

UNIVERSITY OF ZIMBABWE



'ROSES AND THORNS':
**A CRITICAL ANALYSIS OF LABOUR PRACTICES AND THEIR EFFECTS ON
WOMEN LABOURERS ON SELECTED FLOWER FARMS IN KENYA**

BY

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Abstract

The Kenyan export flower industry, which generates millions of dollars worth of precious foreign exchange for the nation, has grown immensely since its inception and has created employment for many Kenyans, especially its largely poor and uneducated population of rural women. This research, focusing on five such farms in Kenya, aims at assessing the efficacy of its labour laws and practices in relation to women labourers in the floriculture industry. It relies on the hypothesis that flower farms employ a larger number of women in the general labour category than in any other of its other divisions due to a division based on gender bias and that labour practices within these farms including working hours, health and safety, remuneration and protection are gendered and thus disparately affect women. The human rights and actors and structures approaches were used to establish the extent of the protection of these laws in the context of these incredibly low paid women labourers who are forced to work for long, laborious back-breaking hours exposed to toxic conditions since part of flower management includes their fumigation with lethal agrochemicals. Kenya's international labour obligations were tested from a decent work indicator standpoint. The study revealed that although Kenya has enacted several labour laws in addition to ratifying major instruments protecting women, their implementation has been extremely poor. It also uncovered that the extent of such protection is limited as employers are allowed to regulate important aspects of employment leading to exploitation, including sexual harassment. The women's law approach unearthed women's lived realities on the farms and the effects of labour practices. The farms' failure to comply with the law has led to women's rights being violated especially regarding health and safety protection, equality and non-discrimination, gender based violence and age of employment. It was found that the right of women to enjoy the highest standards of health, equity and equality in treatment, protection of the law, protection of their person and protection and promotion of the best interests of children are all violated under almost slave-like conditions. It is therefore strongly recommended that the government increases its efforts and commitment toward engendering the entire operations of its lucrative flower industry in order to properly acknowledge, protect and reward those women who are silently making the greatest personal sacrifices towards its success.

Declaration

I, Dorothy Neiunje Wanjala, do hereby declare that this dissertation is my original work and has not been presented or submitted anywhere else before.

.....
DOROTHY NEIUNJE WANJALA

.....
DATE

.....
ROSALIE KATSANDE

.....
DATE

Dedication

To all the women working in Kenya's floriculture industry, may your voices be heard and your rights upheld. We shall keep fighting!

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My utmost gratitude goes to my supervisor Dr. Katsande for her invaluable guidance throughout my research. To Professor Julies Stewart and Comrade Gwisai, I am grateful for the knowledge they imparted during their fascinating lectures which led to that ‘Ah-hah!’ moment and inspired my decisions to embark on this research.

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List of abbreviations and acronyms

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
GC	General Comment
GR	General Recommendation
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
KFC	Kenya Flower Council
KHRC	Kenya Human Rights Commission
KPAWU	Kenya Plantation and Agriculture Workers Union
Maputo Protocol	Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, 2003
MPS	More Profitable Sustainability
NHIF	National Health Insurance Fund
OHSA	Occupational Health and Safety Act, No. 15 of 2007
PPE	Personal protective equipment
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
UNICEF	United Nations International Children's Fund

List of international instruments

African Charter on the Rights and Welfare of the Child

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Labour Organization Conventions 100, 111, 182

Convention on the Rights of the Child

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in
Africa (Maputo Protocol)

African Charter on Human and Peoples' Rights

Montreal Principles on Women's Economic, Social and Cultural Rights

List of national legislation

Children's Act, 2001

Constitution of Kenya, 2010

Employment Act, No. 11 of 2007

Labour Institutions Act, No. 12 of 2007

Labour Relations Act, No. 14 of 2007

Occupational Health and Safety Act, No. 15 of 2007 (OHSA)

Penal Code (Cap 63)

Workers Injuries and Benefits Act, 2007

List of appendices

Appendix 1:	List of ILO Conventions ratified by Kenya.....	90
Appendix 2:	List of banned pesticides in Kenya.....	93
Appendix 3:	Minimum wage Order for agricultural industry with effect from 1.5.2017 ...	94

List of figures

Figure 1:	Bar chart showing the gender representation within the focus group discussions.....	29
Figure 2:	Bar chart showing the gender representation of labour within the organizational levels of the 5 Flower Farms studied in the research	46

List of tables

Table 1:	Showing details of key respondents with whom in-depth interviews were conducted.....	28
Table 2:	Showing the codes applying to the research farm.....	40
Table 3:	Showing the representation of male and female workers on the 5 Flower Farms studied in the research	43
Table 4:	Showing the levels of educational among the general workers of the 5 Flower Farms studied in the research	47

Table of contents

Declaration.....	3
Dedication.....	4
Acknowledgements.....	5
List of abbreviations and acronyms.....	6
List of international instruments.....	7
List of national legislation.....	7
List of appendices.....	8
List of figures.....	8
List of tables.....	8
Table of contents.....	9
CHAPTER ONE.....	13
1.0 SETTING THE SCENE.....	13
1.1 Introduction.....	13
1.2 Background.....	14
1.3 Statement of the problem: A bouquet of misery.....	15
1.4 Objective of the study.....	16
1.4.1 Research assumptions.....	16
1.4.2 Research questions.....	16
1.5 Demarcation of the study.....	17
1.6 Limitations.....	17
1.7 Summary of chapters.....	17
CHAPTER TWO.....	19
2.0 THEORETICAL AND METHODOLOGICAL FRAMEWORK.....	19
2.1 Introduction.....	19
2.2 Understanding the key concepts.....	19
2.3 Theoretical framework.....	20
2.3.1 Masculinity and dominance feminists.....	20
2.3.2 Social construction feminism.....	21
2.3.3 Marxists and socialists theories.....	22
2.4 Methodological framework.....	23
2.4.1 Unearthing women's lived realities.....	23
2.4.2 Understanding disparate treatment and impact.....	24

2.4.3	<i>Actors, structures and norms approach</i>	25
2.4.4	<i>Human rights approach</i>	26
2.5	Data collection methods	28
2.5.1	<i>In-depth interviews with key respondents</i>	28
2.5.2	<i>Group discussions</i>	28
2.5.3	<i>Observation</i>	29
2.5.4	<i>Desk research</i>	30
2.6	Assessment of methodology	30
2.7	Conclusion	30
CHAPTER THREE		32
3.0	<i>'LABOURING IN VAIN': THE EFFECTIVENESS OF LABOUR LAWS AND THEIR APPLICATION TO THE CUT FLOWER SECTOR</i>	32
3.1	Introduction	32
3.2	Labour regulatory framework	33
3.2.1	<i>Obligation to protect</i>	33
3.2.2	<i>Obligation to fulfil</i>	36
3.2.3	<i>Obligation to respect</i>	39
3.3	Conclusion	41
CHAPTER FOUR		42
4.0	THE PLIGHT OF WOMEN IN THE CUT FLOWER SECTOR	42
4.1	Introduction	42
4.2	A gendered labour market	42
4.2.1	<i>Horizontal segregation</i>	42
4.2.1.1	Labour participation disparity due to historical bias	44
4.2.1.2	Impact of education on labour market disparity	44
4.2.1.3	Bias toward women in agriculture	45
4.2.2	<i>Vertical segregation</i>	46
4.2.2.1	Gendered reasons for vertical segregation	47
4.3	Health and safety: A cycle of neglect	50
4.3.1	<i>Efficacy of personal protective equipment (PPE)</i>	50
4.3.2	<i>Women's interaction with agrochemicals</i>	51
4.3.3	<i>The dilemma of pregnant women in the farms</i>	54

4.3.4	<i>Other health implications</i>	55
4.4	Remuneration.....	56
4.4.1	<i>Fair wage</i>	56
4.4.2	<i>Equal remuneration for equal work</i>	59
4.4.3	<i>Remuneration - decent living (interrelation)</i>	61
4.5	Working hours	62
4.5.1.	<i>Gender equality and decent working time</i>	63
4.5.2	<i>Family responsibility versus Work time</i>	64
4.5.3	<i>Employees health and safety and working time</i>	65
4.6	Gender based violence.....	66
4.6.1	<i>Sexual harassment</i>	66
4.6.2	<i>Physical violence</i>	69
4.7	Emerging issues.....	70
4.7.1	<i>Child labour</i>	70
4.7.2	<i>Tribalism and tribal affiliation</i>	72
4.8	Conclusion.....	72
CHAPTER FIVE		74
5.0	POVERTY AND WAYS OF COPING.....	74
5.1	Introduction	74
5.2	Gender dynamics and the minimum wage.....	74
5.3	Coping with economic shocks	75
5.3.1	<i>Prostitution</i>	75
5.3.2	<i>Petty theft</i>	77
5.3.3	<i>Informal social security systems</i>	78
5.4	Conclusion.....	79
CHAPTER SIX.....		80
6.0	THE WAY FORWARD	80
6.1	Introduction	80
6.2	Conclusion.....	80
6.2.1	<i>Effective application of law</i>	80
6.2.2	<i>Gendered labour markets</i>	80
6.2.3	<i>Labour practices: Health and safety</i>	81

6.2.4	<i>Gender dynamics and low remuneration</i>	81
6.2.5.	<i>Gender based violence</i>	81
6.3	Recommendations	82
Bibliography		86
Appendices.....		90

CHAPTER ONE

1.0 SETTING THE SCENE

1.1 Introduction

Flowers grown in Kenya are given to people on all sorts of occasions all over the world as tokens of love, happiness and friendship. Like the recipients of this commodity, this nation's highly profitable horticultural industry also has the immense capacity to benefit the people and their communities who give it life through their work. This however is only possible if their human rights are more keenly protected and promoted.

According to Gwisai (2006), labour serves a number of important functions for workers. Firstly, this includes its primary economic purpose of creating a worker's dependence on employment for their livelihood. The fact that capitalism ensures societal dependence on wealth created the concept of work (whether formal or informal) to ensure the continuity of the state and ultimately individual benefit. Kenya being a capitalist nation largely depends on its citizens to engage in formal labour that enables the state to benefit from its output. Such formal labour leads to migration within the country for people in search of employment opportunities, which provide regular income for the employee and his/her dependents. The type of employment secured determines their level of access to different money-dependent commodities including housing, food, healthcare, education and opportunities in general (Gwisai, 2006).

Secondly, labour serves a psychological purpose as it gives a worker a sense of accomplishment, which in turn affects their self worth. According to Lord Denning (1974):

‘A skilled man takes pride in his work. He does not do it merely to earn money. He does it so as to make his contribution to the well being of all. He does it so as to keep himself busy and not idle. To use his skill and improve it. To have the satisfaction which comes with a task well done.’

It is therefore necessary for work places to comply with proper work standards and practices that would ensure its employees are properly treated. Unsatisfactory work conditions have been linked to low self-esteem as well as alienation (Gwisai, 2006).

Social interaction is also a benefit of labour. As most employees spend most of their time in a work environment there is a chance that important relationships may spring up. This socialization may come in handy especially when an employee is in need. It may act as an important safety net in case of economic or other forms of shock.

Lastly, through the collective organizations of workers, e.g., trade unions, labour may serve as a political tool. These organizations serve the purpose of ensuring that employees are aware of their rights and in a better position to negotiate for improvements of employment practices. They act as catalysts for progress especially when it comes to the oppressed, who more often than not, require a voice to represent them. Historically, unions played a major role in liberating the oppressed, for instance, former President Kenneth Kaunda played a significant role as head of a trade union in the struggle for democracy and liberation of Zambia.

This research critically analyzes the labour practices in Kenya's cut flower sector and its effects on the day-to-day lives of the women working in the sector. It discusses the theories that explain the *status quo* of most farms and its disparate effects on men and women. It also interrogates the extent of Kenya's compliance with its international HR obligations and its effects on women working in flower farms.

1.2 Background

The genesis of horticultural industry in Kenya dates back to the colonial period. When the British realized they needed a larger territory to manage their East African territory, they quickly expanded this sector to include floriculture. They traded with other powers across Africa and exported some of the produce on a smaller scale to Europe. This industry was maintained after independence but only started expanding as an export product in the 1970s when the Netherlands began importing over 70% of the country's total produce. As the industry has steadily grown, so has the area under floriculture; its market has expanded with an improvement in trading levies. At the moment over 2,500 hectares of land is used in flower production. Since the industry is dependent on good soil drainage and cool temperatures, areas which are most suitable for its success include Mount Kenya, Lake Naivasha, Nairobi, Thika, Kiambu, Nyandarua, Transzoia, Kitale, Kericho, Athi River, Uasin Gishu, and the

Eastern parts of Kenya. All these areas are also well populated which means that there is easy access to labour.

Kenya is now hailed one of the world's largest flower exporters after Colombia and Ecuador. It concentrates on a variety of flowers including lilies, erygiums, hypericum, statice, gypsophyllia, carnations, alstromeria and roses, among others. Most producers have specialized in rose farming and now enjoy 38% of the European market. One quarter of Kenya's total exports is exported directly to specific markets, while 50% is sold through Dutch auctions. According to the Kenya Flowers Council, flowers from Kenya are sold to over 60 countries worldwide (KFC, 2015). As Kenya is largely dependent on agriculture, the expansion of the market has been a welcomed venture. In 2016, the horticulture industry contributed about 1.6% to the national GDP with 1.1% being specifically from the floriculture industry, earning the country approximately US\$1 billion annually. The industry is expected to continue growing steadily over the next 5 years (KFC, 2015).

Flower farms in Kenya have certainly been hailed as a major contributor to the economic welfare of its citizens. With over 150 farms spread across the country, it enables a lot of job seekers in urban, peri-urban and rural areas to access employment. As most labour on the farms is not dependent on academic qualifications, this industry enables the lowliest and most illiterate to venture into the economic sector. It is estimated that this industry directly impacts the lives of over 500,000 people of whom most of its 100,000 employees are women. Further, the impact of the floriculture industry is felt indirectly by over 2,000,000 livelihoods.

1.3 Statement of the problem: A bouquet of misery

In 2007, Kenya enacted several labour laws to ensure the protection of the labour rights of its workers. These laws were based on equality and non-discrimination principles that sought to protect men and women alike. The rights were reiterated in the Constitution of Kenya, 2010 which also recognized all ratified international instruments as forming part of Kenyan legislation.¹ Years after implementation, however, the cut flower sector is, according to the Kenya Human Rights Commission (KHRC), still plagued with reports of human rights violations (KHRC, 2012). Further, it remains a concern why so many years after the establishment of the sector and even through its huge returns, workers in this sector still

¹ Articles 2(5) and 2(6).

remain among the poorest of Kenya's poor population. It is pertinent to understand the theories that inform the *status quo* of this industry and the far-reaching impact of the various human rights violations suffered by its female worker's in order to remedy their plight.

1.4 Objective of the study

The objective of this study was to assess the efficacy of labour laws in relation to women labourers in the floriculture industry and analyze the impact of labour practices and their effect on women labourers. I will finally make recommendations to improve the position of women in the cut flower sector. The study was guided by the following research assumptions and questions:

1.4.1 Research assumptions

1. That labour laws in Kenya do not effectively address the needs of women labourers in the cut flower sector.
2. That flower farms employ a higher number of women in the general labour division than in any other division due to gender bias.
3. That labour practices in the flower farms are unsafe and strenuous and thus expose women to a variety of health and social problems.
4. That the remuneration of workers within the general labour division is insufficient for the majority of the women.
5. That women labourers on flower farms are subjected to gender based violence at all levels.

1.4.2 Research questions

1. Do labour laws in Kenya effectively address the needs of women labourers in the cut flower sector?
2. Do flower farms employ a higher number of women in the general labour division than in any other division because of gender bias?

3. Are women labourers on flower farms exposed to health and social problems due to unsafe and strenuous labour practices?
4. Is the remuneration for workers in the general labour division insufficient for the majority of women general workers?
5. Are women labourers on flower farms subjected to gender based violence at all levels?

1.5 Demarcation of the study

The research was carried out across several farms in Nyandarua, Laikipia and Lake Naivasha regions. Naivasha (part of Nakuru County) lies within the Great Rift Valley Region of Kenya with its main water source being the Lake Naivasha. It is a sprawling mini-metropolitan region that is on the brink of major urbanization. With over 35 farms, flower plantations cover about 970 square kilometres of Naivasha. The neighbouring counties of Nyandarua and Laikipia boast over 15 farms between them. Both are semi-rural townships inhabited by mostly the Samburu and Kikuyu communities. They are relatively new to the floriculture industry but fast growing in popularity due to ready availability of labour.

1.6 Limitations

The study is limited to 6 flower farms across the Naivasha area, Nyandarua and Laikipia counties. It is therefore not a generalized representation of all flower farms in Kenya. The study is further limited to employment opportunities in flower farms; labour practices on flower farms (including; health and safety conditions, remuneration, working hours, child labour and gender based violence) and their resultant effects on women working as general workers on these farms.

1.7 Summary of chapters

This research is organized as follows. Chapter 2 outlines the methodological and theoretical framework I used in gathering my data and analysis of the same. Chapter 3 presents the regulatory framework in the context of Kenya's duty to implement its various human rights obligations towards women workers on flower farms. Chapter 4 describes and analyzes findings in the field on gender segregation in the farms and labour practices in the cut flower

sector as well as their implications for the day-to-day lives of the women labourers. It also discusses emerging issues in the field. Chapter 5 explores the ways in which women labourers in the cut flower sector cope with poverty. Finally, chapter 6 summarizes the analysis of findings and makes recommendations for improvements for women flower industry workers.

CHAPTER TWO

2.0 THEORETICAL AND METHODOLOGICAL FRAMEWORK

2.1 Introduction

The previous chapter set out the basis for this research. It gave the background of the floriculture industry in Kenya and detailed the objective of the study. To achieve this objective it is necessary to use concepts, theories and methodologies that adequately interrogate the assumptions espoused. This research was conducted based on concepts and theories that underpin labour rights and their application in flower farms. Feminist theories discussed underpin the concepts of gender and equality while economist theories explain the interplay between labour relations and practices. The research further employed methodologies and methods that effectively investigated the assumptions in-depth to produce the data resented in the next chapters. This chapter defines the key concepts relied upon for a better understanding of the research. It also explains how various theories influenced the understanding of data in the field. Further, it outlines the methodologies relied upon to understand women's lived realities, the influence and perceptions of actors and structures charged with the implementation and enforcement of labour rights and lastly, the rights guaranteed for women in the floriculture industry and their normative contexts.

2.2 Understanding the key concepts

A general worker in the floriculture industry refers to an employee tasked with carrying out manual labour either unskilled or semi-skilled labour. These employees carry out tasks like pruning, packing, spraying, transporting, planting and picking.

Decent work is 'productive work for women and men in conditions of freedom, equity, security and human dignity' (ILO, 2015). Such work includes opportunities that are productive and afford a fair income; provide security and social protection for workers and their families; offer good prospects for personal development and guarantee equal opportunities and equal treatment for all.

Gender bias is the unfair treatment of men and women based on societal gender roles that generate expectations. Sources of gender biases include stereotypes, gendered roles, unfair attitudes and discriminatory policies.

The concept of '*work of equal value*' covers not only cases where men and women do the same or similar work, but also where they do different work in content, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions.

Gender based violence at all levels refers to any physical, verbal or non-verbal conduct meant at demeaning a particular sex thus affecting the dignity of women and men within the workplace, to and from work and at home.

Poverty as used in this research connotes the inability of remuneration to cover what is called the living wage, being the minimum amount a person should be paid in order to live a decent life in the context of their residential surroundings. It is used to show how the living wage in the areas where women general workers live is higher than the minimum wage which they earn from their work in floriculture.

2.3 Theoretical framework

2.3.1 Masculinity and dominance feminists

Masculinity only exists in contrast to femininity (McCann, 2013: 252). The polarization of the sexes therefore defines identity as well as characterization. Masculinity intersects with gender to problematize the gendered institutionalization in society, which applies gender configuration in recruitment, division of labour and policy making. To engage with the vertical segregation in flower farms and why most women were unable to break through the 'glass ceiling', masculinity theory became an important analytical tool. I wanted to know why even though the floriculture sector has mostly female employees the same was not reflected in management positions. Is it because men are thought to be better managers? Was it because women do not make good managers? Do women lack educational qualifications to become managers? To answer these questions, it was necessary to consider a theory that explained the legitimacy of power and its division. Connell (2005) states:

'Hegemonic masculinity serves as an analytical instrument to identify those attitudes and practices among men that perpetuate gender inequality, involving both men's domination over women.'

This theory proved useful as some respondents pointed out men cannot work in a lower position than women. They contended that it was natural for women to occupy lower levels of work than men and also not be in a managerial position due to their feminine impulsiveness. This narrative was used to disregard women's qualification for higher positions and thus restricted women's access to management levels in flower farms.

Dominance feminism problematizes sexuality. It considers sexuality as a social construct through male dominance and sexual domination of women by men (Becker, 2007: 107). According to MacKinnon, aggression against women is a form of sexual pleasure, an entitlement of masculinity. Sexual abuse is therefore a form of terror used to maintain dominance and subordination. To establish causes of gender-based violence against women working in flower farms, this theory contextualized the prevalence of abuse by management over general workers. The fact that the women have no capacity to complain made them susceptible to constant exploitation in the farm from both management and male co-workers.

2.3.2 Social construction feminism

Social construction feminists look at the structure of gendered social order in which society is organized. To them gendered norms and expectations are socialized into people requiring them to adapt to alternative ways of acting, arrangement of work and family life (Lorber, 29). This theory gave context to the feminization of poverty as witnessed in the floriculture industry. As women are expected to behave in a way that does not threaten the male social structure, it became apparent that most of the women working in the farm chose this market as it best fit their pre-assigned roles in society.

They further consider inequality to be the core of gender. Due to social differentiation, unequal treatment is justified. This pervasiveness leads people to believe gendering is biological and thus natural. In a quest to explain why most women are employed in the general labour category this theory proved important as some respondents revealed. They believed that women are better suited to work in the industry due to their natural ability to bend for longer hours than men. This narrative was prevalent even in the absence of scientific proof of the same and a medical officer called it a fallacy created over time through gendered roles.

This theory also problematizes the division of care roles. To them the fact that women are ostensibly required to be primary carers and homemakers exemplifies the segregation and hardship of women (Lorber, 30). To test my assumption on labour conditions and its resultant effects being especially hard on women, I investigated the care roles on men and women. I found that due to societal expectations of women to care for their families, most of the women respondents were sole carers of multiple dependents and thus took up other employment to meet their needs. For instance, the inadequate minimum wages they earned working on the farms led women with dependents to partake in prostitution and other aberrant behaviour in order to provide for their families. This theory also proved important for my recommendation as it advocates for aggressive dialogue to change preconceived notions.

2.3.3 Marxists and socialists theories

To understand why women are disparately impacted by their work in flower farms, I relied on the marxist and socialist feminist theories. It gave context to the gendered roles of women. Expectations within the family and society meant that care roles are solely women's work (Lorber, 11). It also explained why many of my respondents were single mothers who had dependents not only from their extended but also from their nuclear families. This contextualized the added pressure on women who then engaged in other activities to make ends meet.

Socialist feminists suggest that wage differences between men and women are not set by labour markets, education or even one's worth to an employer; rather, it is based on gender and other forms of discrimination. Through this theory, I questioned the determination of 'worth' of work which led to understanding the reason for the difference between the salaries paid to men and women in the general worker category. Spraying in all the farms in this study is a job specifically reserved for men. Sprayers are paid more than other general workers, including women. According to one of the managers, the salary difference is due to the value of the work done. Sprayers are considered to work in high-risk environments and this makes them worthy of receiving a higher remuneration package which covers insurance against chemical poisoning. This explanation is patently false and does not justify the remunerative discrimination women workers suffer since they come into just the same or even more contact with the flowers as the male sprayers. In some instances, management engages in the

dangerous practice of allowing the flowers in the greenhouses to be fumigated by higher paid male sprayers while lower paid women workers are present and going about their work.

Marxists feminists also view women's liberation as being achievable only through the radical restructuring of capitalist economies. They contend that compensation is necessary to liberate women from oppression. Through this suggestion I found it necessary to look into the minimum wage provisions in comparison to the living wage women flower workers need to live a decent life. The disparity was glaring as I found the living wage in the areas of research was two or three times more than the minimum wage the women were earning. As part of my recommendations therefore, I suggest a review of the minimum wage.

2.4 Methodological framework

2.4.1 Unearthing women's lived realities

To investigate women's position within the cut flower sector and its impact on their livelihood, I needed to use a framework that would effectively enable me to interact with the women. The women's law approach, according to Dahl (1987), takes the woman as the starting point, looking at their circumstances and lived experiences and gauging their position of law and society. It takes cognizance of the importance of looking at the reality on the ground before locating the laws affecting them and making recommendations for improvement. Using this approach, I was able to appreciate the lived realities of women labourers through interviews and discussions with women and men labourers as well as management on their perspectives and lived experiences. It led me to discover a weak point in the Employment Act, 2007 which left an avenue for employers to dictate working hours which translated to women effectively being forced to work up to 16 hours per day.

This approach further enabled me to pick out and engage with several labourers from within and without their working area. Despite some apprehension in talking to me at first, the respondents opened up. I was therefore able to conduct the interview on the farms while they worked as they had orders and targets to meet every day. This opened up an interactive process with which they were able to relay their experiences without fear. I discovered that farms paint a picture of total compliance with laws and perfect labour practices when in fact the women spoke of constant exposure to chemicals and pesticides without proper protective

equipment. I was able to triangulate the data through group discussions with other key respondents including gender committees on several farms.

I was also able to engage with different theories that affected the gendered market and labour practices within the farms. In doing so some issue I had not considered going into the field began to emerge. For instance, the issue of a worker's tribe came up in most of my discussions on the farms. I noted that most women employed in flower farms within the Nyandarua area are not native to the area and therefore faced difficulties on the farms and the increased chance of sporadic violence inside and outside of their working hours. I was able to probe this issue of employment and tribal origin with my other respondents and it emerged that it is of major importance within the flower sector and also other labour institutions as well. This led to me to consider the intersectional inequalities migrant women face in these areas. This was especially important, as flower farming is largely dependent on migrant workers.

Further, this approach also enabled me to understand the effects of labour practices on the women's day-to-day lives outside their work place. For instance, those who were resident within farmhouses complained of gender insensitivity by management in the allocation of living spaces, as they were paired up with men who in several instances would sexually and physically abuse them. Such revelations were important in my overall research as the voices of the women brought out various other rights that were being violated indirectly and all in all it informed my recommendations to remedy practices within the cut flower sector.

2.4.2 *Understanding disparate treatment and impact*

A sex and gender analysis approach to the research also enabled me to interrogate how biological differences and social roles affect employment opportunities, labour practices and their resultant effect. Sex is the physical difference between a man and a woman. Gender on the other hand is a social and cultural construct (Bentzon *et al.*, 1998: 82). Equality of sexes has been recognized in the Kenyan Constitution as well as labour laws. I used this approach to establish how sex played a key role in employment at different levels at the farm. During the research, I noted that socially constructed gender roles were key to the division of labour. In all the farms I visited, women made up to 80% of the general worker workforce a sharp contrast to their 5% representation at management level. Management justified this on the basis of their belief that women are softer hence more suited to handling delicate flowers as

opposed to men. They further stated that men are not naturally meant to do work which requires them to bend as it is not muscular. Women on the other hand are chosen to perform this work because they can bend and are able to endure long hours of such work.

I was also able to find out which sex is most affected by violations of labour rights on flower farms. As gender connotes perceived social relations, I investigated the social roles played by the different sexes, e.g., caretaker roles. This was important in helping me identify who suffered more in cases of labour violations, e.g., excessive overtime, unpaid dues and limited social security. The social roles attributed to women meant that they suffered more when farm practices were poor. For instance, most of the farms did not have crèches, yet 60% of my female respondents had children younger than 5 years old and a further 80% of them were single mothers. Due to their compulsory over time duties, these women failed to enjoy time with their children who mostly ended up staying with neighbours or at home alone.

Further care roles came out exclusively as a woman's job. The relational characteristic women are socialized to exhibit means that they use up the minimum wages they earn on other people, while male labourers invest in private profitable ventures. Out of desperation, women also end up being casual labourers more often than men and further suffer from receiving less remuneration than their male counterparts.

2.4.3 Actors, structures and norms approach

Prior to going into the field, there was a need to ensure I identified key respondents to provide the data I needed for the research. I therefore mapped out several farms, institutions, Ministries and organizations that I felt would hold the most appropriate information. I engaged with existing literature and law to identify my key respondents.

Labour is an area in which multiple stakeholders interact to ensure the protection and implementation of existing law. My second assumption was that flower farms employ more women in the manual labour division than any other division due to gender bias. I hypothesized that flower farms deliberately employ women in these sectors because of management's stipulated requirements. Flower farms set up policies and codes of control within their premises. These policies are usually intended for the benefit of the farm to ensure operations run according to its management's targets. One of the actors admitted to the existence of a policy to ensure that only one woman was to be hired for every five men at

managerial level. He supposed that this was so because women are easily controlled, less rational and therefore unsuitable for work in the high stress environment of managerial work. He also attributed this attitude to historical gender struggles.

The Ministry of Labour, as a structure, is the only Ministry in charge of ensuring the Kenyan labour market runs smoothly and efficiently. To ensure this mandate, several stakeholders including the Kenya Human Rights Commission (KHRC) and other civil rights bodies are tasked at looking into human rights issues within various sectors and coming up with recommendations for law reform. The Ministry is divided into different sectors in order to ensure the effective implementation of law. Labour inspectors for instance are tasked with conducting inspections in employment premises to ensure compliance with national law. This however has not been achieved due to insufficient budgetary allocation, which has led to understaffing. As a result, flower farms are not inspected and little effort is made to educate workers about their labour rights. The gaps between the law and its implementation within the Ministry are therefore crippling its operations and undermining the effectiveness of the country's labour laws.

I further looked into the Ministry of Gender to establish how they were dealing with discrimination and inequality in labour and the measures they had taken to ensure women in flower farms are protected. I also found that due to limited budgetary allocations, this Ministry equally fails to carry out audits of the farms and thereby exposes women labourers to abuse by their employers.

Following this interaction, it appears that women labourers in the cut flower sector continue to be subjected to unfair labour practices largely due to the failure of key stakeholders to ensure respect, protection and fulfilment of women's labour rights.

2.4.4 Human rights approach

The International Labour Organization (ILO) was established in 1919 in an effort to bring together workers, the government and employers to develop acceptable standards of employment for both men and women. Equitable labour rights and practices have also been recognized under the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) among others.

The fact that my first assumption speaks to labour rights led me to consider the human rights approach as I would have to investigate the international standards as well as Kenya's legal instruments and see how they apply to women labourers in Kenya's flower farms.

Using this rights approach I was able to interrogate the extent of compliance with international standards based on not only the text provision but through the various discussions by committees and the key determinants on implementation. For instance when considering remuneration, I used the context given by the Committee on Economic, Social and Cultural Rights' (CESCR) General Comment (GC) 18 (GC 18) to analyze whether the remuneration received by general workers was fair.

The human rights approach also enabled me to investigate whether women labourers understood and interpreted their rights. For instance during my first interview of a key respondent I was able to discern that she did not know her rights and that the farm management does not educate any of its workers about their rights. The same was confirmed during a focus group discussion during which the women could not agree on the correct position of law with regard to the farm's health protection requirements or the minimum wage.

This approach further enabled me investigate the interrelatedness of rights. I found out that labour practices not only infringed on the women's right at work but also other rights outside of work and those of their dependents. According to General Comment No. 18 of 2005, the CESCR acknowledges that the right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community. For instance, due to low paid work in this sector, most respondents reside in slum areas without adequate sanitation and security which is an infringement of their right to health and security.

2.5 Data collection methods

2.5.1 *In-depth interviews with key respondents*

I selected key respondents based on first hand information from the flower farms. Focus was on the day-to-day experiences of women in flower farms, the impact of the law and possible solutions. I considered the research questions to guide the interviews. This method allowed me to seek clarity on issues I did not understand (Table 1)

Table 1: Showing details of key respondents with whom in-depth interviews were conducted

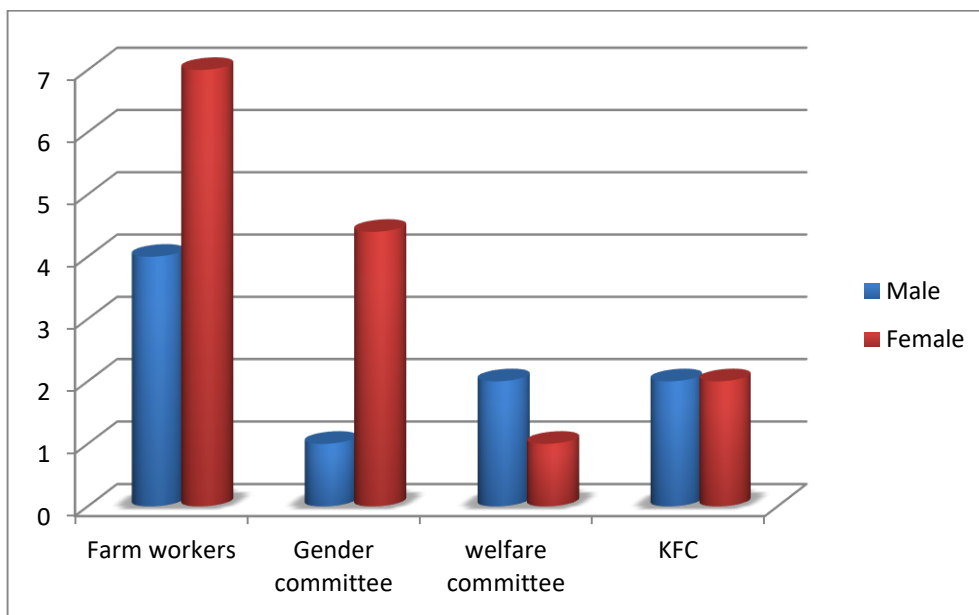
Respondent	Female	Male	Total
Labour officer	0	1	1
Clinical officer	1	0	1
General workers	6	4	10
Farm management	1	4	5
Kenya Flower Council (KFC)	0	2	2
National Gender and Equality Commission	1	0	1
Kenya Human Rights Commission (KHRC)	1	0	1
Total	10	11	21

2.5.2. *Group discussions*

This method enabled me interact with a larger number of people at once (Figure 1). Insights provided by the group also enabled me to corroborate the data I had gathered from individual interviews. I used structured questions to guide my interview but did not allow myself to be limited to them, as I needed to develop new theories and interact with emerging issues. All except one of my group discussions consisted of only one sex. Discussing issues with both men and women was important as it enabled me to understand how men and women viewed issues about the farm, how they viewed gender roles and what they thought about the effects of unfair farm practices. Among those with whom I was able to have discussions included gender and welfare committees as well as female and male workers. These discussions were helpful as they allowed debate among the respondents who all brought forth their opinions on the various issues. Most of the women thought it was unfair and backward that they remain solely responsible for caring for family members as well as conducting other day-to-day tasks

within their community. The men on the other hand were of the opinion that women are created to perform such tasks and thus expecting a man to step up and do the same is absurd. They however all agreed that unfair labour practices affect women more than men.

Figure 1: Bar chart showing the gender representation within the focus group discussions



2.5.3. Observation

While conducting interviews, I observed the conditions on the farms. For instance, I observed that even though management insisted that the farm was kept clean and workers were not exposed to chemicals and pesticides, I saw the mud in which women were forced to work and some of them did not have boots. One woman had blisters on her feet due to exposure from the chemicals in the water.

I also used this method to note the farms' compliance levels with labour standards. I observed that most farms did not display the required notices informing employees of their rights. I was therefore able to collect data directly.

This method was therefore important in enabling me to verify information I had gathered from key respondents. Direct interaction with these working spaces afforded me first hand knowledge of the actual labour practices on the farms and how they affect their labourers.

2.5.4 Desk research

I used this method as a secondary source of data to find out key literature including academic writing, legal positions, news articles and other writings on labour conditions on flower farms. Through this method I was able to locate literature that informed the study and from this I located the gaps in knowledge that informed my decision to choose this area of research. I was also able to pinpoint what law applied to the cut flower sector and then cross-check this against the reality on the ground to find out if, where and what violations were occurring to help me identify legal weaknesses and gaps in the overall operational legal framework that unfairly and disproportionately impacted women workers in the cut flower sector.

2.6 Assessment of methodology

All the methods and methodology discussed above were effective. I was able to interrogate the research assumptions thoroughly as the methodology allowed to me to triangulate data, detect emerging issues and further fill in the missing links in my data. Some respondents were reserved in telling their stories as they thought I was spying for management but after engaging with them further and reassuring them that this was not the case, they became more open. Other than that, the research was conducted smoothly and the data collected was corroborated as I went along. Interviews were useful in gathering information as they enabled me to immediately engage with the respondents in order to clarify vague answers. Observations on the other hand enabled me to corroborate information from actors for instance regarding the displaying of rules and regulations on the farms.

2.7 Conclusion

This chapter has outlined the various conceptual, theoretical, methodological framework and data collection methods. Key concepts underlying this research were explained in order to ensure a better understanding of it. This chapter also discussed theoretical framework including feminist theories like masculinity which problematize power and control as the reason why male feel the need to dominate women and social construction feminism, which views socialization as the key to gender bias against women. Economic theories including marxist and socialist theories on the other hand problematize capitalism and thus explain the position of women on the farms and why they are disparately treated and impacted by labour practices.

The methodological framework described the approaches employed in the field and how they allowed the gathering of required data to fulfil the objective of this study. The women's law approach takes women as the starting point unearthing their lived realities on farms and determining the effects of their labour practices. The human rights and actors and structure approach was used to test the efficacy of labour laws, their observance and implementation on flower farms as well as their enforcement through the courts and other regulatory bodies.

The next chapters discuss and analyze the findings obtained in the field making use of the approaches and methods of data collection discussed in this chapter, all of which will also set the stage for the making of recommendations to improve the plight of women workers in the cut flower sector.

CHAPTER THREE

3.0 ‘LABOURING IN VAIN’: THE EFFECTIVENESS OF LABOUR LAWS AND THEIR APPLICATION TO THE CUT FLOWER SECTOR

3.1 Introduction

The previous chapter outlined the various conceptual, theoretical and methodological frameworks used in the study. This chapter uses the human rights and actors and structures approach in analyzing Kenya’s labour regulatory framework and the extent of its implementation. Work is recognized as an important aspect of a person’s mental, social, economic and political welfare. It is therefore pertinent to answer the following questions: What laws govern labour in Kenya? Are there gaps in the law? Are the laws being implemented adequately? What are the challenges of its implementation?

The effective realization of human rights is substantially dependent on a state’s corresponding obligation. Kenya has ratified various treaties in an aim to improve the employment rights of workers. They include the ICESCR, which recognizes the right to work in article 6, and its accompanying rights in article 7 on an equal basis for everyone.² The African Charter on Human and Peoples’ Rights on the other hand recognizes the equality of all persons and the right to work under equitable and satisfactory conditions and remuneration. Further Kenya has ratified instruments that specifically speak to the rights of women including the Maputo Protocol and CEDAW. These two instruments require the state to ensure equality is not only realized *de jure* but also *de facto*. They also acknowledge the right to work under just and favourable conditions and without discrimination in articles 12 and 13 and article 11, respectively. This means addressing both direct and indirect discrimination and creating an environment to ensure substantive equality. The ILO has been a major contributor to labour matters globally. Kenya has ratified over 47 ILO Conventions³ (Appendix 1) and continues to work towards the realization and protection of the right to work and of the rights at work. The ILO Decent Work Indicator (2013a) provides a framework for ensuring these rights are wholly protected. It takes cognizance of the various

² As per article 3.

³ Includes 7 of the 8 fundamental Conventions.

instruments including CEDAW and the Maputo Protocol for the effective protection of women.

This chapter therefore discusses Kenya's labour regulatory framework in relation to international standards as set forth by the ILO.

3.2 Labour regulatory framework

3.2.1 *Obligation to protect*

The obligation to protect requires States Parties to effectively prevent the infringements of the right to work and rights at work both domestically and, to the extent that compatible with international law. States Parties are therefore to adopt legislative, administrative, educational, and other appropriate measures to ensure effective protection against Covenant rights violations linked to work. Kenya in line with this obligation enacted several laws to govern labour and employment in 2007. This was a step taken to ensure compliance and alignment with international standards to some extent. These laws include:

- The Employment Act, No. 11 of 2007 which regulates various aspects of employment including; assurance and protection of access and choice of employment, favourable conditions of work, employer and employee duties and obligations, standards of work as well as identification of disputes and their resolution.
- The Labour Institutions Act, No.12 of 2007 establishes and regulates major institutions aimed at ensuring labour laws are effectively implemented in Kenya. These institutions include: the Industrial Court, the Labour Administration and Inspection Office, the Wages Council, employment agencies, the National Labour Board as well as the Committee of Inquiry.
- The Work Injury Benefits Act No. 13 of 2007 accords relief to any worker who is injured by an accident at work or becomes ill with a disease caused by work-related activities. It also allows for a personal representative of a worker who dies as a result of work-related accident to make a claim under the Act.

- The Labour Relations Act, No.14 of 2007 provides for the registration, management and democratization of trade unions and employers organizations and federations. Further, it promotes sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining, and the promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development.
- The Occupational Health and Safety Act, No.15 of 2007 (OHSA) specifically deals with work conditions. It requires the employer to provide a clean and safe working environment for workers free from all forms of sanitary disturbances as well as establishing and educating all employees about clear rules for the handling of dangerous substances, e.g., chemicals.

The right to work and rights at work were reiterated in the Kenyan Constitution of 2010. This legislation acknowledged the existence of fundamental human rights and the need to ensure equality in order to enjoy these rights. Article 27 of the Constitution precludes discrimination based on sex, pregnancy, ethnic origin, dress, and marital status among others and further calls for affirmative action & other measures to ensure disadvantaged groups are protected. It further recognizes several labour rights in article 41 including: fair remuneration, reasonable working conditions, freedom of association and the right to strike. This recognition embraces tenets of the decent work agenda which, when read with other rights in the Bill of Rights, culminate in complete protection. Important protection for labour can also be inferred from the recognition of general rules of international law and ratified treaties as conventions which form part of Kenyan law in accordance with article 2(5) and (6).

According to the CESCR, this obligation also requires the state to ensure labour inspectorates interact with work environments to ensure compliance with laws. Section 30 of the Labour Institutions Act establishes the office of Labour Commissioner, Director of Employment and other officers⁴ necessary for the administration of labour laws including labour officers, employment officers and medical officers. These officers are issued certificates of authority bearing their designation, which, upon their presentation, should enable them to gain access to the any premises of employment. For the purpose of monitoring and enforcing compliance,

⁴ Appointed by the Cabinet Secretary for Labour.

the labour officer has the power to require the production of documents in relation to employment,⁵ interview workers, inspect labour premises as well as the housing provided, question employers and institute proceedings to in case of contraventions. The medical officer has the same powers as the labour officer in addition to ordering sick employees to seek medical help or go back to work, inspect food within the workplace, employment premises and order changes and clinics in areas of employment. The employment officer has the power to collect labour market data.

From the foregoing it is clear that the Ministry is charged with the monumental task of ensuring the implementation of labour laws and the enjoyment of women's labour rights. The effective implementation of the vast number of laws would mean that women in the flower sector would be protected from exploitation through the blatant disregard of their rights of subtle non-conformity. According to the Ministry of Labour, officers have not been able to carry out their mandate effectively due to a lack of funding that has led to understaffing, depleted equipment and schemes of service, a situation that has persisted for years (Ministry of Labour's Strategic Plan 2008-2012; KHRC, 2012). It is therefore clear that the state's failure to enforce existing law that directly and indirectly respect human rights is a significant legal gap. This gap has led to a quagmire of different interpretations and applications of the law creating a situation in which the right to work is not afforded in its normative context. Violations committed within the farms are rampant especially owing to the fact that most of these farms are located within the interior of the various counties keeping them away from the public's glare.

This obligation further requires states refrain from dealing with individuals or corporation forum in contravention of human rights within their workspaces. This is however impossible as government audits are not effectively carried out within this sector and therefore identification of these farms is impossible. As far as this study goes, farms involved reported increased revenue and tax returns notwithstanding violations of labour rights in some farms. According to OCHRC (2011), one of the fundamental principles of a state's duty to protect human rights is to ensure business enterprises respect human rights. Therefore, allowing farms, in contravention of their workers' human rights, to continue trading is a failure of the state's duty to protect such rights.

⁵ E.g, wage sheets, employee database.

3.2.2 *Obligation to fulfil*

Kenya, under this obligation, is required to take necessary steps to ensure realization of workers' rights in the cut flower sector. To ensure compliance, a 3 pronged approach should be observed:

- (a) The *duty to promote* requires awareness-raising among the employers and employees on the laws and policies in place. This means that educational campaigns should be carried out in flower farms, collecting and disseminating best practices by offering incentives to best performing farms and regular updates of relevant materials. To establish compliance with this obligation I explored the extent of awareness among and understanding of law among various respondents. The majority of the respondents pointed out that they were not aware of the laws as most only had primary school education and had not been educated about the laws. The failure can be attributed to the lack of information dissemination by the Labour Inspectorate, which is the duty bearer.

Of those who knew about their actual rights, some had reached attended University and some had learnt about them through institutional training at the farms. Some farms had several committees, which teach employees about their rights. Through training sessions, the committees understand and are well versed in the labour laws and therefore teach them to illiterate workers. Further, some farms disseminate the laws both in Swahili and English to ensure employees understand them.

These data confirmed the low levels of awareness about rights at work and even the structures to enable the enforcement of and compliance with the laws. They also suggest that if the Ministry of Labour has done anything to promote awareness, it is clearly not enough and improvements need to be made as it is not reflected at the community level. The lack of awareness of rights in flower farms has led to the exploitation of workers by some corrupt employers as witnessed at one farm, where rules on working hours had been put up on a notice board purporting to be government issued hours, when in fact they were not. It therefore dawned on me that it is important to raise awareness among the employees if for nothing but to teach them to identify violations if and when they occur.

The Labour Inspectorate's inability to carry out its mandate effectively has affected the issue of incentives. Due to the Inspectorate's failure it is not easy to identify farms with good records. This means that incentives and appraisal are impossible. Therefore farms are unable to compare their performances, learn from each other's mistakes and successes and therefore motivate themselves to observe the human rights of their workers.

- (b) The *duty to facilitate* requires the Ministry of Labour and other key stakeholders to consider all steps necessary for the full protection of women in the cut flower sector. The Agricultural Wages Council is tasked with making recommendations for the setting of minimum wages subject to conditions of employment as well as the standard of living. According to the ILO, a statutory minimum wage can be an important counterweight to gendered effects in global supply chains (Rubrey, 2009: 1). This council has however been criticized for proposing recommendations that do not adequately reflect the realities on the ground in the floriculture industry. Considering that Kenya's cut flower sector is a multi-million dollar operation, the minimum wage needs to reflect the labour intensive and laborious nature of the work which drives it as well as its highly lucrative returns. This Council bases its findings on small agricultural enterprises as revealed by the KHRC (2012: 25). Putting small scale and highly commercialized industries in the same bracket obscures the work output and the reality of migrant labour⁶ relied upon by the larger flower farms. Farms are generally located in semi-urban areas where the cost of living is high and this important factor should be taken into account when considering the minimum wage for flower farm workers. According to the ILO, a minimum wage should reflect the living wage, the amount of work performed, the conditions of labour, its associated dangers and the business returns generated from the work performed. An improvement of the minimum wage for the cut flower sector is paramount for the protection of women's right to and at work. This wage should be reflective of the cut flower sector.

⁶ While small-scale agriculture has been linked to women living within their home areas who can access land attached to farms, horticulture is mostly dependent on women migrants from other parts of Kenya in search of employment opportunities. Therefore their living expenses increase significantly and so, in accordance with the living wage for the area, should their minimum wage.

Kenya has further has decentralized various institutions for the implementation of its labour laws. These institutions are however plagued by chronic underfunding, lack of adequate staffing⁷ and generally a lack of will to carry out their mandate. Lack of will was inferred from an interaction with the labour officer who distanced the Ministry from claims of inadequate remuneration even in the face of clear evidence. He rubbished the claim that women in this sector engaged in prostitution because of poverty, stating that it was a matter of their choice claiming that poverty affects other people who do not choose prostitution. To him, claims of low pay are just lies to seek attention and pity. This lack of understanding of and urgent need to attend to this serious violation against women creates a hotbed for victimization of other women at large. It also diminishes the influence of patriarchal dominance that commodifies sex to subordinate women (Saulnier, 2000: 189).

- (c) Lastly, the *duty to provide* requires the state to establish schemes to help employees who are unable to realize their rights through, e.g., collective bargaining and social dialogue. The Labour Relations Act allows for the right to association including forming or joining a trade union with a view to initiating social dialogue to enable effective protection in employment. Most of my respondents acknowledged being members of the Kenya Plantation and Agriculture Workers Union (KPAWU). They expressed their gratitude for this union in its efforts to protect their rights. They however decried its skewed representation because women are not represented in the top positions largely due to certain monetary obligations demanded of representatives. Most of them claimed that this requirement functioned to exclude them indirectly as, due to their social roles, they cannot afford to use their monies as so required. According to the World Bank, women are generally poorer than men (World Bank, 2012). To effectively recognize women's plight, it is necessary to have women in positions of power to influence engendered policies. Aside from these, some employees are not members of workers unions. This may be attributed to lack of knowledge and, as some argue, farm policies, which preclude its employees from joining these unions (KHRC, 2012: 12). I was surprised when a group of respondents asked me to give them advice on how to join a trade union and to explain to them what it means to be a member.

⁷ *Ibid.*

In as much as this union has been helpful to employees, it represents a whole range of agricultural workers in Kenya and due to its work log, women in the cut flower sector are often left unprotected and their rights neglected. This can be inferred from the lack of punishment meted out in response to the reporting of on-going violations by farms against their women workers who are members of KPAWU.

3.2.3 *Obligation to respect*

This obligation connotes the enjoyment of the right to work and the rights at work without any form of direct or indirect distinction. The government has fulfilled this obligation to some extent by the inclusion of equality and non-discrimination provisions within its various labour laws. This right, however, has not been actually achieved as clear evidence of segregation can still be observed within the cut flower sector; firstly, by the fact that it is dominated by women and secondly by the fact that these women still occupy its lowest working positions. This scenario can be explained using the theory of neoclassical economists who view segregation in labour markets as an interplay between the state, employers and employees. To them, employees in search of economic empowerment often consider their endowment levels, constraints and preferences, while employers who seek to maximize benefits, employ workers worthy of their marginal product (Ruwanpura, 2004: 251). The state turns a blind eye to this segregated arrangement. This leads to competitive labour markets, which relegate women to lower paid positions due to hierarchical and distinct labour market participation and minimum skill and training before and during employment. All these factors combine to ensure that women are located within activities that reflect constraints, e.g., part-time work and flexible hours, which attract the lowest levels of remuneration.

According to the CEDAW Committee (GC 33), the right to access justice is essential for the realization of women's rights. This multidimensional right encompasses sustainability, accessibility, availability, quality and adequate remedy. The Employment and Labour Relations Court is charged with adjudicating on all matters regarding employment. This institution however has not had an impact on women working in the flower farms because of their lack of means, threats they come under from farm management, the lack of knowledge of their rights and delays within the corridors of justice all of which work together and discourage women from seeking to enforce their rights. There is therefore a need to engender this institution to enforce and therefore realise women's labour rights.

Apart from the above regulatory framework, buyers in the international forum started movements and established codes to help ensure the protection of human rights standards for, e.g., workers on the farms with whom they trade. These codes include Fair-trade whose mandate is to ensure transparency and respect of persons as well as the environment to ensure sustainable standards. Membership in this partnership is however voluntary. More Profitable Sustainability (MPS) is a Dutch affiliated code that requires the application of international standards to farming and the treatment of employees. The Kenya Flower Council (KFC)⁸ on the other hand is a voluntary private organization of producers. It sets codes for the labour market including quality compliance, environmental standards as well as human rights concerns. At the moment it has over 100 members and has been credited for improving compliance among its member farms. KFC audits are done on a yearly basis although they say it is not always conclusive as getting information from workers at times is stressful due to problematic power relations on farms. They however contend that in case of non-compliance certification is not granted and membership may be revoked. All these organizations conduct audits and have ways of ensuring compliance, which include certification as well as incentives (Table 2).

Table 2: Showing the codes applying to the research farm

Code	Farm 1	Farm 2	Farm 3	Farm 4	Farm 5
KFC	X Silver membership (not certified)	X Silver membership (not certified)	X Silver membership (certified)		
MPS				X	X
Fair-trade			X		X

Despite these codes, farms continue to disregard human rights. However, farms affiliated to Fair-trade seem to have better labour standards which they attributed to the repercussions of non-compliance, which generally affected the marketability of their produce.

⁸ The KFC has been recognized globally and awarded an accreditation of ISO 65 (a recognized standard for certification bodies).

3.3 Conclusion

This chapter gave an overview of the labour rights according to the ILO's Decent Work Indicator. It was analyzed from an international obligatory standpoint and reflected the state's duties versus the reality in terms of implementation on selected flower farms. It delved into the various institutions charged with the realization of labour rights and unearthed gaps that exemplified non-implementation, non-compliance and non-enforcement. It is therefore clear that the government needs to strengthen its commitment toward international labour standards in order to effectively protect women's rights at work on flower farms. The next chapter discusses the women general workers' lived realities in terms of employment opportunities, labour practices and their effects on other human rights.

CHAPTER FOUR

4.0 THE PLIGHT OF WOMEN IN THE CUT FLOWER SECTOR

'Economic, social and cultural rights have a particular significance for women because as a group, women are disproportionately affected by poverty, and by social and cultural marginalization.'

(Montreal Principles on Women's Economic, Social and Cultural Rights)

4.1 Introduction

According to UN Women (2018), women's lived experiences are greatly intersected. Their right to work and rights at work affect all other aspects of their life and those of their dependents socially, physically and psychologically. The previous chapter outlined Kenya's labour regulatory framework and the codes of practice on flower farms that took part in the study. It further noted the gaps in the implementation and enforcement of women's labour rights. This chapter uses the laws outlined to analyze the findings on labour opportunities and practices within the flower farms. It focuses on segregation in employment patterns, health and safety on the farms, remuneration, working hours and gender-based violence. It contextualizes related labour rights all while engaging theories and contributing factors to understand the *status quo* and interrelatedness and indivisibility of women's rights. It also discusses child labour and tribalism as emerging issues in the field.

4.2 A gendered labour market

4.2.1 Horizontal segregation

Horizontal segregation connotes the difference in occupational sectors between men and women. Employment within the formal sector in Kenya is largely male dominated, with women currently constituting about 35% of the total labour force (Danish Trade Council, 2016: 16). Accordingly, 70% of women employees are within the lower wage limits compared to their male counterparts. This notwithstanding, Kenya has experienced an increase of women in casual employment. They are engaged in activities that have been traditionally deemed feminine while men are spread across all sectors (Danish Trade Council, 2016: 17). Besides the informal sector women are generally concentrated in the agricultural sector, both large and small scale. Floriculture is considered part of the agricultural industry and hence is governed by its rules and regulations. According to the Natural Resources

Institute (2002: 1), women make up about 65-75% of workers employed in the cut flower sector and an increase of 5% occurred in the year 2016. The cut flower sector has undoubtedly benefited a lot of women by creating opportunities for employment especially in the peri-urban and rural areas.

Regarding the first part of my second assumption that the flower industry employs a large number of women, all the respondents acknowledged that a vast number of women do indeed work in the sector. A Human Resources Manager at Flower Farm 1 said that out of their 600 employees about 500 were women. On Farm 2, out of 380 employees 270 were female (Table 3).

Table 3: Showing the representation of male and female workers on the 5 Flower Farms studied in the research

FARM	NUMBER OF EMPLOYEES	MALE	FEMALE
1	600	100	500
2	380	110	270
3	1000	200	800
4	400	150	250
5	600	100	500

According to her, the disparity in gender representation on flower farms is a general trend which is witnessed within the greater sub-Saharan region. Because most flower farms are located in rural or semi-rural areas, there is a high chance that women will be engaged in this type of employment since they generally make up most of the rural population. According to the Kenya Bureau of Statistics (2013), approximately 72% of the total female population lives in the rural areas. This can be attributed to the lack of economic solutions for them in urban areas and hence the need to engage in small-scale businesses and plantation agriculture in rural areas. KNBS (2013) indicated that approximately 13.5 million women live in rural areas and only about 3.7 million reside in urban areas. With this enormous number of women in the rural areas it makes sense that most of them would be engaged in employment opportunities prevalent in rural Kenya, which is agricultural labour.

4.2.1.1 Labour participation disparity due to historical bias

This phenomenon can be traced in history as far back as the 1800s. Women were not a significant part of the formal labour force during the pre-colonial and colonial periods and these manifestations are still being experienced to date. With the outset of trade and the privatization of property, gender roles quickly began to change. When whole communities shared equally in labour, segregation along family lines began to be formed and as long as the male population was involved in trade, women were made to reproduce to increase the labour pool. They featured more in the domestic arena. As Germans and Arabs ventured into Kenya looking for raw materials, the slave trade emerged whereby macho men were trafficked across East Africa and the Continent to be labourers. This was soon after followed by colonialism (Lecture notes).

Colonization established discrimination against women both formally and substantively. It was formally provided for against race but with the advent of capitalism and the need for the exploitation of cheap available labour it morphed into gender discrimination. Men were used as a tool of trade and were therefore preferred when it came to working in plantations. As more people began to resist this exploitation, tariffs were introduced to require all Africans to pay taxes and thus most men left their homes in search of employment in plantations in order to pay their imposed taxes. Women on the other hand were left in the rural areas to perform other care roles and provide for their families who had been left behind. They therefore adapted to the roles that men performed by engaging in small-scale subsistence farming for familial use and barter trade (Lecture notes).

4.2.1.2 Impact of education on labour market disparity

John Ludwig Kraft was the first missionary explorer in Kenya. He introduced the first form of formal education, which catered for the male population only. This acted as an advantage to the male population as it afforded them access to higher rank and better pay in the plantations farms. This access also enabled them to gain better paying employment as teachers, clerks and other work in administration (Francis, 1995: 202). Although education is now a right enjoyed by all, illiteracy levels among the female population in Kenya still remains high due to societal and cultural stigma that does not respect the girl child's right in the same respect as boy child. Women therefore are still being left behind in economic ventures with most of them especially in the rural areas opting for the most available labour. The agricultural sector although laborious, has been dubbed a lesser skill sector in which

academic qualifications are generally not required. The fact that skill is equated to education prejudices many women in their quest to break free from the cliché jobs reserved for the uneducated. These lesser skill occupations offer little to no chance of career advancement as well as low wages and thus culminate in the phenomenon of the feminization of poverty.

4.2.1.3 Bias toward women in agriculture

During a group discussion with some of the workers on one of the Flower Farms, I found out that most employees thought flower farms intentionally chose women and preferred men to women whenever applications for positions were considered. For instance Nancy said:

‘It is obvious that flower farms need people who can be subservient and obey all instructions.’

According to these women, men and women alike apply for the same positions in flower farms. They say most of them know at least 5 men who have been applying for a position within the farm but have never been hired. Owing to the fact that, most employment within flower farms does not require any educational qualification, it is highly probable that employment may be targeted. Cornheil (2006) emphasises the preference of the high-level agricultural sector for women workers for the labour-intensive tasks associated with non-traditional and agricultural production. Women are considered submissive and docile, having greater dexterity for tasks that require care and patience, and flexibility with regard to work conditions (e.g., work hours, wages, contracts). Out of desperation, women suffer in silence and stay in such employment, a phenomenon that can be attributed to their relational nature.⁹ Women in the rural areas adhere to traditional African culture in which the woman is tasked with care roles not only of her immediate but extended family as well. A female worker would therefore sacrifice her comfort for the benefit of her dependents.

Gender bias in this context affects the right to equality and non-discrimination. Flower farms inadvertently violate this right by effecting direct discrimination against men, which in essence means regarding women as inferior and ‘other’ making them susceptible to mistreatment. This, according to the definition of discrimination in CEDAW and the Maputo Protocol, amounts to outright violations of women’s rights. Article 5a of CEDAW decries any attitude that may cause any inferiority or superiority complex which may give rise to

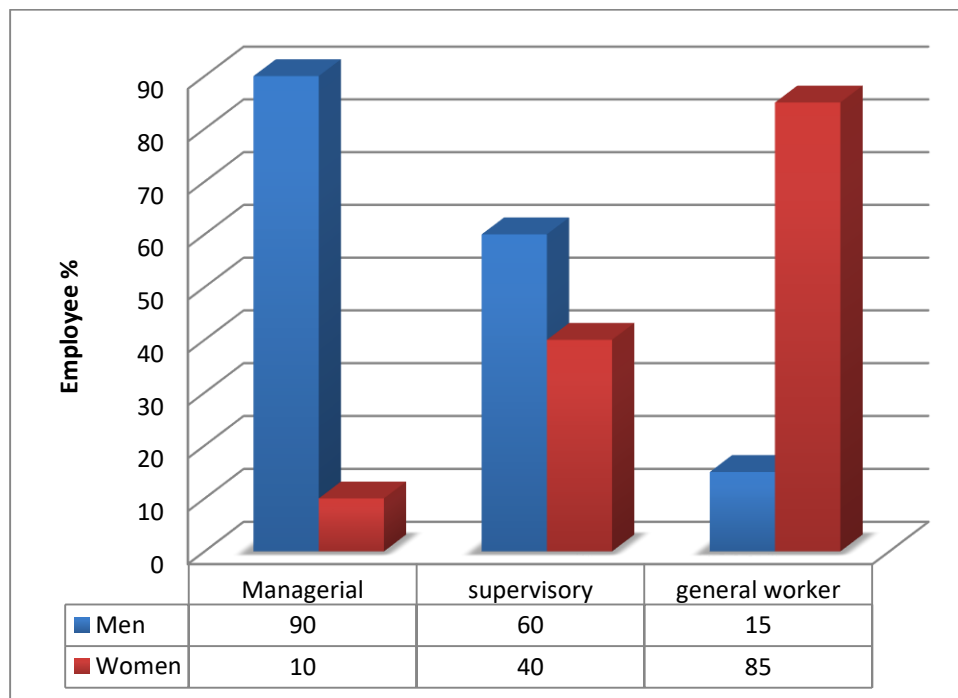
⁹ The need to provide for dependents without considering one’s own well-being.

discrimination. This theory was confirmed by KHRC, which confirmed that the cut flower sector employs 90% women due to its failure to embrace the notion of equality and non-discrimination. They also attributed it to biased views and beliefs.

4.2.2 Vertical segregation

The relevant literature shows that women’s representation within the labour market remains highly polarized especially in policy making and management positions (Francis, 1995). Within the flower sector, gender disparity can be further observed through lopsided ratios within the different categories of workers. The higher you climb through the management levels, the fewer women you find. The ILO (2013a) notes that statistics show the higher the position the wider the gender gap, so that women worldwide hold less than 5% of the top positions. Work is generally divided between men and women according to their supposed gender roles which is also referred to as the gender division of labour. It not only concerns paid employment but also general work and responsibilities assigned to either men or women in their day to day lives which in essence determines certain patterns in the labour market.

Figure 2: Bar chart showing the gender representation of labour within the organizational levels of the 5 Flower Farms studied in the research



According to the research about 85% of all general workers in the cut flower sector are women. A sharp contrast to the miniscule number of women employed in managerial position (Figure 2). The second assumption in relation to this study was that the cut flower sector employs a higher number of women in the manual labour division than any other division due to gender bias and this was confirmed by the findings.

4.2.2.1 Gendered reasons for vertical segregation

Most of the respondents gave me the same explanation when it came to women’s prevalence in employment in the general worker category. They averred that women are preferred over men when it came to handling delicate flowers. To them women are more careful and gentler than men and therefore better suited to doing work which directly interacts with the delicate petals of flowers. In a group discussion with men who worked on the farm, it was clear they thought that women are socialized to act in certain ways and this makes them soft and docile. They gave examples of women taking care of newborns and said the handling flowers was women’s work because of their gentle touch; men, on the other hand, cannot control or be expected to control their aggression. Gendered roles within the home and socialization to act in a certain type of way contribute enormously to inequality in flower farms because they give rise to expectations between men and women that determine the positions they occupy. These differences make management as well as job seekers prefer to seek certain kinds of jobs that society deems acceptable for their sex. To illustrate this point, I made an inquiry about the level of education among general worker respondents and was shocked to discover that not all employees were as uneducated and illiterate as was assumed by management (Table 4).

Table 4: Showing the levels of educational among the general workers of the 5 Flower Farms studied in the research

EDUCATIONAL LEVEL	MALE	FEMALE
Elementary level	65	30
Secondary level	30	50
College/ University level	5	20
Total	100	100

On inquiry about the disproportionate representation of women within the various categories on Farm 4, the manager explained that it depends on an applicant's qualifications as well as the firm's preference. To him the majority of general workers had at the most secondary school education and were thus classified as unskilled labour. He added that management is a muscular job and hence is suited to men due to its time intensive nature, which requires an employee to be constantly on their toes concerning farm practices and finding suitable, rational solutions. He said that farm policy was followed for engaging employees for management positions. Going through job applications for farm management positions it became clear that there were more women than male applicants. Most of the applicants had impressive academic qualifications. The same was not reflective of the qualified applicants as 90% of them were male. He explained that according to farm policy, five men had to be hired for every one woman. He justified this on the basis that women are incapable of working in close proximity to others and doing the same high-level work as men since they are irrational and emotional which would cripple the farm's business.

This explanation was absurd as I put myself in the position of woman applying for a job and being rejected on the mistaken belief that my being a woman made me irrational and incapable of performing a high level job. It also sounded ridiculous considering the flower farms have been known to employ a high number of women who are constantly working together in the farm with no problem. On asking him about this he replied:

‘Disenfranchised women are more disciplined than those with power. If you give a woman everything she thinks of it as a matter of right and becomes defiant which is not good for business.’

These types of attitude clearly perpetuate a bias against women applicants for management and other high level jobs in the farms. The CEDAW Committee (1999), in explaining how attitudes affect equality and are discriminatory, points out the need to curb any attitudes of this nature which perpetuate a superiority or inferiority complex that ultimately prevents women from being able to enjoy their rights and creates stereotypes that lead to the nullification of their rights or to difficulties in achieving them.

Various other reasons, including biological determinism, were given for the farms preferring to employ women in the lower work categories in the sector. According to Mercy, other than just the general view that women are soft, being a general worker within the farm means one

has to be on their feet almost the whole day. Those who work in the green house have to bend most of the time in order to take care of the flowers. Martha, a human resources manager, pointed out that such bending is not muscular and hence men are not preferred. Women, on the other hand, can bend for long periods of time without a problem. As social constructionists argue, socialization and the constant portrayal of women in a crude light such as this has led to the belief that gendered roles are natural attributes. It is clear, therefore, that using only women in intensive labour agriculture is based upon an unfair assessment of them which serves to keep them in an unfair position. Flower farms commonly use such unsubstantiated biological determinism to effect discrimination against their women workers. The fact that they feel that a woman's body is somehow different from that of a man and justifies subjecting women as opposed to men to long hours of bending and standing, is a harmful stereotype that has been linked to health issues of women who work on flower farms.

This scenario was further reaffirmed when a resource manager and supervisor on Farm 3 pointed out that only men work in the engineering department. Antonio Gramsci's concept of hegemony¹⁰ is a perfect explanation of gendered nature of work in Kenya's cut flower industry. According to Connell (2005: 257), hegemonic masculinity can be used to explain the problem of the legitimacy of patriarchy, which creates the dominance of men and their subordination of women. The engineering department caters for the mechanical and electrical needs of the farm and training in truck driving. Explaining why women do not work in this sector, he said:

'Some jobs are meant for men. It is absurd for women to drive trucks while men work in the field.'

This explanation showed the existence of an assumption that it is unacceptable for a woman to work in a better position than a man. The fact that a qualified woman is overlooked simply because a man is available to do the work creates a bias. This bias ensures that women entering employment on the farms have no prospect of career advancement. This was confirmed by observing the training for engineering positions. Only men were being given lessons on truck driving meaning they were eligible to move higher in the general worker category and improve their economic prospects.

¹⁰ The cultural dynamic in which a group claims and sustains leading positions in social life.

The fact that societal and cultural attitudes and institutional power work hand in hand in suppressing women's voices and abilities, creates an accepted strategy that will, if not addressed, continue to marginalize women.

4.3 Health and safety: A cycle of neglect

The right to healthy and safe conditions of work has been recognized in articles 7(b) of the ICESCR, 11(f) of CEDAW and 12 of the Maputo Protocol. According to the CESCR (2016), preventing accidents and diseases at work is fundamental to the realization of just and favourable conditions of work, which is in turn fundamental for the attainment of the highest standard of physical and mental health. The Committee therefore urges state parties to adopt law/policy to prevent work place injury and illnesses through minimizing hazards in all types of work places. The policy should emphasise how to handle different elements of work and disciplinary measures for violations. States are also obliged to put in place appropriate monitoring and enforcement provisions including investigations and adequate penalties in case of violations. In its efforts to fulfil this obligation, Kenya has enacted the OHS Act that specifically deals with work conditions. This piece of legislation requires an employer to provide a clean and safe working environment for their workers and this includes the provision of safety gear. The employer is also required to establish and make known to all employees clear rules for the handling of dangerous substances such as poisons and pest control products.

4.3.1 Efficacy of personal protective equipment (PPE)

According to the KFC, members must adhere to strict safety and clothing features including: overalls, dustcoats, face masks, gumboots, eskimo cloths and gloves. This is necessary to ensure the full and complete protection to their employees. According to their audits, most of the KFC members adhere to this requirement, although others are still failing to do so. To test this claim against the reality on the ground, I observed that most employees on Farm 1 did not have most of these clothing. Farm 1 is a member of the KFC although it had not been certified at the time I was carrying out my research due to its failure to comply with its conditions. As I was conducting a group discussion, I could not help noticing that most of the respondents were not wearing the proper attire. Nyaboke was wearing a pair of torn sneakers through which her toes were protruding and they were saturated. She claimed that she had applied for personal protective equipment (PPE) but had not received any. Her work area was

flooded due to a blockage in the drainage system and management had not fixed it for over 3 months thus violating the requirement to maintain a clean and safe environment.

This scenario however differed from the manner in which I observed that male respondents were treated. They were all dressed in boots and other protective gear. They claimed that they had PPE because they came into direct or closer contact with heavy machinery and chemicals and therefore needed it more than the women. The differences between the protection afforded men and women were glaring as I found all these employees working in the same area of the farm. While men fumigated wearing masks for their protection, women continued to work in the same area with no protection. There was an obvious difference between the protection accorded to male workers and the lack thereof to their female counterparts. It may have been that due to a lack of proper timing, the women were unfairly exposed to agrochemicals. Be that as it may, each section has a supervisor who should ensure that such unsafe practices do not occur. Such practices should be stopped immediately and the reasons for their occurrence properly investigated. In addition, a further unsafe practice was that employees accessed the cold room without any protection and this exposed them to near freezing temperatures.

ILO General Recommendation (GR) 192¹¹ (as read with C184¹²) requires labour inspectors to randomly visit farms to ensure rules of fumigation and entry are properly observed. Due to inadequate funding, however, the Director of Health and Safety is unable to carry out this inspection and therefore non-compliance is rife.

4.3.2 Women's interaction with agrochemicals

The blatant disregard for female employees' welfare combined with the aggressive use of agrochemicals in the floriculture industry means women are constantly exposed to products that are harmful to their health. Since the mid-1980s, Kenya has banned a number of agrochemicals from the market (Appendix 2). These chemicals are deemed unfit for use due to their harmful effects not only to people but also the environment. Studies show that there has been a significant improvement to health and safety within the floriculture sector, although violations are still common (KHRC, 2012: 62). The KFC reported that they provide their member farms with a comprehensive list of approved products in order to ensure the

¹¹ Promotional framework for occupational safety and health.

¹² Safety and health in agriculture Conventions (Agriculture Convention).

protection of the environment and their employees as well. Despite their efforts, the KFC acknowledged that time and time again they come across farms using unapproved products because they are readily available and cheap and their use exposes the environment and their workers to a variety of serious health and safety risks. They noted that these chemicals have been associated with conditions such as toxic shock, respiratory and inflammatory diseases as well as ocular problems.

Two managers on the farms claimed that they did not know about this list of banned products. I found this to be absurd in view of the fact that they, as duty bearers who are directly responsible for health and safety, should, as a matter of due diligence, know about such information. According to the United Nations International Children's Fund (UNICEF, 2009), duty bearers should have the capacity to fulfil their duties and obligations. They therefore should have knowledge of their duties and responsibilities. The human resources personnel who work on flower farms are supposed to strengthen the employer/employee relationship by acquainting themselves with and enforcing all laws, regulations, guidelines and best practices in order to protect the health and safety of employees. It is prudent therefore that the human resources departments familiarize themselves with legal and banned chemicals to ensure the safety of employees. A search around the premises for a notice warning against the use of banned chemicals proved futile and it made me wonder what the people who came into constant contact with chemicals thought about this omission. This lack of due diligence on the part of duty bearers exposes women to serious harm since their protection from coming into contact with dangerous chemicals is not observed.

One respondent had her doubts about the agrochemicals used on the farm claiming she had witnessed labels on chemical containers being switched around on several occasions. Upon investigation she was accused of attempting to cause alarm and despondency for no good reason. She recalled an incident in which some of the sprayers started convulsing at the same time. In response, management started offering sprayers milk to drink after spraying in order to neutralize the effects of the chemicals without changing the practice of using them in the first place. This reaction by management totally overlooks the women general labourers who should also, but do not, receive protection although they work in the same space as these male sprayers.

In addition to exposure to banned chemicals, employees can also suffer the effects of approved agrochemicals if their instructions for use are not properly observed. Training, according to the OHSA,¹³ is mandatory to ensure that all employees are protected from all work injuries and illnesses. Health and safety officials on the flower farms should conduct such training. Some farms reported that they had been given training of some kind, including how to evacuate buildings, what to do and where to go in the case of emergencies and the sprayers were taught how to mix chemicals. Others however reported that all they were ever told about safety was when they joined the farm. They said that they were told that in case they came into contact with chemicals they should wash their hands and eyes thoroughly and that if they suspected chemical poisoning, they should drink water. This casual attitude adopted by farm management towards their workers proves just how vulnerable such workers really are. This is especially the case for women who are in constant contact with the flowers in the fields, the greenhouses and fumigation chambers.

All farm personnel should also exercise caution when interacting with sprayed areas, as they can be dangerous. Re-entering sprayed areas before the required lapse of time after spraying can result in poisoning. Some farms displayed signs indicating spraying times, the type/s of chemical/s used and the lapse of time necessary before re-entering the sprayed area. This showed some proof of employers' safeguarding the health of employees. Some respondents however accused management of forcing them to return into sprayed areas before it was safe to do so. They complained that they were not accorded any extra protection from the chemicals apart from dustcoats and a few who had worn-out gloves, which resulted in their suffering from itchy eyes, outbreaks of skin rashes as well as long-term inflammatory respiratory diseases. This was confirmed by a doctor at a county hospital who acknowledged the vulnerability of women workers on flower farms. She also observed that most of the women who face complications giving birth in the hospital work in the flower industry where they are exposed to harsh working conditions and harmful products.

As most labourers have only the government stipulated National Health Insurance Fund (NHIF), they are seldom treated for the harm they suffer from their extensive exposure to the harmful chemicals in their work place. This insurance often fails to work indicating a zero balance when the patient swears that they are paid up. Therefore women general labourers

¹³ Section 6(c).

often find it difficult to secure medical attention for work related injuries. The ILO (2013b) actually notes that women in agriculture face a high chance of injury and disease especially because they do not have ready access to medical services. This situation is exacerbated by their lack of awareness of and access to information on the risks involved in the agricultural sector. The lack of chemical insurance for women working in the floriculture industry therefore unfairly excludes them from their right to health protection services.

Even though most farms have clinics, they are largely understaffed and suffer from a shortage of drugs resulting in little to no protection in case of emergencies.

4.3.3 The dilemma of pregnant women in the farms

The CEDAW Committee explained that the right to health as protected in article 12 of CEDAW should include the protection of women's health and safety in workplaces by ensuring the improvement of working conditions to safeguard the reproductive function of women. They should also receive special protection from harmful types of work during pregnancy and paid maternity leave (GR 24, par 28). It is therefore necessary for employers to take steps to recognize the vulnerable nature of reproduction and set up workstations that will safeguard the pregnancy. Martha, a human resources manager, said that pregnant women within the farm are treated differently to ensure their utmost well being by according them the lightest jobs. However, she admitted that she was not aware of all that happened on the farm because it is huge and not all workers were comfortable approaching the relevant authority. This account was challenged by most of the general workers. For instance during a focus group discussion the women claimed that the farm exposed pregnant women to conditions which were cause for great concern. They said that whenever the women reported to their supervisors, they would be met with immense hostility. One of the women said a supervisor reacted with hostility when she requested to be assigned lighter duties. He barked at her:

‘Why are you telling me, did I impregnate you? You knew you work in the agricultural sector yet you chose to look for enjoyment, this will teach you to think before you act.’

In essence it is apparent that on some farms there is a general lack of care for pregnant women who are exposed to a variety of health problems which are preventable.

The mental state of some women workers has also been impacted by the staff attitude on flower farms. Male employees reported that some women take dangerous steps after finding out they are pregnant in order to hide their pregnancy from management. They even resort to having abortions so that they can continue working. This scenario proves the power that management wields over its employees. To dis-empower a woman to the point of forcing her to harm herself should be strenuously prohibited and punished. It is a shame that most women do not know or understand their rights sufficiently well to enforce them. Discrimination of this type should be eliminated as it affects both mothers and their unborn babies.

Forcing pregnant women to work in deplorable conditions has repercussions for their reproductive health that may culminate in other health problems in old age. According to the ILO (2013b: 14), greenhouse microclimates and pesticides have been shown to cause health problems for pregnant women including miscarriages, involuntary abortions and premature deliveries. According to one respondent, the farm does not accord pregnant women any special care since they are treated like any other worker on the farm. Sometimes pregnant women work in the storage area, which is quite cold, and without adequate protective clothing they end up being exposed to extremely cold temperatures. The respondent gave an account of a woman who miscarried due to exposure in the cold room and this was confirmed by medical officers.

The Work Injuries Benefits Act, accords every employee injured in the work place an avenue for reparation. It is therefore unfortunate that some women are unable to rely on it when it comes to the enforcement of rights due to gender insensitivity and other obstacles that impact women differently.

4.3.4 Other health implications

As noted earlier, flower farming is labour intensive and requires a person to be on their feet most of the time. During the peak season it is even worse as most farms employ compulsory overtime shifts with only a 30-minute lunch break during the day. This has led some employees to develop protruding varicose veins.¹⁴ Nyambura's feet are swollen and her veins stick out of her legs. She said that she had gone to hospital and was advised not to stand for long periods but this is part of her job description. She said that when she reported this

¹⁴ Swollen and enlarged veins caused by excessive force or pressure on the feet.

problem to management they did not improve her conditions but instead offered her early retirement which she said she could not accept because she has dependents to support. So to put it bluntly, management simply does not care. Oedema¹⁵ is also caused by standing for long periods of time. The KHRC noted that this was especially common among women who work in packing houses (KHRC, 2012: 63).

The research findings showed that the health and safety of workers was better among affiliated to Fair-trade. The respondents attributed this success to the observance of strict guidelines and constant audits by the organization. These farms also have health and safety as well as gender committees which ensure the well being of their workers.

4.4 Remuneration

Article 7(a) of the ICESCR recognizes remuneration for all types of work and calls for equal remuneration for work of equal value. This provision is to be interpreted in the light of article 3 of the same Convention as was espoused in GC 16 (2005). This GC recognizes equality as a fundamental principle that will ensure the dignity of all persons. The *travaux preparatoire* of article 3 recognizes that other than the provision decrying discrimination, this right should be expressly recognized for all on an equal footing and sustainable measures taken to ensure that women have an opportunity to exercise their right (GC 18, 2005).

Remuneration is a guarantee under the Kenyan Constitution. The normative context for remuneration according to the CESCR (GC 18, 2005) is that it goes beyond the notion of wage/salary and also includes fair and reasonable allowances and insurance. To determine remuneration the Committee suggested taking the following into consideration:

4.4.1 Fair wage

A fair wage should be interpreted within the context of a particular worker and their occupation. Employers should consider the level of skill, education, impact on the worker's health and safety, hardships related to the work, impact on the worker's personal and family life, among others. Employers should also ensure that wages are paid regularly on time and in full. Article 41 of the Constitution of Kenya recognizes the right to fair wages for all employees. The same is also guaranteed in Part 3 of the Employment Act, which also

¹⁵ A condition in which excess water collects in the body's cavities and tissues.

provides additional procedural measures to protect this right. This Act however does not stipulate the amount of remuneration. This is dealt with in section 43 of the Labour Institutions Act, which requires the Cabinet Secretary for Labour to establish a General Wages Council as well as an Agricultural Wages Council. As the floriculture industry is categorised as being part of the agricultural sector in Kenya it refers to this Council which makes recommendations for the industry's minimum wages and conditions of employment. In July of 2017, the East Africa Community Cabinet Secretary for Labour published the new minimum wages for the agricultural industry to take effect immediately (Appendix 3).

According to the KF, most of their member farms adhere to the prescribed minimum wage¹⁶ standard with some of them paying higher wages pursuant to collective bargaining agreements. They pointed out that adherence to the law was mandatory for the farms so that they could receive their yearly certification following the audit process. They however pointed out that at times a few farms have paid less than the minimum wage. After this had been discovered, they were warned that unless they complied with the law they would not be certified. All the managers I spoke to claimed that wages are duly paid to their employees in full and on time. They all indicated that they knew about and complied with the Government Gazette Notice on the minimum wage. On Farm 1, the manager indicated that employees sign a contract upon employment, which includes the terms of their wages and benefits. She said they receive a salary of Ksh.6,300 and a Ksh.1,900 housing allowance. This she said is a strong indicator of the farm's commitment to obeying the law. She claimed that she had never received any complaint from any worker that this salary was inadequate. This minimum wage was however problematized by employees as being insufficient due to management's lack of appreciation for the living wage. It further does not take into account the hardship workers experience as a result of the laborious nature of their work in the floriculture sector.

Despite confirmation of their entitlement to their wages by some respondents, others claimed that the farms delay their payments for months on end. Sections 17 and 18 of the Employment Act require salaries to be paid in a timely manner failure of which amounts to an offence attracting a penalty of two years imprisonment or payment of a fine of Ksh.100,000. This failure on the part of farms rendered most women helpless as, due to their lack of education and other skills, they could not leave them and find other work. As one

¹⁶ *Ibid.*, chapter 3, duty to facilitate.

respondent contended, being a single mother of 4, she could not afford to be jobless and was therefore grateful for the few times she had received her salary during the year. Farms which do not care about the family responsibilities of their women workers by unlawfully delaying the payment of their salaries cause them and their immense dependents immense suffering. This can best be understood and explained using Carol Gilligan's cultural feminism, which celebrates the value of traditionally feminine activities including care roles (Becker, 2007:144). For most of the women respondents, care roles are mostly shouldered by them and they perform them with a passion. As most respondents are single parents, they take care of not only their immediate but also their extended families. These duties coupled with inadequate and late payment of their salaries places them at a much greater disadvantage than their male counterparts.

The fact that most of the women workers have dependents who rely on them and their inadequate wages means they have to endure whatever difficult conditions they face at work for the benefit of their dependents. This exposes them to exploitation, as employers are aware of the desperation these women face and hence exploit them whenever they can. On one of the farms, the respondents explained that the farms pay male respondents more regularly than they do female employees because of the unfair bias based on the belief that male employees would quickly resort to drastic and confrontational action if they were not paid. In addition, those in higher positions on the farm are paid more regularly than its general workers. The fact that women are viewed as more docile and compliant than men also makes them more susceptible to exploitation. This situation amounts to direct discrimination against women farm workers.

Most general workers interviewed stressed the inadequacy of the wages they received from the farm. They contended that most of them were unable to meet their daily needs and the situation was especially difficult for employees with dependents most of whom are women. The fact that most employees had to perform compulsory overtime work entitled them to better wages but often they were not paid for it. Farm management's theft of the rest and leisure time of their women employees is far worse than simply a 'don't care' attitude which undermines their contribution to the overall success of the farms.

It is therefore clear that wages within the general worker category are not fair since they do not fulfil the criteria proposed by the Committee. The laborious nature of the floriculture

industry should warrant better wages in the sector. From observation the constant hands on work requires precision, as inspections are constant and regular. Further due to constant interaction with chemicals and the vast amounts of time spent bending over or standing, health concerns are rife meaning wages should be reflect these arduous conditions. This lack of fair wages in such labour intensive fields can be well understood through the lens of Karl Marx's theory which sees that large corporations are run by bourgeoisie capitalist owners of production who prey on the working class for maximum production with minimalist wages creating an arrangement that entrenches a pattern of dependence of employees to keep them coming back, shackled to their work stations.

4.4.2 Equal remuneration for equal work

This provision not only connotes equal remuneration for similar work. It encompasses a wide array of situations in which equal remuneration should be considered for different jobs of equal value assessed through objective criteria (CESCR, GC 23). To assess the 'value' of work, it is important to look at skills, responsibilities and effort required as well as the work conditions.

Female labour within the agricultural sector is deemed natural and therefore not skilled. This means that they fall into the lowest category of wages which are generally less than those paid to the skilled labour division which is mostly preferred for men. Men's labour within the same sector has been given more value because they involve using machinery and much physical strength. Consequently, women receive less remuneration than men. As labour laws in Kenya require equal pay for equal work, direct discrimination is not immediately noticeable. However, upon looking at the categories of workers it is not hard to spot examples of indirect inequality. For instance, Charles, a human resources manager, explained that certain types of activities in the farm are specifically reserved for men, including those who spray the flowers in the greenhouses.¹⁷ According to him, remuneration for this category deserved to be higher as it is a high-risk job. Sprayers are therefore classified as semi-skilled employees and are afforded chemical insurance. However, and here is the rub, such insurance is not covered by the ordinary National Health Insurance Fund (NHIS) which is available to the women general workers who are exposed to the same chemicals tending to the same flowers in the same greenhouses. Therefore Charles' explanation is absurd and to make

¹⁷ This involves using chemicals and pesticides on flowers in greenhouses.

matters worse, the women general workers are often forced to re-enter the greenhouses to carry on their work before the expiry of the stipulated time after the men have sprayed. The women's group on Farm 1 explained that re-entry is not always voluntary as they were told that orders have to be fulfilled daily, failing which they would be disciplined. They were therefore even more exposed to chemicals than the male sprayers because of the farm's refusal to afford them protective clothing.

The flower farms' perception of 'work value' can be best illustrated using the socialist feminist theory, which considers salary discrepancy in terms of the relative worth of an employee's labour in terms of the labour market rather than in terms of gender discrimination. To them salaries for men and women differ categorically based on work input and whether it is feminine or masculine (Lorber: 12). The fact that women working on flower farms are seen as simply continuing or extending into the workplace work they are already expected to and do perform as part of their social role at home makes them an ordinary group of workers compared to men for whom such work is new, special and therefore, skilled. It is in this way that the worth that is attributed to women's work in the work place is undervalued and unfairly judged. Its true worth is diminished based on the belief that women apply no skill to their work as they are biologically built to do it or are expected by nature to be capable of the same. The Government's failure to appreciate the true value of women's role in agriculture further exacerbates this discrimination in remuneration by referring to their valuable contribution as 'unskilled'.

Indirect discrimination in remuneration also occurs when women are the most preferred workers during peak season. They are contractual part-time workers who earn significantly less than their full-time counterparts. Although both full-time and part-time workers work the same number of hours during the peak season, most farms offer lower remuneration rates to these workers with a total exclusion of other benefits, including health insurance, which means that any injury or illness occasioned by their work is completely unprotected. The value of the work done by these workers is therefore hugely undermined and exposes them to unlimited shocks. The rampant exploitation of this cheap labour can be attributed to the lust of employers to maximize their profits for the lowest possible labour cost.

4.4.3 Remuneration - decent living (interrelation)

Remuneration that allows for workers to enjoy a decent living should be considered in the light of existing living standards and other social and economic conditions, including health care, social security, education, food, sanitation, housing, clothing, etc.

Article 11(1) of the ICESCR recognizes the right to adequate housing for a person and their dependents. According to the CESCR (GC 4), the right to housing cannot be narrowly or restrictively interpreted. Rather it should encompass living somewhere in security, peace and dignity. Adequate housing connotes legal security of tenure, affordability, habitability, location, cultural adequacy and the availability of services, among others.

Most of the women respondents contended that they live within the slum areas of their various work locations because of the low salaries that they are paid. To them renting a better house in a better location would mean spending more money, something that was impossible for them to do. Mercy, for instance, lives in a 2-roomed temporary home in a high density area with her 4 children. She explained that it is not the best living situation but it is all she can afford. Upon making inquiries into the rental costs in the different areas it was apparent that houses in the slums cost about Ksh.1,500. These houses have no electricity, water nor security. In a better neighbourhood it is possible to find a one bedroom house that goes for about Ksh.3,000 but most women explained that this is too expensive for them and are therefore forced to rent in the poorest areas. To make matters worse, most of the respondents have children with whom they live in these areas. These unsafe areas therefore pose a danger not only to the women but also their children, as they have to share amenities like bathrooms and water and sanitation which were deplorable. Therefore the remuneration the farms pay their women general workers is inadequate since it breaches their right to adequate housing, sanitation, security and health.

Housing provided by the farms is no better. As Martha, the human resources manager explained, Farm 1 affords some housing for some employees on a first-come-first-serve basis. She said that all employees were welcome to stay in the houses regardless of 'their family baggage'. However, as the housing is limited, employees are forced to share 1-roomed houses and this is uncomfortable and dangerous. The employees contend that their cramped conditions are not favourable for employees with families and this constitutes a violation of their right to privacy. The fact that the farm forces men and women employees to share such

cramped living spaces puts the women and their children at risk of sexual and other forms of physical abuse and violence. Therefore, although these houses are affordable it is safe to say that they fail the other criteria which would satisfy their right to adequate shelter.

Social security protection within the cut flower sector is very poor. Employers do the bare minimum by conforming with the legal requirement to ensure that every employer registers their employees with the National Health Insurance Fund (NHIF). Most respondents acknowledged being members of the NHIF. They however contend that this scheme is not very effective as it does not cover many ailments which means that they are not fully protected. Further as the NHIF is a contributory scheme whose cover is dependent on the amount of an employee's salary, it is clear that the cover that a general worker receives based on their low wages is insufficient to protect them from the risks of harm to which their dangerous working conditions expose them. This may be attributed to the government's failure to appreciate the particular importance of health care for vulnerable low-income individuals. Health care is a basic right according to the World Health Organization (WHO), and it is pertinent that the government ensure that everyone is protected in accordance with the central principle of the 2030 Sustainable Development plan. Further the failure to enforce more comprehensive social protection for workers in the cut flower sector connotes a lack of appreciation for the labour intensive nature of the production process, the risks involved and the massive returns from this multi-million dollar business.

4.5 Working hours

Article 7(d) of the ICESCR recognizes the right to rest, leisure, reasonable limitation of working hours and periodic holidays with pay. This according to the CESCR, it is important to ensure an employee maintains a balance between their work and social responsibilities. Working hours should further protect their mental health all while ensuring their physical health is optimal (GC 23, 2016: 3). The Committee urges states to enact legislation to regulate working hours which also prescribes limits so as to ensure employees are not exploited. Kenya has partly recognized the right to leisure within the Employment Act.¹⁸ While it leaves the regulation of working hours to the employer, it does entitle the employee to at least one day's rest every seven days. This gap in the law has led to employers taking

¹⁸ 'Section 27

- (1) An employer shall regulate the working hours of each employee in accordance with the provisions of this Act.
- (2) An employee shall be entitled to at least one rest day in every period of seven days.'

advantage of their employees by creating policies which exploit workers. This section compares working hours on flower farms with the ILO's decent working time report (2007).

4.5.1. Gender equality and decent working time

Gender equality in working time recognizes segregation in the work place and advocates that work time takes cognizance of the different sectors, types and levels of work performed each day. Therefore employers should ensure certain sectors are not overlooked when it comes to the flexibility of work or provisions for leave.

Most farms have set up their own arrangements on working hours. Farm 1 for instance requires employers to work for 8 hours 40 minutes per day, 6 days a week; while Farm 3 requires 7 hours 40 minutes for 6 days. Farm managers defended this practice as they said it is stipulated in the law and they feel it is reasonable for the sustainability of business. They pointed out that at times the farms require extra work to be done and therefore voluntary overtime is practised. In this case an employee submits their name for a voluntary extra shift, which lasts no longer than 4 hours per day. They further added that this is not a common occurrence as it is done only when flower orders are large. This narrative was however disputed by most of the general workers. Judith, a general worker on Farm 5, rejected the notion that overtime work was voluntary. She said that the farms set targets for every worker on a daily basis and for most of them this target is usually too high to be completed within their normal working hours. This therefore forces employees to 'volunteer' to work extra hours to complete their designated daily target. If they failed to do so they faced disciplinary action for failing to meet their daily target and this involved 3 warnings and a pay cut¹⁹ and then eventual dismissal. This scenario is best illustrated using Karl Marx's Marxists theory which problematizes the need for capitalists to maximize their profits. In their determination to do so, they abuse their workers by extracting from them on pain of punishment more than they are capable of producing without doing themselves physical, mental and emotional harm. For instance, Ruth said:

'I work from 6 a.m. to 12 a.m. most of the time.'

¹⁹ Which would mean payment below the minimum wage guaranteed by the law.

Although the Committee said that this sector is the best paid through incentives,²⁰ the fact is that no employees opted for them, proving just how meaningless they are. All the employees said that the hardship their dependents would have to suffer as a result of their working for these so-called incentives would far outweigh any benefit they could possibly derive from actually earning them. There is therefore a constant battle of living forces between capitalists who constantly demand the cheapest but highest quality labour and the working classes who are forced to strive beyond their human capacity and yet constantly fail to earn enough to meet their basic needs. Women are therefore affected most due their prevalence in sectors that are more laborious.

4.5.2 Family responsibility versus Work time

Secondly, decent work time should take cognizance of family responsibilities as propounded in the Convention on Workers with Family Responsibilities.²¹ Family friendly working schedules should therefore be designed to enable sufficient time for employees to care for their dependents and meet their domestic obligations on a daily basis.

Clearly, farms take advantage of the vulnerability of their employees, women especially due to the multiple roles they play in society. According Karl Marx, economic and material conditions are the root of culture and social organization meaning that in order to create a livelihood it is necessary to engage in the labour market (Saulnier, 1996: 53). This practice has repercussions for workers with dependents. According to KHRC (2012), 55 % of all women employees on flower farms are single parents. The situation is even more dire as most of my respondents claimed to be the sole carers of their dependents who comprise not only members of their own nuclear family but also of their extended family. These roles have arisen as a result of cultural connotations and socialization, which have seen women having to bear their care roles alone. Care is integral to child development and well-being. The lack of care is damaging to a child especially when a woman is forced to choose between the competing demands of care and provision (Samman, 2016: 10). The fact that farms keep women at work for prolonged periods of time therefore causes an imbalance between their working and social responsibilities. Flower farms attach greater importance to their work responsibilities which in turn violates women's social rights by denying them the right to

²⁰ Ksh.1 per stem.

²¹ ILO Convention 1981 (No.156).

undertake other necessary family and social activities outside of work. This includes attending to their marital and childcare responsibilities as well as socialising with their peers.

Kenya has no specific legislation regulating childcare at the work place or existing crèches. This has led to instances of child abuse and even death. Only one of the farms I visited had a crèche. Employees of the other farms were therefore forced to make external arrangements to care for their children while at work. Most of the women said external crèches were costly and due to their wages it was impossible for them to send their children there. The prices ranged from Ksh.40 to Ksh.100 per day for the period from 7 a.m. to 5 p.m. In addition, the money women workers work doing overtime does not cover the extra money needed to pay these care facilities to look after their children. The farm that had set up the childcare service showed its empathy toward many of the single mothers on the farm and decided to take care of the children of their working mothers in order to increase their productivity.

Most of women respondents said that due to the excessive working hours within the farms and lack of adequate resources they resorted leaving their children at home alone, with neighbours, family friends, members of their extended family and even informal crèches. One woman remarked:

‘I have no choice but to entrust other people to take care of our children. It’s not uncommon to find out that children are being sexually, physically or mental abused. I just pray that it doesn’t happen to my child.’

I found it cruel that the farms forced women workers to have to entrust their children to strangers into the very late hours in the evening. Looking at it from the women’s perspective, however, it seemed that without their mothers having to make these sacrifices in order to perform their work and keep their jobs their children would probably not survive. Working hours therefore have the potential to affect a child’s rights either positively or negatively. The regulation of working hours is therefore key to ensuring that the children and other dependents of women workers are ultimately protected.

4.5.3 Employees health and safety and working time

Regular long working hours not only adversely affect the health and safety of employees, they also affect the productivity of individual workers and the enterprise as a whole. Regarding mental and physical health, floriculture is labour intensive and requires a lot of

bending, standing and exposure to greenhouse microclimates and chemicals, which may have a negative impact of a worker's health. Moderate exposure is therefore necessary to promote a worker's well being. Extended exposure and long working hours therefore violates a worker's rights to mental and physical health.

Securing transport to their homes after completing the overtime they are often forced to perform is necessary for farm workers. This is because of the long distances between the two locations. Workers are forced to depend on the few available buses provided, *bodaboda*²² taxis and group walks. Respondents claimed that the farms did not offer adequate transport and hence some employees were stranded and left to their own devices especially late at night. This has exposed some employees to physical and sexual attacks on their way home. Hence, unsafe working hours exposing women workers to such risks therefore indirectly infringe their right to security.

4.6 Gender based violence

According to the CEDAW Committee (GR 19), gender based violence is any form of discrimination that seriously inhibits²³ women's ability to enjoy rights and freedoms on a basis of equality with men. This section analyzes various forms of gender-based violence inside and outside the farms as a direct result of their employment.

4.6.1 Sexual harassment

Although CEDAW does not specifically use the term sexual harassment, the Committee gave a description of sexual harassment as including 'unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions' (GR 19: par 18). This is confirmed by the ILO, which further notes that sexual harassment may take two forms, namely, *quid pro quo* or hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim. Convention 111²⁴ acknowledges that such conduct erodes equal opportunity and treatment in employment. In line with international obligations, the Employment Act protects all employees against all forms of sexual harassment²⁵ and requires that all employers with more than 19 workers to issue, in consultation with workers or their

²² Motorbike or bicycle taxi.

²³ Nullifies or impairs.

²⁴ Convention on Discrimination (Employment and Occupation) Convention, 1958.

²⁵ Section 6.

representatives, a policy statement on sexual harassment.²⁶ This liberal approach to the protection of women has succeeded *de jure* but not *de facto* (i.e., has succeeded on paper but not in reality).

According to all the managers of the farms I visited, sexual harassment policies are present either as a matter of an internal policy or in accordance with various codes, e.g., Fair-trade. These policies are designed to maintain a working environment free of sexual abuse and to ensure that employees and management are well acquainted with the grievance and dispute resolution procedures. This initiative was a welcomed surprise but I could not help but notice that on four of the six farms I visited, the policy was not displayed for all to see.

Most respondents shied away from talking about sexual harassment and a few reported having witnessed it from fellow employees, supervisors and managers. No respondents reported having been a victim but claimed to have witnessed it happen. They said managers and supervisors would make unwelcome sexual advances towards them and sometimes they would use their position to extract sexual favours from them. This is illustrative of MacKinnon's dominance theory, which argues that such power exerted over women puts them in a submissive position in which they can be dominated and sexually exploited. To her, gender is not simply a bipolar distinction but a system of power relations and that with this sexualization of hierarchy it therefore becomes hard for a woman at the lowest rank of an organisation to resist or oppose a man forcing himself on her from a higher level of authority. Without management's protection and desperate to keep their jobs, such women often silently submit to these sexual attacks. The women said that they had no redress because their bosses to whom they were supposed to complain about such conduct had themselves turned into their abusers so the women could not expect to receive any justice from them. They said most of the women therefore suffer such abuse in silence while others eventually choose to resign. So serious is this sexual abuse of women workers that the failure by farm management and other stakeholders to stamp out it out makes a complete mockery of any of their efforts to protect any of the other rights of the women workers.

Some male respondents were of the view that sexual conduct, e.g., making catcalls at women workers was normal for men and as it was natural for them to behave as such and besides

²⁶ Section 19.

women enjoy such attention. This view illustrates the naturalist's school of thought, who believe that men have a stronger sexual drive than women and that sexual misconduct by them is a biological hormonal imbalance that should not be frowned upon. These men therefore believed that their conduct was not discriminatory. Their view blinded them to the feelings or opinions of the affected women or even to the fact that it caused them to resign as a result of their being constantly harassed and unprotected. Most of the women exclaimed:

‘There is nothing you can do when even your protector partakes in your abuse. You just move on with your life.’

This statement is illustrative of socialist feminists' theorizing as they regard male control of labour as key to creation of a ripe environment for sexual harassment of women with impunity (Saulnier). Such control ensures that women remain in a vulnerable position due to their fear of loss of employment or prospects of advancement. This can only be remedied through the equitable distribution of power which will enable women to negotiate for their protection. Some farms have already taken steps to ensure protection by creating gender committees as well as appointing women to positions of supervisors. Respondents in these farms reported a sharp decline in instances of sexual harassment.

It is important to note that most of my respondents did not even understand what sexual harassment means. For instance in the farm where I experienced catcalls, most of the respondents denied existence of sexual harassment but when I explained what it meant, they all claimed to have witnessed, experienced or taken part in it. This lack of knowledge on some farms made me doubt the effectiveness of awareness-raising and training surrounding policies claiming to combat sexual harassment. I was dismayed to find out that some of the farms offered no training on the issue at all. Therefore the existence of a policy was of no use to the employees. As KHRC (2012: 55) noted the success of a sexual harassment policy is dependent on the level of training actually given to workers and management. The CEDAW Committee recommended that to protect women from violence, training and employment monitoring is essential. Therefore the fact that employees lack the basic knowledge on how to conduct themselves at work should be addressed.

4.6.2 *Physical violence*

Respondents claimed physical violence, both sexual and non-sexual, was rampant on farm housing estates due to the over-crowded conditions in which they are forced to live. They claimed that reporting to management did not help as they considered that it was not a work-related issue and simply urged the complainant to look for alternative housing. According to the Employment Act²⁷ and the OHSA,²⁸ the work place extends to housing premises afforded by the employer in the course of employment. The dichotomization between public and private farms means that protection is only extended as far as production is concerned which ultimately violates the obligation to protect the women labourers. The fact that women complain to management and are ignored connotes its tolerance of such abuse and may possibly serve to exacerbate it.

Some employees claimed they faced violence on the way to and from work. Most farms are located in interior locations where one has to take a *bodaboda*.²⁹ As some farms do not offer transportation to their workers many of them reported having been attacked and robbed and even physically assaulted. Salome claims that 2 years ago while she was heading home³⁰ at night following a shift of mandatory overtime, she was attacked and raped by an unknown man. She reported the violence to the farm but they dismissed it saying they do not deal with events that occur outside their compound. She conceived and was forced to give birth to the baby as Kenyan law does not permit abortion unless there is a risk of serious health implications.³¹ It is clear that failure to provide adequate protection exposes women to external unforeseen harm.

Regarding violence within the home most of them said they had no experience of that as they are mostly single parents but some said they had heard of one or two cases. Judith explained that she would get beaten by her husband every time she came home late although he knew that she had to stay at work. She said:

²⁷ Sections 31.

²⁸ Section 2 which defines a workplace as including, any land, premises, location, vessel or thing, at, in, upon or near which a worker is in the course of employment.

²⁹ A motorcycle taxi.

³⁰ She lives about 200 metres from the farm.

³¹ Article 26 of the Constitution of Kenya.

‘He always gets frustrated with my working hours and felt like I was lying and seeing other men. He would beat me with sticks and his fist and I finally left him when he threw my son across the room because he was angry at me.’

Some women reported violence in the sense that they are harassed by their husbands especially toward the end of the month to force them to hand over to them the little money they make.

Farm practices therefore not only affect women in the work place but are also inextricably tied up with their life in other spheres. It is necessary for flower farms to create conditions (especially when they also house their staff) to ensure all round protection for their women employees from all forms violence.

4.7 Emerging issues

4.7.1 Child labour

In the field I saw clear signs prohibiting the admission of any and all persons below the age of 18 to all farm premises. I thought this meant that they would require the production of some form of identification before allowing admission on to the farms but to my surprise they did not. Article 15 of the African Charter on the Rights and Welfare of the Child and article 32 of the Convention on the Rights of the Child preclude the economic exploitation of the child and the prohibition of employing children to do any work that may negatively impact them.

Child labour came up during one of the interviews when a lady pointed out her neighbour who worked on the same farm as her. She looked much younger which prompted me to ask about her age and the respondent informed me that she was barely 17 and had worked for the farm for over 2 years. Child labour has been described by CEDAW as a form of discrimination. The ILO (2012) notes that not all work done by children amounts to child labour unless it interferes with the child’s dignity and is harmful to their physical and mental development. Julie lives in a slum area with her one year old daughter and ‘husband’. She narrated that upon securing work at the farm she was not required to produce any ID and therefore her age was not verified. She says the farm does not always require an ID, and that her case is not rare. She explained that she started working on the farm to save up money to go to school as her parents could not afford to do so but has been unable to go back as she

was raped while on her way from work one late night and now needs to take care of her child. She explained that the farm knows she is under age because when she reported the assault to them they taunted her and threatened to fire her on the basis of her age. She therefore has not been able to go back to school. Child labour on flower farms may be as a result of the contradiction between different laws in Kenya. On the one hand, the Children's Act, 2001 recognizes a child as being anyone below the age of 18 and prohibits their being employed; the Employment Act, on the other, precludes the employment of children under the age of 16. As the case of Julie shows, this inconsistency in the law enables farms to abuse workers by applying whichever law suits their purpose at any given and it is most likely for this reason that they can get away with the illegal practice of child labour which also violates the best interest of the child principle.

According to UNICEF (2009), girls are generally denied their right to education more than boys as gender biases make preferences in favour of educating boys rather than girls. Girls therefore end up working earlier or taking up multiple responsibilities. There is also a correlation between sexual exploitation of the girl child and child labour according to UNICEF. It is therefore pertinent that the state ensures it protects the girl child from all forms of exploitation. This by extension implies that flower farms should strictly adhere to the law³² and not employ anyone under the age of 18. Protection of the child is therefore paramount in ensuring that they grow up and enjoy their rights in the same way as other people.

Apart from paid labour, it also became apparent that some children, mostly girls, engage in labour on the farms without pay and in breach of the Constitution and Children's Act. This exploitation of child labour takes the following form. The respondents reported that farms that offer education through primary school take advantage of the students by expecting them to work on the farms, especially during peak seasons. These undocumented children are not remunerated for their labour and their slavery is usually euphemistically covered up as 'social ventures to teach children about flower farming' and seriously hampers their educational development.

³² Children's Act, 2001 as read with the Constitution.

4.7.2 Tribalism and tribal affiliation

Flower farms depend largely on migrant labour. As a result their women workers reported being subjected to verbal and physical abuse by their neighbour who accused them of not being part of their communities and having sinister motives of wanting to dilute the culture. They also reported the influence of tribalism on the farms where some women were shown better treatment than others due to their tribal affiliation. This affected the pay and working conditions. It further exposed some of them to a greater risk of harassment than usual. This is a violation of the equality and non-discrimination principles of labour laws which specifically prohibit any form of distinction based on ethnicity.

4.8 Conclusion

To summarise, flower farms unfairly target women as employees. Due to gender bias women are preferred as employees in the general labour division which exposes them to all kinds of abuse and exploitation. Furthermore, labour practices on farms are not conducive and negatively affect women far more than their male counterparts. Health and safety conditions on some farms are not conducive to a safe and healthy work environment for women workers due to strenuous labour conditions combined with excessive unprotected exposure to dangerous agrochemical which in turn expose women to a variety of health related complications, e.g., stillbirth, infertility as well as respiratory inflammatory diseases. Due to their exposure to agrochemicals, nursing women are at times unable to breast feed their children thus exposing them to nutritional problems. Pay is also much lower for women than male employees. Faced with also having to perform multiple caring roles at home, women, unlike their male colleagues, do not have the same opportunities to engage in alternative ways of earning money outside of their farm employment. Also their lower pay means women are forced to live in squalid conditions without any medical treatment for the illnesses they suffer as a result of their exposure to the agrochemicals on the farms. As a result of their long working hours women are forced to neglect or abandon their dependents thus exposing them to multiple forms of foreseeable harm. Overtime, which is often mandatory, is also not adequately if at all remunerated and this amounts to forced labour and even slavery of the women on the farms. Other dangerous consequences of overtime for women who perform overtime include: the harmful effects to their health due to the long, arduous and laborious nature of their work as well as the gender based violence they face from their spouses and strangers when going home at night. Sexual abuse is also common on the farms with women

opting, out of a sense of desperation, to suffer in silence (due to the fear of further victimization) rather than resigning from their jobs which amount to little better than slavery.

Regarding emerging issues, it is apparent that even though farms boast signs of non-admission of under 18 year olds into the farms, children, most of whom are girls, are still exploited for cheap and free labour by some farms. This practice violates their rights to education and exposes them to health and sexual dangers. Further, tribalism in Kenya poses a danger to migrant workers. As flower farms are mostly dependent on migrant labour, women are therefore faced with multiple inequalities which causes them further hardship not only within the farms but also in the communities.

The next chapter addresses ways in which women have undertaken to mitigate the effects of these unfair labour practices which have plunged them into an endless cycle of poverty.

CHAPTER FIVE

5.0 POVERTY AND WAYS OF COPING

'Poverty is the parent of crime.'

(Aristotle)

5.1 Introduction

As the previous chapter revealed, women are affected more than men when it comes to labour practices on farms. To understand the ways in which women cope with economic shocks, I investigated the way of life of the respondents. This chapter presents findings on how the minimum wage in the floriculture sector prejudices women. It looks at the multiple roles played by women and how they interact with each other to violate women's human rights and the ways in which women cope with these shocks. Specifically, it discusses prostitution, petty theft and informal social security systems which help women cope with life working in the flower sector. It also emphasises the effects of these coping mechanisms on women and society at large.

5.2 Gender dynamics and the minimum wage

Women worldwide are generally poorer due to inequalities in social, cultural political and economic participation (Gildbatt, 2016: 18). Feminist legal theories have emphasised how various roles are segmented within public and private arenas and thereby prejudice women. Division in family labour has been problematized as one of the aspects causing women to miss out on the labour market or to access lower ranking positions that ultimately cause them to be poorer, have less power, status and influence than their male counterparts.

Societal expectations have rendered women primary carers. There is a silent expectation that the girl child is supposed to take care of her home and family members. According to the KHRC, 55% of women working in the cut flower sector are single mothers. This was confirmed as 80% of my female respondents claimed to be single parents, meaning they are expected to take care of their dependents on their own. As dealt with in the preceding chapter, remuneration in the cut flower sector is poor. The wages of women general workers in the flower industry are well below that of the living wage in view of the fact that, according to the Kenya benchmark living wage report, the cost of living in Naivasha is estimated at

Ksh.19,305 per month in 2015 (Anker 2017: 7). Owing to the constant rise of living wage in Kenya, this figure must have risen by about 2% as of 2017. In Nyandarua and Laikipia counties the living wage is estimated to be around Ksh.11,937 due to their rural setting (Anker, 2017: 7).

This difference notwithstanding has little significance on the women, as the prescribed minimum wage is almost half the living wage. As most women working on the farms are migrant workers, they have no permanent homes within the zip codes and therefore rely on cheap housing options which means that they live in slum areas. Judith, a general worker, lives in a one-roomed temporary iron sheet structure with her son. There is barely enough room for the few chairs, a stool and mattress on the floor. She cannot afford to rent a better house as she is forced to part with Ksh.1,500 every month for rent. The structure has no electricity so she relies on a motor battery and the bathrooms are shared. Water is also an issue, as they have to rely on one council tap that supplies water to 15 houses. Judith's is a success story as she only has to fend for two people and survives on very little on her small wages.

These seemingly unintentional feminization of poverty as connoted by some feminists is an epidemic that requires urgent attention as it sends ripple effects throughout the lives of women and their communities. Gender based-discrimination on flower farms is not only unjust for women workers but also economically harmful to the country at large. The farms' low pay and poor work conditions take such a serious toll on the lives of their women workers that they are forced to make other ways of earning money in order to sustain themselves and make ends meet.

5.3 Coping with economic shocks

5.3.1 Prostitution

Although prostitution has been popularly termed as the world oldest 'profession', feminists view it as the world oldest 'oppression'. The CEDAW Committee classifies it as a form of gender based violence especially in a situation in which one is pushed into it due to poverty and employment (GR 19).

Nyaboke is a single mother of 4. She is not native to the area but had to come with her children and elderly disabled mother, as there was no one to look after them in her native Kisii home. She lives in a crowded slum area in a one-roomed cabin. She revealed that the house costs her Ksh.2,500 and after paying for electricity and security she is barely left with Ksh.3,000 to take care of her dependents and herself. Since the farm offers no transport she commutes every day, for which she must also pay. The effects of living in poverty have been disastrous and since the farm does not allow employees to engage in any other work she resorted to the extreme measure of prostitution which earns her up to Ksh.100 a day and which is more than enough to meet her daily needs. She started prostituting herself 3 years ago when she found she could not provide for her family despite working on the flower farm. She says she has no regrets in engaging in this trade as long as her dependents have food to eat at the end of the day and her children acquire education and hopefully do not fall into a cycle of poverty.

Her story is not isolated. It is so prevalent, especially in Naivasha, that, due to the huge gap between the living wage and actual earnings of flower farm workers it is referred to as the '*prostitution centre of Kenya*'. Women farm workers especially migrant workers who have no means of cushioning these economic shocks have resorted to the most available form of trade to sustain their livelihoods. This oppression is however not limited to workers as it extends to their families too.

Another respondent revealed that she was pushed into prostitution after being unable to pay her rent even though she had employment. As she was the primary carer of her teenage daughter, she had to ensure that they did not live on the streets. She then introduced her daughter (15) to prostitution and they have been working the streets together ever since. She found that it was the only way to ensure they had a roof over their heads and that her daughter continued with her schooling. She was afraid for her daughter's safety because some men refuse to pay or beat them up afterwards and as far as health is concerned she claimed that protection is not a priority and what she does is dependent on the wishes of a client. Article 3 of ILO Convention 182 recognizes work which has the potential to harm a child's health, safety and morality is the worst form of child labour in that it jeopardizes their mental, moral and physical well being.

Violation of the rights of children as a ripple effect of the poor minimum wages women earn in the cut flower sector is of great concern. I am of the view that it is an indirect form of violence against girls and women in the cut flower sector. The normalization of prostitution and the blame-game which surrounds it clearly connotes a lack of care for women's human rights. When I broached this subject with the labour officer for instance he was clearly dismissive of the fact that women these women problematized insufficient wages as a cause of prostitution. In a rather shocking tone he said:

‘So many other women who are paid minimum wage do not engage in prostitution and survive. Some people want it all, they long for a life they cannot afford. Minimum wage is sufficient if one is economic in its use.’

The fact that many within the government call it a woman's free choice, indicates a simplification and lack of commitment to address the key causes that push women into prostitution in violation of their human rights. Prostitution is a violation of a woman's dignity and her right to equality. It further poses a psychological and physical danger to women as violent crimes are often perpetrated against prostitutes. A high incidence of HIV and AIDS has also been linked to prostitution among women in the cut flower sector.

5.3.2 *Petty theft*

Once during a focused group discussion I sat down with some women under a tree overlooking a large maize plantation. The women claimed that not only were their wages insufficient to live a decent life but even worse they had not been paid in months. This took me by surprise and I wanted to know how they then managed to survive. One of the women pointed at the maize field and said:

‘I can never go hungry when people plant food. Every day I pass by the field and get some maize which I use to feed my children and myself.’

The sense of helplessness for these women had reached such a low point that they had even reported to stealing in order to eat. Their open admission of theft showed their desperate lack of hope. They even pointed out that if I properly investigated the cases of stealing at the local court I would discover how many of those cases are affiliated to workers on the farm. They said it increased especially in 2017 because they were not paid. Therefore working for flower

farms exposes women labourers to the temptation to steal and to the danger of public lynching which is a common occurrence especially in the rural areas.

5.3.3 *Informal social security systems*

Aristotle's argument on poverty and crime is not true in its entirety as some women have devised other seemingly clever ways of dealing with poverty (Oliver, 2004: 2). Aside from crime women employees are venturing into informal voluntary schemes to help them cope with the effects of poverty. These schemes include:

- (a) Traditional safety nets, customarily regulated by the family or community at large. These are systems based on kinship and family ties based on the solidarity and generalized reciprocity (Oliver, 2004: 3). This social institution is heavily relied on by most poor women who are in close proximity to their native community and/or have close ties with their family. It therefore mostly benefits women who work in their native area, which accounts for a small percentage of women labourers in the flower farms. This mechanism is also underlined by the care value. It has been observed recently that family members are disintegrated as a result of their pursuit for employment and better opportunities in urban areas. Community support systems are also weakening due to increased community heterogeneity. Those who are unable to benefit from these schemes often access the semi-formal option.
- (b) Semi-formal social networks developed due to the shortages of traditional safety nets. They are self-help organizations based on mutual savings associations known as '*chamas*'. Members and beneficiaries however have to be contributories either monetary wise or materially to benefit from these schemes. Through these networks women within the cut flower sector are able to make ends meet and enjoy somewhat of a cushion against the effects of poverty. Underlined by the principle of mechanical solidarity and *harambee*,³³ this system is perhaps the most adept to poor women's needs.

³³ *Harambee* is a Swahili word that means coming or pulling together with others to face life together rather than alone recognizing the power of one as well as the power of many in order to help carry each others' burdens.

5.4 Conclusion

This chapter shows how at less than half the living wage, the minimum wage provided for by the agricultural sector falls dramatically short of what is necessary for its women workers to live a decent life. The huge disparity exposes general workers to inconceivable hardships including lack of access to adequate healthcare, food, housing and other basic human necessities. Due to the additional social roles expected of women in society, the minimum wage affects them more than men. Women are therefore forced to turn to drastic measures to cope with the effects of poverty. These measures include prostitution, which in effect exposes women to a variety of health and physical dangers. Out of compassion for their mothers, it has also led to children becoming prostitutes as well in order to supplement their parents' meagre earnings, thus violating the best interests of girls. Petty theft is also used as a means of ensuring availability of food. Some women admitted to stealing crops from farms in order to feed their dependents. Further, most women in farms are engaged in informal social security systems including the dependence on family members for help or *chamas*³⁴ which are contributory schemes that cater for short term shocks and are based on trust among members. These unregulated schemes serve to cushion light shocks experienced by women. They however only cater for those who have the capacity to contribute.

Based on these findings it is therefore important to look for solutions to improve the situation of women workers on the flower farms in order to protect them from an undeserved life of poverty. The next chapter summarizes the study's key findings and makes recommendations based on them.

³⁴ *Ibid.*

CHAPTER SIX

6.0 THE WAY FORWARD

6.1 Introduction

As can be deduced from the foregoing chapters, Kenya's floriculture industry is clearly paradoxical. Its vast growth and returns are not at all reflected in its working practices and conditions of service imposed on its valuable women workers without whom its success would be impossible. There is an urgent need for measures to be taken to improve the situation, which eventually will translate to substantive equality and protection by law as well as increased productivity and economic growth as suggested by the World Bank (2016). This chapter draws conclusions from the findings in the previous chapters and thereafter makes recommendations.

6.2 Conclusion

From the findings presented in the previous chapters, the following conclusions are drawn:

6.2.1 Effective application of law

Although Kenya boasts its subscription to a number of national and international laws, women in the cut flower sector hardly feel their effects. This lack of implementation coupled with the women's lack of awareness of such protection makes it impossible for them to know their rights or identify any violations they suffer, let alone seek remedies for them. There is also a lack of crucial legislation that would enable women to effectively enjoy their right to work. For instance the lack of a clear law concerning working exposes women employees to exploitation. Once a violation is noted, access to the courts for protection is often coupled with hurdles which lead most women to abandon their quest causing them to suffer in silence.

6.2.2 Gendered labour markets

A female workforce largely dominates the cut flower sector. Within the farms however there is segregation as women are severely underrepresented in managerial positions. Most of my respondents acknowledged the existence of stereotypes, roles, attitudes and misconstrued beliefs about men and women as being major reasons for the segregation. These biases have led to women being confined to agricultural labour and further to the general worker category in the cut flower sector.

6.2.3 *Labour practices: Health and safety*

As the cut flower sector is agrochemical intensive, it is important to provide the necessary protective equipment for workers. This is however not the case on some farms. Workers are not accorded PPEs and are therefore constantly exposed to chemicals, which have been linked to reproductive problems in women among other ailments. Further, long working hours mean women, even pregnant women, participate in arduous labour and are constantly subjected to long periods on their feet and working till late at night which exposes them to problems like oedemas, and the disintegration of their families. It also exposes their children to danger as they are constantly left with strangers for long hours since their mothers cannot afford to pay for day care on their low wages.

6.2.4 *Gender dynamics and low remuneration*

According to the literature the living wage in the areas of research exceed by a large margin the prescribed minimum wage paid to general workers. With this and the additional burden of care placed solely on women in mind, most of them are left destitute soon after they receive their wages. Further the value attached to the different segments in the flower farms, means women's work is viewed as the least valuable and hence they are accorded less remuneration than the men working in the same category. This leads women to engage in crime and other activities to sustain their livelihoods. However, work conditions on some farms are better as the employees are accorded proper gear and pregnant women are given lighter duties to ensure they are protected. Working hours are also controlled so that they do not work more than 10 hours a day. The common thing about these farms is that they are members of Fair-trade.

6.2.5. *Gender based violence*

Violence on the flower farms against women is common. Sometimes the perpetrators and victims do not even realize that such conduct is unacceptable it due to their lack of knowledge. Those in power continue carrying out this abuse as most of the women are so desperate to keep their jobs that they keep quiet and suffer in silence. Besides employees are also subjected to attacks on the way to and from work due to the extreme working hours on the farms. Further remuneration and working hours have resulted in women being subjected to domestic violence at work due to frustration or just the need for control by their spouses.

6.3 Recommendations

From the above conclusions, the following recommendations are made:

To ensure effective protection of law

- (a) There should be an increase budgetary allocation toward the Ministry of Labour and Employment in order to ensure the implementation of labour laws in Kenya. As the Ministry is crucial in ensuring the cut flower sector corresponds to legal expectations, this increase would:
- Improve staffing both in the headquarters and field officers, which will enable more manpower for inspection of the fields. As most farms fail to comply due to the unavailability of checks and balances, regular inspections would surely ensure compliance.
 - With increased budgetary allocation, awareness raising would also be improved. According to the labour officer, the Ministry is required to ensure employers, employees and the public at large have knowledge and understanding of their rights. He explained that they had a problem with a shortage of resources in carrying out the required campaigns and advocacy. It would therefore benefit the women in the farms if they knew their rights, how and where to enforce them. There are bodies which may help the women follow up on their rights but they are unaware of them.
- (b) The Care and Protection of the Child and Parents Bill of 2016 should be adopted into law. This would ensure that Kenya's regulatory frame work would create a conducive environment for women to work in the farms. Section 18(b) requires the country to create care centres to cater for persons who do not have any other place to leave children below the age of 3 and at affordable price. This bill further requires day care attendants to be competent and certified before carrying out these duties.
- (c) As mentioned before, the ILO has been at the forefront on the protection of workers right. It has also been concerned with the improvement of women's rights by recognition of their vulnerability and the need to protect them specifically through the

law. It has therefore come up with specific laws that may guarantee the protection of women in the cut flower sector in Kenya. Kenya should ratify conventions such as:

- Maternity Protection Convention 183
- Workers with Family Responsibilities Convention 156, which recognizes the care roles imposed on women and enables them to fulfil various responsibilities harmoniously and without discrimination and also requires men to take part in familial roles

To engender the floriculture industry

- (a) An affirmative action policy should be established for flower farms. This affirmative action should be concerned with the hiring practices on the farms. Because the cut flower sector is female centred, representation of women should be evident at all levels of employment. Affirmative action should ensure women are significantly represented in all positions on the farms.
- (b) As social construction feminists recommend, to change the deeply rooted gendered social order it is necessary to pursue a conscious reordering of the gendered disparity in labour and at the same time undermine the speculations about women's and men's capabilities that justify their *status quo* (Lorber: 31). It is therefore necessary to initiate a social dialogue through negotiation, advocacy, consultation and information sharing among others to counter the attitudes, stereotypes and biases that push and confine women to the lower levels in the sector.

To attain safe and healthy standards on the farms

- (a) It is necessary to strengthen the standard setting organisation's monitoring and evaluation capacities of flower farms so they conduct unbiased audits. These organizations should carry out sensitization programs to ensure the employees they aim to protect are aware of their rights and can identify violations.
- (b) The overall impression at the farms regarding labour conditions was that the farms affiliated with Fair-trade had better labour practices. The workers in these farms were content with the treatment accorded as they said it matched Fair-trade's policy

circular. It may therefore be prudent for farms to submit to membership of Fair-trade to ensure the strict audits and labour market requirements that would ultimately protect women from unfair labour practices.

- (c) As excessive working hours was a recurring complaint among my respondents it became clear that there is a need for a limit to be set. The Employment Act recognizes the right to leisure and rest but accords the employer the power to stipulate the working hours in their workplace. To curb this practice, it is necessary this provision to be amended to stipulate the maximum working hours per day for every employee.

To tackle persistent poverty among women workers in the industry

- (a) It is necessary to re-conceptualize the flower sector. As noted in chapter one, the floriculture industry in Kenya is a major contributor to the country's economy. It is highly successful as a billion dollar industry. The fact that this industry is therefore considered part of the agricultural sector is misleading. The agricultural sector is confined to small-scale subsistence farming which is a far cry from and does not reflect the reality of the industrialised farming operations of the floriculture industry. The Wages Council in charge of floriculture is the Agricultural Wages Council which gives recommendations of minimum wages based on small scale subsistence farming and does not take into account the complexities of the floriculture industry, including its extremely demanding, arduous and dangerous conditions of work, skills involved or massive returns harvested from the fruits of its labourers.
- (b) Re-conceptualization would also enable this industry to follow Uganda's initiative of creating a union specifically for workers in the floriculture industry in order to give adequate attention to this labour intensive sector. As the KHRC (2012: 27) noted, it may be necessary for Kenya to have a sector specific organ that represents workers in the sector.
- (c) The value attached to women's work on the farms needs to be re-evaluated. The fact that women interact with the chemicals without necessarily spraying the greenhouses makes them entitled to the chemical insurance and PPE which is currently provided to men in this sector.

To tackle gender based violence

- (a) All farms should establish competent and well-trained gender committees to train, sensitize and monitor on all matters concerning gender based violence as a result of working on the farms. These committees should have clear grievance procedures and constitute women representatives as well as men.

- (b) Sanctions for gender based violence should be clear and concise to deter perpetrators from acting against women. The sanctions should also ensure management is also put to task in case of reports of misconduct.

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Appendices

Appendix 1: List of ILO Conventions ratified by Kenya



International
Labour
Organization

Promoting jobs,
protecting people

NORMLEX

Information System on International Labour Standards

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Ratifications for Kenya

50 Conventions

- Fundamental Conventions: 7 of 8
- Governance Conventions (Priority): 3 of 4
- Technical Conventions: 40 of 177
- Out of 50 Conventions ratified by Kenya, of which 41 are in force, 8 Conventions have been denounced; 1 Instrument abrogated; none have been ratified in the past 12 months.

See also

[Conventions not ratified](#)

Display the list by: Type Number Subject Status

Fundamental

Convention	Date	Status	Note
C029 - Forced Labour Convention, 1930 (No. 29)	13 Jan 1964	In Force	
C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	13 Jan 1964	In Force	
C100 - Equal Remuneration Convention, 1951 (No. 100)	07 May 2001	In Force	
C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	13 Jan 1964	In Force	
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	07 May 2001	In Force	
C138 - Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 16 years</i>	09 Apr 1979	In Force	
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	07 May 2001	In Force	

Governance (Priority)

Convention	Date	Status	Note
C081 - Labour Inspection Convention, 1947 (No. 81)	13 Jan 1964	In Force	
C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)	09 Apr 1979	In Force	
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	06 Jun 1990	In Force	

Technical

Convention	Date	Status	Note
C002 - Unemployment Convention, 1919 (No. 2)	13 Jan 1964	In Force	
C005 - Minimum Age (Industry) Convention, 1919 (No. 5)	13 Jan 1964	Not in force	Automatic Denunciation on 08 Apr 1980 by convention C138

Convention	Date	Status	Note
C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)	13 Jan 1964	In Force	
C012 - Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	13 Jan 1964	In Force	
C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)	13 Jan 1964	In Force	
C015 - Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	13 Jan 1964	Not In force	Abrogated by decision of the International Labour Conference at its 106th Session (2017)
C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	09 Feb 1971	Not In force	Automatic Denunciation on 31 Jul 2015 by convention MLC, 2006
C017 - Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	13 Jan 1964	In Force	
C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	13 Jan 1964	In Force	
C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	13 Jan 1964	In Force	
C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	09 Feb 1971	In Force	
C032 - Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	13 Jan 1964	In Force	
C045 - Underground Work (Women) Convention, 1935 (No. 45)	13 Jan 1964	In Force	
C050 - Recruiting of Indigenous Workers Convention, 1936 (No. 50)	13 Jan 1964	In Force	
C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	13 Jan 1964	Not In force	Automatic Denunciation on 08 Apr 1980 by convention C138
C059 - Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	13 Jan 1964	Not In force	Automatic Denunciation on 08 Apr 1980 by convention C138
C063 - Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)	13 Jan 1964	In Force	
C064 - Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)	13 Jan 1964	In Force	
C065 - Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)	13 Jan 1964	In Force	
C086 - Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)	13 Jan 1964	In Force	
C088 - Employment Service Convention, 1948 (No. 88)	13 Jan 1964	In Force	
C089 - Night Work (Women) Convention (Revised), 1948 (No. 89)	30 Nov 1965	In Force	
C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)	13 Jan 1964	In Force	
C097 - Migration for Employment Convention (Revised), 1949 (No. 97)	30 Nov 1965	In Force	
<i>Has excluded the provisions of Annexes I to III</i>			
C099 - Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	09 Feb 1971	In Force	
C112 - Minimum Age (Fishermen) Convention, 1959 (No. 112)	09 Feb 1971	Not In force	Automatic Denunciation on 08 Apr 1980 by convention C138
C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118)	09 Feb 1971	In Force	
<i>Has accepted Branches (d) to (f)</i>			

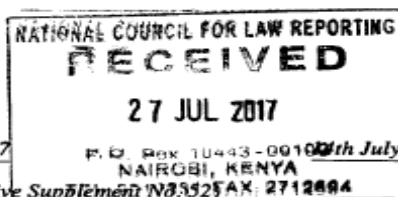
Convention	Date	Status	Note
C123 - Minimum Age (Underground Work) Convention, 1965 (No. 123)	20 Jun 1968	Not in force	Automatic Denunciation on 08 Apr 1980 by convention C138
C131 - Minimum Wage Fixing Convention, 1970 (No. 131)	09 Apr 1979	In Force	
C132 - Holidays with Pay Convention (Revised), 1970 (No. 132) <i>Length of holiday specified: 21 working days. Has accepted the provisions of Article 16, paragraph 1(a) and (b).</i>	09 Apr 1979	In Force	
C134 - Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	06 Jun 1990	Not in force	Automatic Denunciation on 31 Jul 2015 by convention MLC, 2006
C135 - Workers' Representatives Convention, 1971 (No. 135)	09 Apr 1979	In Force	
C137 - Dock Work Convention, 1973 (No. 137)	09 Apr 1979	In Force	
C140 - Paid Educational Leave Convention, 1974 (No. 140)	09 Apr 1979	In Force	
C141 - Rural Workers' Organisations Convention, 1975 (No. 141)	09 Apr 1979	In Force	
C142 - Human Resources Development Convention, 1975 (No. 142)	09 Apr 1979	In Force	
C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	09 Apr 1979	In Force	
C146 - Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) <i>Length of annual leave specified: 30 days</i>	14 Sep 1990	Not in force	Automatic Denunciation on 31 Jul 2015 by convention MLC, 2006
C149 - Nursing Personnel Convention, 1977 (No. 149)	06 Jun 1990	In Force	
MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006) <i>In accordance with Standard A4.6 (2) and (10), the Government has specified the following branches of social security: medical care; sickness benefit; old-age benefit, employment injury benefit and maternity benefit.</i>	31 Jul 2014	In Force	
Amendments of 2014 to the MLC, 2006	18 Jul 2014	In Force	
Amendments of 2016 to the MLC, 2006	08 Jul 2016	Not in force	Formal disagreement period until 08 Jul 2018

Appendix 2: List of banned pesticides in Kenya

BANNED PESTICIDES IN KENYA

	Common name	Use	Date Banned
1.	2,4,5 T (2,4,5 - Trichloro-phenoxybutyric acid)	Herbicide	1986
2.	Chlordane	Insecticide	1986
3.	Chlordimeform	Insecticide	1986
4.	DDT (Dichlorodiphenyl Trichloroethane)	Agriculture	1986
5.	Dibromochloropropane	Soil Fumigant	1986
6.	Endrin	Insecticide	1986
7.	Ethylene dibromide	Soil Fumigant	1986
8.	Heptachlor	Insecticide	1986
9.	Toxaphene (Camphechlor)	Insecticide	1986
10.	5 Isomers of Hexachlorocyclohexane (HCH)	Fungicide	1986
11.	Ethyl Parathion	Insecticide All formulations banned except for capsule suspensions	1988
12.	Methyl Parathion	Insecticide All formulations banned except for capsule suspensions	1988
13.	Captafol	Fungicide	1989
14.	Aldrin	Insecticide	2004
15.	Benomyl, Carbofuran, Thiram combinations	Dustable powder formulations containing a combination of Benomyl above 7%, Carbofuran above 10% and Thiram above 15%	2004
16.	Binapacryl	Miticide/Fumigant	2004
17.	Chlorobenzilate	Miticide	2004
18.	Dieldrin	Insecticide	2004
19.	Dinoseb and Dinoseb salts	Herbicide	2004
20.	DNOC and its salts (such as Ammonium Salt, Potassium salt & Sodium Salt)	Insecticide, Fungicide, Herbicide	2004
21.	Ethylene Dichloride	Fumigant	2004
22.	Ethylene Oxide	Fumigant	2004
23.	Fluoroacetamide	Rodenticide	2004
24.	Hexachlorobenzene (HCB)	Fungicide	2004
25.	Mercury Compounds	Fungicides, seed treatment	2004
26.	Pentachlorophenol	Herbicide	2004
	Phosphamidon	Insecticide, Soluble liquid formulations of the substance that exceed 1000g active ingredient/L	2004
27.	Monocrotophos	Insecticide/Acaricide	2009
28.	All Tributyltin Compounds	All compounds including tributyltin oxide, tributyltin benzoate, tributyltin fluoride, tributyltin lineoleate, tributyltin methacrylate, tributyltin naphthenate, tributyltin chloride	2009
29.	Alachlor	Herbicide.	2011
30.	Aldicarb	Nematicide/Insecticide/Acaricide.	2011
	Endosulfan	Insecticide.	2011
31.	Lindane	Insecticide.	2011

Appendix 3: Minimum wage Order for agricultural industry with effect from 1.5.2017



SPECIAL ISSUE

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(Legislative Supplement No. 325)

LEGAL NOTICE NO. 111

THE LABOUR INSTITUTIONS ACT

(No. 12 of 2007)

IN EXERCISE of the powers conferred by section 46 of the Labour Institutions Act, 2007, the Cabinet Secretary for East African Community, Labour and Social Protection makes the following Order:—

THE REGULATION OF WAGES (AGRICULTURAL INDUSTRY) (AMENDMENT) ORDER, 2017

1. This order may be cited as the Regulation of Wages (Agricultural Industry) (Amendment) Order, 2017 and shall be deemed to have come into operation on the 1st May, 2017.

Citation

2. The Regulation of Wages (Agricultural Industry) Order is amended by deleting the Schedule and substituting it with the following new Schedule:

Sub Leg.

SCHEDULE

BASIC MINIMUM CONSOLIDATED WAGES

	Occupation	Per Month KSh. Cts.	Per Day KSh. Cts.
1	Unskilled employee	6,415.55	269.40
2	Stockman, herdsman, watchman	7,409.00	313.75
	<i>Skilled and semi skilled employees</i>	<i>Per month KSh. Cts.</i>	<i>Per day KSh. Cts.</i>
3	House Servant or cook	7,323.65	278.85
4	Farm foreman	11,573.55	489.10
5	Farm Clerk	11,573.55	489.10
6	Senior foreman	7,492.40	318.60
7	Farm artisan	7,668.00	326.05
8	Tractor driver	8,131.40	345.40
9	Combine harvester driver	8,957.95	380.10
10	Lorry driver or car driver	9400.80	398.50

Dated the 16th May, 2017.

PHYLLIS KANDIE,
Cabinet Secretary for East African Community,
Labour and Social Protection.