – comply with the applicable law but, in any event, no more than 48 hours per week with at least one day off for every seven day period; voluntary overtime paid at a premium rate and not to exceed 12 hours per week on a regular basis; overtime may be mandatory if part of the collective bargaining agreement.

Compensation – wages paid for a standard work week must meet the legal and industry standards and be sufficient to meet the basic need of workers and their families; no disciplinary deductions.

Management Systems – facilities seeking to gain and maintain certification must go beyond simple compliance to integrate the standard into their management systems and practices.

APPENDIX F

Kenya Flower Council Code of Conduct 1999

The complete KFC code of conduct entails a lengthy code of practice. As ummary, therefore, is provided below:

Aims and Objectives

- To foster the responsible and safe production of cut flowers and related products as defined in the constitution of the Kenya Flower Council with due regard for the interests of the community and the environment.
- To promote a safe working environment for all farm staff.
- To grow flowers in such a manner as to safeguard the natural environment.

Methods of achieving these objectives are contained within this Code of Practice. A monitoring unit and audit team will ensure that members comply with the Code. Such compliance over periods of time will enable a member to ultimately display certification of compliance including use of the Council's logo.

APPENDIX G

International Code of Conduct for the Production of Cut Flowers

Preamble

The following code aims to guarantee that flowers have been produced under socially and environmentally sustainable conditions. The code provides a concise statement of minimum labour, human rights and environmental standards for the international cut-flower industry. Companies should pledge to require their suppliers, contractors and sub-contractors to observe these standards. The code is concise in order to display it in workplaces and in order to avoid any confusion between these basic principles and the application of principles. An independent body, established to provide independent verification of compliance with the code and to assist companies to implement the code, will provide an auditable check-list of practices and conditions that are consistent with the standards set forth in the code. The company pledges to observe the core ILO standards, the universal human rights standards and basic environmental standards, which are the base for this code. The company pledges to make observance of the code a condition of any agreement that it makes with contractors and suppliers and to require them to extend this obligation to their sub-contractors. The company accepts that the implementation of the code is subject to independent verification. The code establishes only minimum standards that must not be used as a ceiling or to discourage collective bargaining. The company shall comply with all national laws and legal regulations. When national law and these criteria address the same issue, that provision which is most stringent applies. The text of the code, which is intended to be posted where workers can see it, shall also include a means by which workers can report failure to comply with the code in a confidential manner.

Code of Conduct

1. FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

The rights of all workers to form and join trade unions and to bargain collectively shall be recognised (ILO Conventions 87 and 98). Workers representatives shall not be subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions. (ILO Convention 135)

2. EQUALITY OF TREATMENT

Workers shall have access to jobs and training on equal terms, irrespective of gender, age, ethnic origin, colour, marital status, sexual orientation, political opinion, religion or social origin (ILO Conventions 100 and 111). Physical harassment or psychological oppression, particularly of women workers, must not be tolerated.

3. LIVING WAGES

Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income. Pay should be in cash, direct to the workers, promptly and in full. Information to wages shall be available to workers in an understandable and detailed form.

4. WORKING HOURS

Hours of work shall comply with applicable law and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off every week. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

5. HEALTH AND SAFETY

A safe and hygienic working environment shall be provided. Companies shall provide free and appropriate protective clothing and equipment, and comply with internationally recognised health and safety standards. (ILO Convention 170)

Workers and their organisations must be consulted, trained and allowed to investigate safety issues. There should be regular monitoring of workers' health and safety.

Companies shall supply drinking water, provide clean toilets and offer showers and washing facilities. Where housing is provided, it should comply at least with the minimum standards for size, ventilation, cooking facilities, water supply and sanitary facilities. (ILO Convention 110, Articles 85-88)

6. PESTICIDES AND CHEMICALS

Every company should assess the risks of the chemicals used and apply measures to prevent any damage to the health of their workers. Companies shall record and reduce pesticide and fertilizer use by adequate techniques and methods. No banned, highly toxic (WHO I) or carcinogenic pesticide and chemical should be used. Safety instructions and re-entry intervals must be strictly observed and monitored. Spraying, handling and storing pesticides and chemicals should be done by specially trained people with suitable equipment. Stores, apparatus and equipment must be clean, safe, handy and conforming to international standards.

7. SECURITY OF EMPLOYMENT

Work which is by its nature not seasonal or temporary shall be done by workers on permanent contracts. Provisions for non-permanent and seasonal workers, including freedom of association, should be not less favourable than for permanent workers.

Every worker shall get a copy of their contract.

8. PROTECTION OF THE ENVIRONMENT

Companies should make every effort to protect the environment and the residential areas, avoid pollution and implement sustainable use of natural resources (water, soil, air, etc.).

9. CHILD LABOUR IS NOT USED

There shall be no use of child labour. There shall be no workers under the age of 15 years or under the compulsory school-leaving age, whichever is higher. Children under 18 shall not work in hazardous conditions. (ILO Convention 138) Adequate transitional economic assistance and appropriate educational opportunities shall be provided to any replaced child workers.

10. NO FORCED LABOUR

There shall be no forced labour, included bonded or involuntary prison labour (ILO Conventions 29 and 105). Nor shall workers be required to lodge "deposits" or their identity papers with their employer.

Section of Implementation

1. To overview the implementation of the Code of Conduct an independent body, accepted by all parties involved (for example trade unions, NGOs, employers), shall be formed.
2. This body will set the terms for an independent process of verification of compliance with the Code of Conduct.
3. The companies shall report regularly about the progress made in the implementation of the Code.
4. The independent body shall make provisions for workers, trade unions and other concerned groups to lodge complaints about violations of the Code, which if serious, have to be followed-up.

5. The Code shall be translated into local languages and prominently displayed in the place of work.

August 1998

proposed by:

* IUF - International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and

Allied Workers' Associations, Geneva

* Flower Campaign, Germany (Bread for the World, FIAN, terre des hommes)

* IG BAU - Trade Union for Construction, Agriculture and Environment, Germany

* FNV - Trade Union Confederation, Netherlands

* OLAA - Organisatie Latijns Amerika Activiteiten, Netherlands

* INZET, Netherlands

* Fair Trade Center, Sweden

* Flower Coordination, Switzerland

* Christian Aid, UK

APPENDIX H

Ratification of Core Conventions in Kenya

Labor Inspection (Agriculture) Convention, 1969, No. 129 and
Labor Inspection (Agriculture) Recommendation, 1969, No. 133

Minimum Age Convention 1973, No. 138

Relevant Employment Legislation in Kenya

The Regulation of Wages and Conditions of Employment Act Chapter 229

The Employment Act Chapter 226

The Workmen's Compensation Act Chapter 236

The Trade Union Act 233

The Trade Disputes Act 234

The Factories Act 514

The National Hospital Insurance Act 255

The National Social Security Fund Act Cap 258

The Pest Control Products Act 346

Appendix I KENYAN FLOWICULTURE CODES OF CONDUCT – SUMMARY OF WORKER HEALTH & WELL-BEING CONTENT (1999)

Transnational		Company	Sectoral							
ETI	SA8000	UK Retailers	FPEAK	MPS	COLEACP	KFC				
N	N	Y	Y	N	Y	Y	National Legislation			
N	N	Y	Y	Y	Y	Y	Industry Standards			
Y	Y	Y					UDHR Principles			
Y	Y	Y					ILO Standards			
N	Y	N	Y	Y	Y	Y	Management System			
N	Y	Y	Y	Y	N	Y	Audited Code			
Y	Y	N	N	Y	N	N	- Stakeholder involvement			
Y	Y	Y	Y	Y	Y	Y	Health Risk Management			
		Y	Y	N	Y	Y	Health Ed & Supervision			
							Health Services			
							- OSH Services			
N	Y	N	N	N	Y	N	- Reproductive Health			
N	N	N	N	N	N	N	Housing Conditions			
N	N	N	N	N	N	N	HIV/AIDS policy			
Y	Y	Y	N	N	Y	N	Abuse			
Y	Y	Y	N	Y	Y	N	- Sexual Harassment			
		N	N	N	N	Y	Maternity Leave			
		N	N	N	N	Y	Sick Leave			
		N	N	N	N	Y	Insurance			
Y	Y	Y	N	N	N	Y/N	Discrimination			

APPENDIX J
Key Informant Interview List⁸⁴

- ***Horticulture Workers***
- ***Floriculture Business***
- ***Importers***
- ***Industry Organizations***
Kenya Flower Council
P.O. Box 24856
Nairobi
Tel: 254 2 24856

Horticulture Crops Development Authority
(HCDA)
Uriafric House 4th Floor
Koinange Street
Nairobi

FPEAK
Fresh Produce Export Promotion
Nairobi
- ***Trades Unions***
IUF Africa
Muthaiga Shopping Ctr.
Above Post Office
2nd Floor
Limuru Road
P.O. Box 63405
Nairobi, Kenya

ITGLWF
rue Joseph Stevens 8
B-1000 Brussels
Belgium
- ***Independent Auditors***
Bureau Veritas
Nairobi
- ***Agrochemical***
Department of Community Health
University Nairobi, Kenya

Kenya Safe Use Project (KSUP)

ICIZE

KARI

KEMRI
- ***Multi-Lateral Agencies and Donors***
World Bank

DfID
- ***Transnational NGOs***

FIAN – Germany
Overwegstr. 31
44625 Herne, Germany

Christian Aid
- ***Health Professionals***
Oserian Development Company Hospital

Homegrown Ltd. clinic
- ***Retailers***
UK Retailers (Supermarket ethical
sourcing representatives & technicians)
- ***Ethical Trading Initiative***

⁸⁴ See stakeholder analysis for further details.

APPENDIX K: Interview Questions Guideline
 (for Key Informant Interviews, Informal Open-Ended Format Discussions, Structure Direct Observation and Document Analysis)

Explore contributing factors leading to the genesis of ethical codes of conduct, specifically within Kenyan floriculture.		
Research Question	Research Sub-Questions	Research Methods
What is the background of export floriculture in terms of history, current trends and supply networks?	What is the brief history of export floriculture?	Document Analysis Key Informant Interviews
	What are the current trends in global cultivation and export, particularly for Kenya?	Document Analysis Key Informant Interviews
What were the contributing factors leading to the genesis of the current codes of practice for the Kenyan floriculture sector?	What are some of the patterns in the supply of global floriculture?	Document Analysis Key Informant Interviews
	Who initiated the development of the codes? Who was involved in their drafting?	Key Informant Interviews Informal Surveys Structured Direct Observation Document Analysis
	Which principles and guidelines have been drawn on in formulating the codes?	Key Informant Interviews Document Analysis Informal Surveys, Structured Direct Observation
	How explicit are they in written documents? Name those directly responsible for implementing, monitoring and verifying codes.	Key Informant Interviews Document Analysis Informal Surveys, Structured Direct Observation

Identify scope & role of actor involvement in promoting worker health and well-being standards via COP.		
Research Question	Research Sub-Questions	Research Methods
<p>What is the role and influence of each actor relevant to Kenyan floriculture?</p> <p>To what extent does this affect the implementation of the health and safety codes of practice?</p>	<p>Which actors are directly or indirectly linked to floriculture codes of conduct in terms of their design and application? Which actors are not linked?</p>	<p>Key Informant Interviews</p> <p>Open-ended Guided Discussions</p> <p>Structured Direct Observation</p> <p>Document Analysis</p> <p>Stakeholder Analysis</p>
	<p>To what extent is each actor aware of the codes and <u>how</u> they will be implemented?</p>	<p>Key Informant Interviews</p> <p>Open-ended Guided Discussions</p> <p>Structured Direct Observation</p> <p>Document Analysis</p> <p>Stakeholder Analysis</p>
	<p>What types of 'forums' are there for each actor to participate?</p>	<p>Key Informant Interviews</p> <p>Open-ended Guided Discussions</p> <p>Structured Direct Observation</p> <p>Document Analysis</p> <p>Stakeholder Analysis</p>
	<p>Which transnational actors are involved in shaping/influencing the codes?</p>	<p>Key Informant Interviews</p> <p>Open-ended Guided Discussions</p> <p>Structured Direct Observation</p> <p>Document Analysis</p> <p>Stakeholder Analysis</p>
	<p>To what extent is each actor involved in/responsible for the monitoring & verification of the codes?</p>	<p>Key Informant Interviews</p> <p>Open-ended Guided Discussions</p> <p>Structured Direct Observation</p> <p>Document Analysis</p> <p>Stakeholder Analysis</p>

Identify some of the underpinning priorities or interpretations reflected in the design & application of codes of practice.		
Research Question	Research Sub-Questions	Research Methods
<p>What are the basic ethical assumptions and values (attitudes, preferences, and priorities) behind the codes of practice?</p> <p>And for each stakeholder?</p> <p>How do these interpretations affect the scope and details of the health and safety codes of practice?</p>	<p>What is perceived to be the problem in the floriculture industry with respect to worker health and safety standards?</p>	<p>Document Analysis</p> <p>Key Informant interviews</p> <p>Informal Surveys</p> <p>Structured Direct Observation</p>
	<p>What are the actual OSH and well-being aspects in the codes? Which aspects are more emphasized over others?</p>	<p>Key Informant interviews</p> <p>Informal Surveys</p> <p>Document Analysis</p> <p>Structured Direct Observation</p>
	<p>Which aspects of the health and safety codes are emphasized and/or given more support in terms of implementation and monitoring?</p>	<p>Key Informant interviews</p> <p>Informal Surveys</p> <p>Document analysis</p> <p>Structured Direct Observation</p>
	<p>How do other quality assurance codes (e.g. food safety traceability standards for UK retailers) influence the efficacy of the codes of practice?</p>	<p>Key Informant interviews</p> <p>Informal Surveys</p> <p>Document analysis</p> <p>Structured Direct Observation</p>
	<p>To what extent does transnational actor involvement shape or influence the adoption of codes?</p>	<p>Key Informant interviews</p> <p>Informal Surveys</p> <p>Document analysis</p> <p>Structured Direct Observation</p>

Identify challenges and opportunities in implementing worker health and well-being standards globally & within Kenyan floriculture.		
Research Question	Research Sub-Questions	Research Methods
What kinds of challenges and opportunities will be faced when implementing OSH and worker well-being standards?	What kinds of governance and accountability practices have developed or need further developing? What forms of institutional arrangements are needed in order to underpin codes' schemes? What are the strengths and weaknesses in relying on the current COP frameworks and their monitoring & verification processes? What actual and potential regressive implications could arise in applying codes? What are the possible new roles for each actor? What strategies could develop within the sector to deal with particular needs of workers?	

APPENDIX K (con't): Checklist/Interview Guides to be conducted July 1999 to April 2000

- I. General/Background Information Through document analysis & discussions
 - What is the brief history of export floriculture?
 - What are the current trends in global cultivation and export?
 - What are the business networks in floriculture export?
- II. Kenyan Context Through document analysis & discussions
 - Name actors directly involved in drawing up Kenyan Floriculture Codes of Practice.
 - From where did the idea originate?
 - Which charters, ideas, formats were referred to in drawing up the codes?
 - How explicit are they in written documents?
 - Name those directly responsible for designing, monitoring & verifying codes of practice (throughout the supply chain).
 - What is the Kenyan poverty line? Percentage of those below?
 - What are the known OSH and worker well-being issues in Kenyan floriculture?
 - What Kenyan OSH standards (e.g. industry, national law) exist for the Kenyan floriculture sector?
 - To what public services do the workers have access? What is the quality of the services?
 - Access to health services?
 - The ratio of female to male labor force participation rates?
- III. Codes of Practice Through document analysis, informal open-ended discussions, & observational analysis
 - How are the following explained:
 - Intent and aims
 - Types & range of activities
 - Implementation

- Who is responsible for monitoring and verification
- How the monitoring & verification works
- Health and safety aspects
- What happens if there is a 'violation'?

- How are horticulture operations related to health & safety defined & explained?
- To what extent are the environmental impacts considered in the scope of the COP health and safety plan?
- To what extent are the gender impacts considered in the scope of the COP health and safety plan?

- The Stakeholders: Through document analysis, informal open-ended discussions, & observational analysis
- Which actors are involved in the activities that are shaping the COP?
- Which stakeholders have been included/excluded? Why and why not?
- What types of 'forums' are there for each stakeholder to share views?
- How has each stakeholder contributed to, and at which point, in the COP development?
- Who are the major foreign players involved and what influence do they exert?
- How are foreign stakeholders involved in shaping or influencing the codes?
- Who initiated the drive to develop codes?

IV. Auditing Process To be done during KFC auditing trip to farms

- What are the health & safety aspects of the codes?
- Which aspects are more emphasized over others during the auditing process?
- Are there other types of quality assurance aspects (not in the COP) implicit in the auditing process?
- What recommended steps are given to the company to improve COP performance?

- What considerations are included/excluded?
 - How is performance/effectiveness measured?
 - Is there a clear statement of targets arising from accounting and auditing processes?
 - Does the process provide benchmarks against the company's previous performance?
 - Is facilitation provided so that the business' policy are/can be increasingly responsive to stakeholder views and experiences?
 - What kinds of sustainability issues are taken into account in relation to existing and future projects?
 - What kinds of gender issues are taken into account in relation to existing and future projects?
 - What kinds of governance and accountability practices of the business have developed in response to the stakeholder model?
- V. Benchmarks To be done during KFC auditing trip to farms
- What indicators are used to compare with norms in the Kenyan and international context?
 - What indicators are used to compare with norms from health and social sources?
 - What indicators are derived from qualitative responses?
 - Are there 'good practice' benchmarks for specific businesses and the sector?
 - What examples are there that compare indicators and benchmarks over time?
 - Are there indicators that demonstrate areas of friction and/or complementarity between health, financial, and other aspects of performance?
 - Are future targets specified? Are they measurable?

VI. Monitoring & Verification Through document analysis, informal open-ended discussions, & observational analysis

- How periodic is the monitoring and verification?
- Has it been taking place in a regular and timely manner so far?
- How is the M&V process adjusting to stakeholder views? Which stakeholders?
- What indications are there that the M&V process will be responsive to changes in the sector over time?
- What indications are there that the process reflects an evolving and improving coverage of the businesses' base-line?
- What indications are there that the process is responsive to problems and idiosyncrasies highlighted in past assessments/audits?

- Does the process build up a picture of stakeholder views and needs over time?
- Are stakeholders' views about the accuracy and usefulness of the previous cycle demonstrated?

VII. Disclosure Through document analysis, informal open-ended discussions, & observational analysis

- Is there a full statement required of the business' reporting policy?
- Are the results of the accounting and auditing published and available?
- Was the process designed in collaboration with stakeholders?
- Do the modes of disclosure allow for and encourage feedback from key stakeholders?
- Is the process an effective communication tool?
- Is the process written in a way that allows it to be usefully used in management and strategic decision-making?
- Are the results made accessible to everyone, particularly those stakeholders who are traditionally excluded from consultation processes?

VIII. Sustainability Through document analysis, informal open-ended discussions, & observational analysis

- Are there any statements or plans for the codes over the next two decades?
 - What particular tools and techniques are named to build more effective regulation?
 - What new forms of institutional arrangements are emerging to underpin these codes of practice schemes?
 - What are the possible new roles of each stakeholder?
 - What strategies could be developed within the Kenyan horticulture sector to deal with the particular needs of workers and their families?
- Are there indications as to the activities and stakeholders that will be consulted in future cycles, and when?

APPENDIX L: Main Exporting Countries/areas for cut flowers,* by value (CIF), 1991-95 (in millions of US Dollars)

Export Markets	1991		1995 ⁺	
	Value	%	Value	%
World Exports	3351.7	100.0	3716.8	100.0
of which from:				
Netherlands	2147.4	64.0	2102.2	56.5
Colombia	387.1	11.5	525.0	14.1
Israel	145.9	4.3	158.7	4.2
Kenya	53.6	1.6	103.5	2.7
Ecuador	22.1	0.6	102.2	2.7
Italy	113.2	3.3	92.3	2.4
Thailand	75.5	2.2	80.5	2.1
Spain	70.3	2.0	60.0	1.6
Zimbabwe	16.6	0.4	51.9	1.3
France	31.9	0.9	39.6	1.0
New Zealand	17.1	0.5	37.1	0.9
Malaysia	11.5	0.3	29.7	0.8
United States	23.0	0.6	28.6	0.7
Mexico	18.8	0.5	27.9	0.7
Costa Rica	15.0	0.4	23.3	0.6
Singapore	17.8	0.5	22.7	0.6
Belgium-Luxembourg	6.6	0.1	21.6	0.5
Australia	16.8	0.5	20.6	0.5
Germany	16.9	0.5	20.6	0.5
Morocco	15.0	0.4	17.4	0.4
South Africa	16.1	0.4	16.4	0.4
United Kingdom	15.3	0.4	15.9	0.4
Turkey	12.6	0.3	13.0	0.3
India	2.0	0.0	11.4	0.3
Guatemala	5.1	0.1	10.7	0.2
Mauritius	5.4	0.1	6.7	0.2

Source: ILO -- Sector Publications 1999

* Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.
+ The creation of the single European market in 1993 resulted in significant under-recording of intra-EU trade.

APPENDIX M: Imports of cut flowers into the Netherlands from countries outside the EU ('000 kg)

Country	'000 kg	%
		1996
Israel	23,434	38.0
Kenya	20,020	32.4
Zimbabwe	8,404	13.6
Ecuador	2,081	3.4
Colombia	1,744	2.8
Zambia	1,347	2.2
Tanzania	655	1.1
South Africa	708	1.1
Others	3,347	5.4
Total	61,740	100.0

Source: Bedrijfsschap (1997), based on AIPH Union Fleurs, *Yearbook of the International Horticulture Statistics* (The Hague)

APPENDIX N: Main Import Market for cut flowers,* by value (CIF), 1991-95 (in millions of US Dollars)

Import Markets	1991		1995*	
	Value	%	Value	%
World Imports	3351.7	100.0	3716.8	100.0
of which:				
European Union (15 as of 31.12.1996)				
Germany	1245.3	37.2	1124.9	30.3
United Kingdom	305.6	9.1	360.0	9.7
France	337.8	10.1	358.9	9.7
Netherlands	185.3	5.5	310.4	8.4
Italy	134.0	4.0	118.9	3.2
Belgium & Luxembourg	77.3	2.3	95.8	2.6
Denmark	37.0	1.1	63.0	1.7
Spain	35.1	1.0	29.8	0.8
Ireland	16.0	0.5	19.0	0.5
Finland	12.9	0.4	16.3	0.4
Portugal	2.5	0.1	6.1	0.2
Austria	82.9	2.5	n.a.	-
Sweden	79.2	2.4	n.a.	-
Greece	9.2	0.3	n.a.	-
United States	403.5	12.0	622.8	16.8
Japan	143.8	4.3	216.1	5.8
Switzerland	141.2	4.2	168.7	4.5
Canada	36.8	1.1	49.6	1.3
Singapore	13.2	0.4	29.6	0.8
Norway	29.5	0.9	28.8	0.8

Source: ILO -- Sector Publications 1999

* Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.

+ The creation of the single European market in 1993 resulted in significant under-recording of intra-EU trade.

Appendix O: Interview Code Key

To preserve confidentiality, informant interviews have been coded in aggregate form according to general 'type' of stakeholder (characterized by a letter).

Industry -- I

Civil Society – C

Government – G

Donors – D

Third Party (e.g. auditors, consultants, academics) – P

Numbers were then allotted to identify each informant within these categories (i.e. G1, C4)

APPENDIX P: WORKER HEALTH AND WELL-BEING FRAMEWORK

A summary of the tiered model in which to assess the implementation of worker health rights is displayed below. It also serves as a practical plan with which to define, prioritize and describe health as a human right for workers. Worker health rights can be regarded and prioritized according to a three-tiered approach:



Starting from the top of the pyramid, this segment (OSH) involves maintaining a basic safe and healthy working environment through processes and systems promoting risk assessment and management, record keeping, risk control measures, and workforce monitoring for occupational exposures and other hazards.

Extending to the next tier, the middle segment involves the promotion of health services and education (HSE). The remit of this segment includes 1) establishing a comprehensive coordinated worker health service in which workers receive more than basic occupation-related screenings and treatment. Such a health service extends to

training medical staff on occupational health matters and other relevant issues such as HIV/AIDS, reproductive health, first aid, etc.

The bottom tier of the pyramid refers to the comprehensive health and well-being education of workers, including social protection policies (e.g. insurance, anti-discrimination policies).

This model is a composite of the research findings from this thesis and other floriculture research⁸⁵ into the worker health system and the framework gram needs of the floriculture sector in Kenya and was distilled into the development of a framework proposed by this author – .

1) OSH Risk Management

- **Hazard Identification**
 - Access to agrochemical information on material safety data sheets (MSDS)
 - Identification & inventory of agrochemical products
 - Identify from MSDS the toxic levels of the chemicals & handling instructions

- **Workforce Health Status**
 - Persons at risk to agrochemical overexposure should be screened out
 - Regulated working hours for those mixing and applying agrochemicals

- **Handling (including mixing, loading, cleaning) of equipment**

- PPE, hygiene and work clothes checking
- Exposure measurement (e.g. biological monitoring of cholinesterase levels)

- Risk Measurement
 - LD calculations⁸⁶

- Control Measures
 - Substitution: Replace another suitable product with better health hazard profile (if available)
 - Technical measures including improvements to equipment
 - Improving work practices to reduce exposure
 - Personal Protective Equipment (PPE)
 - Providing adequate protection while meeting ergonomic requirements
 - Improving work postures i.e. raising flower beds
 - Improve working conditions (e.g. cold & wet environs through PPE), apply measures for vulnerable workers (e.g. pregnant & lactating women)

- Record-keeping
 - identify health trends & problem areas for action
 - enable epidemiological evaluations & notification of OSH accidents & diseases
 - fulfill legal requirements

⁸⁵ Loewenson, R. 1992; African Newsletter on OSH Supplement 1/1999; ILO 1999.

- protect companies against unjustified compensation claims
- enable occupational performance monitoring
- Machine Safety & Ergonomics
- Health Research

Research can be done only if good records are maintained.

2) Provision of OSH & Health Services & Education

- Health services linked to one or a collection of farms
- Health services integrated into a national health service as part of primary health care
- Pre-employment & periodic medical examinations – total health care for the worker and not only for occupational and/or traceability related diseases
- Training of clinic staff to identify signs & symptoms OSH illness including agrochemical exposure
- Health service co-ordination with trades unions and management teams (e.g. OSH committees)
- Specific health awareness raising, counseling and education for workers (e.g. PPE use, HIV/AIDS)
- Worker training in outreach health awareness programs (e.g. HIV/AIDS)
- Reproductive health services
- First aid and emergency treatment facilities and training

⁸⁶ This is done by multiplying the concentration of agrochemical by the total period of exposure and the

3) OSH Education and Health & Well-Being Supervision

Training of the issues listed above should aim to achieve worker awareness to facilitate a(n):

- Change of knowledge, attitudes & practices
- Awareness of exposures
- Understanding of control measures
- Cooperation and participation in the overall OSH & Health/Well-Being program

Subsequently, the following key aspects for the education of workers are recommended:

- Training should be provided so that recognition, prevention and control of OSH workplace hazards are facilitated.
- Training and information programs should be conducted on a regular basis to enable accident prevention and safe work practices.
- Personal hygiene education (not just for the product but for the worker) should be conducted. Facilities (e.g. clean drinking water, changing rooms) should be provided to allow for such practices.
- Regular education on Insurance and Workers' Compensation schemes
- Regular training on Maternity leave policies
- Regular training on Discrimination and Harassment policies

degree of absorption and health status of exposed workers.

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ETHICS COMMITTEE

APPROVAL FORM

Application number: 1087

Name of Principal Investigator Julia Kilbourne
Department Public Health and Policy
Head of Department Gill Walt

Title: Integrating health as a human right into an ethical sourcing agenda

Approval of this study is granted by the Committee.

Chair T.W. Meade
Professor Tom Meade

Date 30.3.2004

Approval is dependent on local ethical approval having been received.

Any subsequent changes to the consent form must be re-submitted to the Committee.