

**THE THORNS BEHIND BLOOMING ROSES: THE IMPACT OF THE
LAW ON THE WORKING CONDITIONS OF WOMEN ON FLOWER
FARMS IN NAIVASHA, KENYA**

Abstract

The writer of this dissertation, a lawyer, studies the abuse of the rights of women who work in some of the largest floriculture farms in Naivasha, Kenya, a country which is the world's second largest flower producer. Employing a combination of women-centred methodologies (especially the Women's Law Approach), he collects and analyses data from various sources in order to reveal the 'lived realities' of these women, including the problems faced by them. These problem areas cover the issues of remuneration, working hours, health and safety, trade unions, sexual harassment and maternity leave. He suggests reforms to Kenya's new labour law regime (commenced in 2007) which are intended to enhance the rights of these women workers in accordance with obligations in terms of the various Human Rights Instruments and International Labour Organisation Covenants which Kenya has ratified.

BY

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DECLARATION

I, WILFRED NYAUNDI KONOSI, do hereby declare that this is my original work and has not been submitted and is not currently being submitted for the award of a degree in any university.

SIGNED:

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DEDICATION

To all those women who work in flower farms to make sure that the beautiful flowers are available for sale all over the world.

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Minimum Age Convention, 1973, (No 138).

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1.0 Chapter 1

1.1 Introduction

Flowers traditionally signify love, beauty, affection and purity. They are used on various occasions such as Valentine's Day, Mothers' Day, on Christmas, during funerals and birthdays just to name a few, to say thank you, I love you, get well soon and so on. Few people know the conditions under which these flowers are produced before they reach the market. Chances are that they are likely to have been produced by the large number of women who work in flower plantations under harsh working conditions in various parts of the world.

The Kenya cut flower industry has been growing rapidly in the recent years at an average rate of 35% per annum. It indirectly provides vital income up to two million people and is the second largest agricultural foreign exchange earner after tea, at a value of over US\$ 250 million per year compared to Colombia, the world's largest exporter of flowers with a value of US\$700 million annually. About 25% of all the flowers sold in the European Union market are imported from Kenya and it is estimated that around 55,000, mainly young women, are employed in the industry (ETI, 2008).

This dissertation discusses the findings of the research carried out in Naivasha from October 2007 to January 2008 on the working conditions of women on flower farms. It is divided into five chapters. Chapter one gives the background to the research, the statement of the problem, objectives, research questions and assumptions and the significance of the study. Chapter two contains a discussion of the research methodologies and methods used during the research giving a description of how each of them was used during the research. It also gives an account of the limitations of the research. The findings of the research are discussed in chapter three. The laws relevant to the research are reviewed in chapter four starting with the Human Rights Framework, the International Labour Organization Conventions, and constitutional provisions. It then discusses the legislative reforms on Labour Laws which led to the enactment of a new labour law regime and ends with a comparative study of the old and the new labour laws that were enacted by parliament and received Presidential assent on 26th October 2007. Chapter five gives the conclusions and recommendations of the study.

1.2 Background of the Research

The Name Naivasha is a corruption of the Maasai word *E-na-iposha* (meaning “living waters”). The main industry in Naivasha is agriculture, especially horticulture and floriculture and despite being the home of most flower farms in Kenya, it is the ‘thorns and not the roses’ that stick out as cases of human rights abuses are regularly reported (Gitonga, 2007(a)). It has more than 50 flower farms, which include Sher Agencies, the world’s leading grower, producer, and exporter of rose flowers (Gitonga, 2007(b)). It is also a popular tourist destination because of its proximity to attractions like Hell’s Gate and Longonot National Parks, Mount Longonot and Lake Naivasha where tourists visit to observe wildlife.

The Naivasha Municipal council’s urban planning that was last updated in 1988 had targeted a population of 50,000 people only but the population has rapidly shot up to 300,000 because of the influx of people looking for jobs on the flower farms. One third of this population are working in flower farms and a significant number of them live in the many shanties that have mushroomed in the town with an estimated number of more than 50,000 living in the Karagita slum because of its proximity to most flower farms in the town (Omondi, 2007). This has led to the erection of many unplanned structures that have no access to clean running water or sanitation by property owners who are capitalizing on the situation. These structures are a common sight of heaps of uncollected garbage, which the Municipal Council of Naivasha is unable to collect due to lack of garbage collection facilities. It is evident from the unplanned structures and uncollected garbage that there is poor planning and administration by the Council.

The town is frequently in the news for the wrong as well as the right reasons. The wrong reasons include cases of rape, defilement and the hijacking of buses in transit. The good reasons include the fact that Naivasha is where the comprehensive peace agreement commonly known as the ‘Naivasha Agreement’ was signed. That Agreement was meant to end the second Sudanese war, develop democratic governance countrywide and guarantee the fair sharing oil revenues. There are many cases of sexual abuse that have been reported and it is feared that many more go unreported. According to Anthony Gitonga, there are more than 80 rape, sodomy and defilement cases pending at Naivasha Law Courts, where the number of cases reported rose from 92 in the year 2005 to 181 in 2006 (Gitonga, 2007 (a)).

Whether you are driving along the Nairobi –Nakuru highway between 6.00 a.m. and 7.30 a.m., in the biting cold of the early morning, or between 4.30 p.m. and 6.00 p.m., under the scorching sun of the early evening, you will not fail to notice the large numbers of people, mostly women, walking along and crossing the busy highway. They live in the polluted and overcrowded slums that have rapidly mushroomed in and around the town. A friend of mine, to whom I had given a lift to Nairobi, told me that more than 90% of these pedestrians were actually workers in the various flower farms in the town. Until then I had not realised that there were so many flower farm workers. When you reach Naivasha town and drive along the Moi South Road you will be attracted by the many greenhouses lining the shores of Lake Naivasha and the beauty of all the different types of flowers on display. You will pass the infamous Karagita slum that houses the largest number of workers working on flower farms.

As I thought about what women who work on the flower farms go through on daily basis I recalled a case of a middle-aged woman who walked into my office one fine day and wanted some legal advice. She told me that she was working on one of the flower farms in Naivasha and that she had developed complications because of the effects of the chemicals used in the growing of flowers. She looked frail and her skin had rashes. Her main complaint was that she was suffering from fainting very frequently and despite her visits to the Naivasha district hospital she had not recovered. She had been given sick leave but after she exhausted her sick leave days as permitted in law, she was fired from her job and now she wanted me to file a civil suit on her behalf to recover special and general damages for the pain and suffering she had endured. I drafted a demand letter, which was sent to the farm where she was working but there was no response. I wanted to refer her to a doctor to examine her and write a medical report on the possible cause of her ailment and the extent of the pain and suffering she had endured before proceeding with the matter. The saddest thing, however, was that she could neither afford the doctor's professional fees to write the report, nor filing fees for the case if it ended up in court, let alone my professional fees for services rendered.

I had contemplated doing the case on her behalf on a pro-bono basis but I lost contact with her because she could not afford transport from Naivasha to Nakuru whenever I needed her to come for further consultations. I never heard from her again and I could not contact her since she had

no telephone contact. On the few occasions she could call me, she always used a public pay phone. I did not think much about the case then, but after the exposure I got on women's issues while pursuing my studies in Women's Law I realized that I should have done much more in following up the case. This could have been a good test case with regard to the effect of chemicals on women who work on flower farms where it is alleged that these farms do not observe re-entry periods after flowers have been sprayed with pesticides. This could have been a good precedent if it was found out that her illness was related to her frequent contact with flowers that had been sprayed with chemicals. Now I cannot stop thinking how many women like her are suffering quietly and their stories may forever remain untold. With this background in mind, I chose to investigate the conditions under which women work in the floriculture industry.

1.3 Statement of the Problem

Kenya has been accused of failing to amend or enact labour laws that are in line with the Human Rights Instruments and International Labour Organisation's conventions, which she has ratified. This has led to a situation where employees especially in the private sector work under very harsh conditions at the expense of the capitalists who own most the flower farms and other industries in the private sector, whose main concern is to maximize profits. The cheap labour available in Kenya has created a situation where workers' rights are sacrificed through official acknowledgement of minimum, as opposed to living wages, and the suppression of trade unions. The weak and indifferent Kenyan labour laws, a corrupt and ineffectual labour movement coupled with a tedious judicial process, not only provide opportunities for infringement of workers' rights, but also spread the problem. The move towards a low cost labour force that is predominantly young, single and female defeats the efforts of gender-based economic empowerment as the jobs are not only low-income earning, but offer few opportunities, if any, for promotion and career development. The workers remain ensnared in a vicious cycle of poverty sustained by poor wages and smothering patterns that thwart career change and personal development (KHRC, 2004).

The issue of human rights abuses in flower farms in Kenya has been in the public domain on a very regular basis. It has emerged that sexual abuse is still rife in some flower farms. Fingers have been pointed at the farms with complaints of poor working conditions, sexual harassment

by supervisors, poor wages, casual labour, lack of job security, ineffective labour unions, inadequate housing or housing allowance, lack of paid maternity leave and health and safety issues. Due to the poor wages, many women have resorted to prostitution to supplement their meagre earnings. There are also complaints of the effects of the chemicals used in the farms on women, who complain of long menstrual periods or none at all and miscarriages (Gitonga, 2007(a), Kiprotich, 2007, ETI, 2005, KHRC, 2001). The maladies that are attributed to overexposure to dangerous substances range from chronic bronchitis, breathing problems, severe headaches, loss of hair and acute chest pains (The Daily Nation, 2005).

Forced labour is reported to be rife in the growing Kenyan horticultural industry. Workers are said to be working for 18 hours, from 5 a.m. to 11 p.m., with no overtime being paid during the industry's high season from October to March every year. Since no transport is provided to workers at such odd hours, women are always at risk of being raped or mugged. They also work in conditions inimical to their reproductive health, as they are sometimes forced to work without personal protective equipment and pregnant women are not allocated light duties and continue with their usual chores irrespective of their condition. In spite of the fact that some workers have representation through the Kenya Plantation Agricultural Workers Union, the only trade union in the country representing all workers in the agricultural industry, workers are not genuinely informed of their rights due to the intransigence and sheer ineffectiveness of the union. The union has therefore failed to handle all these ills adequately or at all (Oreyo, 2006, Kiprotich, 2007).

Most farms used to house their workers within the farms but with the rapid growth of the floriculture industry, the flower farms have found it very difficult to keep pace with the needs of the growing number of workers and their families. This has forced workers to live in squalid conditions with families living in single roomed houses, only partitioned by a piece of worn out sheeting (Kiprotich, 2007). In some instances, flower farms have been accused of not granting women maternity leave when it is due (Majtenyi, 2002).

It is quite clear from the above revelations that the Kenyan labour laws need to be reviewed to the extent to which they address the working conditions of workers in various sectors of the

economy. This research anticipates finding out the magnitude of the above problems and the aspects of the law that require to be reviewed.

1.4 Research Objectives

The objectives of this study were to:

- assess if women's working conditions on flower farms in Naivasha comply with international labour standards;
- find out if women working on flower farms in Naivasha are sexually harassed in the course of performing their duties;
- evaluate and find out if women working on flower farms in Naivasha are exposed to an unhealthy and unsafe working environment;
- explain whether or not if women working on flower farms in Naivasha have the right to organise and freedom of association;
- investigate if women working on flower farms in Naivasha work for long hours and do not receive equal pay for the work done;
- examine if women working on flower farms in Naivasha are granted maternity leave when it falls due or are sacked when they fall pregnant;
- investigate if women working on flower farms in Naivasha live in overcrowded houses; and
- analyse and find out if the Kenyan national labour laws and policies address the issues affecting women's working conditions on flower farms in Naivasha in conformity with international labour standards.

1.5 Research Assumptions

The research had the following initial assumptions flowing from the objectives of the study:-

- Women working on flower farms in Naivasha are at a high risk of being sexually harassed in the course of performing their duties;
- Women working on flower farms in Naivasha are exposed to an unhealthy and unsafe working environment;
- Women working on flower farms in Naivasha are denied the right to join trade unions of their own choice;

- Women working on flower farms in Naivasha work for long hours and do not receive equal pay for equal work;
- Women working on flower farms in Naivasha are not given maternity leave when it falls due and are sacked when they fall pregnant;
- Women working on flower farms in Naivasha live in overcrowded houses; and
- The Kenyan labour laws and policies do not adequately address the issues affecting women's working conditions on flower farms in Naivasha.

1.6 Research Questions

Following from the above assumptions the research had the following questions which it sought to answer: -

- Are women working on flower farms in Naivasha at a high risk of being sexually harassed in the course of performing their duties?
- Are women working on flower farms in Naivasha exposed to an unhealthy and unsafe working environment?
- Are women working on flower farms in Naivasha denied the right to join trade unions of their own choice?
- Do women working on flower farms in Naivasha work for long hours and do they not receive equal pay for equal work?
- Are women working on flower farms in Naivasha given maternity leave when it falls due or are they sacked when they fall pregnant?
- What are the living conditions of women working on flower farms in Naivasha?
- Do the Kenyan labour laws and policies adequately address the issues affecting women's working conditions on flower farms in Naivasha?

After I did my literature review on what had been written about the working conditions of women on flower farms in Kenya and collecting my initial data, I found out that new law governing labour issues had been passed by parliament. This called for the revisiting of my initial assumptions with a view of readjusting and rewording them. I would then focus and analyse whether the laws are either strong, weak, or in need of reform. This could help in taking

this research further from a women's law perspective as well as a human rights perspective. This is important because it would enrich the existing data significantly on the issues of concern to women working on flower farms on the themes I was investigating. I consequently came up with the following revised research assumptions and questions.

1.7 Revised Research Assumptions

- The Kenyan Labour Laws on sexual harassment do not adequately address the experiences of women working on flower farms in Naivasha.
- The Kenyan Labour Laws on occupational health and safety do not adequately address the experiences of women working on flower farms in Naivasha.
- The Kenyan Labour laws on the freedom of association and the right to form and join trade unions do not adequately address the experiences of women working on flower farms in Naivasha.
- The Kenyan Labour Laws on remuneration including equal pay for equal work and reasonable working hours do not adequately address the experiences of women working on flower farms in Naivasha.
- The Kenyan Labour Laws on maternity leave do not adequately address the experiences of women working on flower farms in Naivasha.
- The Kenyan Labour laws on housing of employees do not adequately address the experiences of women working on flower farms in Naivasha.

1.8 Revised Research Questions

- Do the Kenyan Labour Laws on sexual harassment adequately address the experiences of women working on flower farms in Naivasha?
- Do the Kenyan Labour Laws on occupational health and safety adequately address the experiences of women working on flower farms in Naivasha?
- Do the Kenyan Labour laws on the freedom of association and the right to form and join trade unions adequately address the experiences of women working on flower farms in Naivasha?

- Do the Kenyan Labour Laws on remuneration including equal pay for equal work and reasonable working hours adequately address the experiences of women working on flower farms in Naivasha?
- Do the Kenyan Labour Laws on maternity leave adequately address the experiences of women working on flower farms in Naivasha?
- Do the Kenyan Labour laws on housing of employees adequately address the experiences of women working on flower farms in Naivasha?

For ease of discussion and analysis of the findings of my study, I have singled out the following themes to be the basis of the research:- sexual harassment, health and safety, freedom of association and the right to organise, remuneration, working hours, maternity protection and housing conditions.

1.9 Significance of the Study

Labour issues have been thorny in many African countries. The Kenyan constitution, which is the supreme law of the land, does not recognize the right to work in its provisions relating to the protection of the fundamental rights and freedoms of the individual. All laws derive their validity from it and any law that is inconsistent with its provisions is void to the extent of the inconsistency.¹ In order to strengthen the laws that provide for the right to work, it is imperative that this right be entrenched in the constitution. The country also needs to enact or amend its municipal laws to ensure that they are in line with the conventions and declarations that she has ratified. It is hoped that the findings of this research will reawaken the Kenyan government's commitment to the rule of law and respect for human rights, so that it can bring all its labour laws into line with the International Labour Organisation conventions and other Human Rights Instruments it has ratified. The findings should also be able to help the government realize the need to undertake a comprehensive constitutional review to ensure that all the fundamental rights and freedoms of the individual are entrenched in the constitution, since the right to work affects other rights such as the right housing, food, education, health among others. The government should be alive to the fact that it needs to channel sufficient resources to the Ministry of Labour and Human Resource Development to enable it effectively to apply all laws affecting the right to work.

¹ Section 3

1.10 Demarcation of the Area of Study

This study was carried out in Naivasha town in the Naivasha District within Rift valley province. The District covers 2837.4 square kilometres and is distinctively known for its cultural/traditionally diverse population background, with basically each of the more than 42 Kenyan ethnic backgrounds represented. More than half its population is found within Naivasha town and the lake region, which covers less than a quarter of the total district square area (LBSI, 2007). I chose to do my research in Naivasha because it was convenient for me since it closer to Nakuru where I work as a lawyer. This made it easier for me to collect data from the large numbers of workers who reside there.

1.11 Conclusion

This chapter has dealt with the background to the research, the research problem, the objectives of the study, the research questions and assumptions, the significance of the study and the demarcation of the area of study. The next chapter deals with the methodologies and methods used during the research.

2.0 Chapter Two

2.1 Research Methodologies and Methods

2.2 Introduction

This chapter discusses the methodologies and methods I used in collecting data during the research. Methodology refers to the justification and the theoretical assumptions that underlie a particular study. In choosing what methodology and methods to use in any research, one must have regard to the objectives of the research, research assumptions, research questions which need to be answered, the researcher's beliefs, values, and skills, and the time and funds available. Different assumptions and questions may require different methodologies and methods or a combination of both in order to achieve the objectives of the research. With these guiding principles available to me I had to decide which methodologies and methods to use, which are discussed in this chapter with an analysis of the advantages and disadvantages of each methodology and method.

2.3 Research Methodologies

2.3.1 Women's Law approach

Since my study was to find out the impact of the law on the working conditions of women in flower farms at Naivasha, my starting point was to take women's actual lived experiences and live situations based in sexuality, birth, care and domestic work as a starting point for the analysis of their position in law and society using the women's law approach since this is a woman centred legal discipline (Bentzon et al, 1998:91). With this in mind my first task was to find out the interplay between law and the life experiences of the women working in flower farms at Naivasha in relation to their working conditions. I decided to do random sampling by visiting the homes of the women working at the flower farms. When I got to Naivasha, I tried to get an entry point to be able to access the women. My friend Ronny referred me to Mr Makimei a resident of the town, who informed me that the majority of women working at the flower farms reside at Karagita. After receiving that information and I decided to visit the area to see whether I could get a good starting point for the research. I had never been in Karagita before, but upon my arrival I gathered courage and walked into a compound where there was a lady sitting outside a block of houses. I then introduced myself and told her that I wanted to talk to any woman who

works in any of the flower farms. She told me that she does not work at any of the flower farms but she pointed out to me a house occupied by a woman who works at a nearby flower farm. She further told me that the woman was about to come home for lunch and offered me a seat and a cup of tea. The cup was dirty and the general hygiene of the area was not conducive for me to have the cup of tea, but since I wanted to get an entry point into my research, I had no option but to take the tea only with a prayer in my heart that I do not get sick.

The woman finally came home for lunch, and I introduced myself to her and the purpose of my visit to her place. It took me sometime to convince her that I was actually a student who was doing research relating to the working conditions of women working on flower farms. She then opened up and gave me an overview of the general problems facing women. She also promised that she could be able to introduce me to other women who would give me further insights on the themes I was investigating. She kept her promise and introduced me to six other women working in different farms who gave accounts of what they perceived to be issues of concern to women working on flower farms. I was able to interview six women using the Women's Law Approach.

Based on the data I collected I was able to examine the existing labour laws from a feminist perspective which examination entailed: (1) a description and evaluation of existing law; (2) identification of areas of strong legal support, weak legal support, and judicial voids where 'legal' issues have not been addressed; and (3) discussion whether and how the body of law ought to be expanded, contracted or replaced (Dahl, 1987:20) as will become apparent in the discussion of the findings of this research.

This methodology was quite useful to me with regard to all my assumptions as it enabled me to point out those aspects of the Kenyan labour laws that are weak and in need of legal reform.

2.3.2 Grounded Theory

Grounded theory is an important aspect of women's law with regard to data collection. It is an iterative process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. The interaction between developing theories and methodology is constant, as

preliminary assumptions direct the data collection and when the collected data is analysed it points to new directions and sources of data. Through this process, new methodological perspectives and theories are hatched (Bentzon, 1998:18). As Creswell has noted, the intent of a grounded theory study is to generate or discover a theory, an abstract analytical schema of a phenomenon that relates to a particular situation (Creswell, 1998:56).

Glaser and Strauss (1967) suggest six skills that researchers can employ in the research process as guidelines in the research process. These are: an open mind, the next question technique, concept building, constant comparative method, theoretical selection or sampling and limitation of theory. Using the above skills I went into the field with an open mind that was not prejudiced by the literature review I had done which was the basis of my original assumptions. Smith (1997) has suggested that general reading of the literature may be carried out to obtain a feel for the issues at work in the subject area, and identify any gaps to be filled using grounded theory. The researcher is able, therefore to approach the subject with some background knowledge, but it is important that the reading is not too extensive, as the theories should evolve from the data itself, producing a grounded theory.

I was alive to the fact that my assumptions might be challenged hence requiring readjustment depending on the initial data collected. Much of the data collected confirmed my assumptions and the literature review but some data opened up a new area of efficacy of the law. With the continuous dialogue and interaction between theory and the empirical data collected, I was able to conceptualize that the law might be weak in addressing the themes I was investigating. Thus, the use of grounded theory helped me to realize that I needed to readjust my initial assumptions to focus more on what was perceived to be the problem with the law.

2.3.3 Legal Pluralism

Legal pluralism recognises that there is a wide range of normative orders other than the formal law which come into play to shape women's legal and social position as opposed to legal centralism which starts from the viewpoint that state law is the most important normative and that all other norm-creating and social fields and institutions are insignificant or irrelevant. The Kenyan floriculture industry has other normative orders that come into play to shape the

women's legal and social status when addressing the problems they face. These are private bodies which include the Kenya Flower Council, the Fresh Produce Exporters Association of Kenya and the Horticultural Ethics Business Initiative which have set up codes of practice which flower farms must comply with before they can be allowed to export their products to various European markets. A study done between 2003 and 2006 by Omosa, Kimani and Njiru on the social impact of the codes of practice on the cut flower industry in Kenya found out that in 2004, approximately half of the 145 grower-exporters, employing around 75% of cut flower industry workers, were signed up to at least one code, with several belonging to more than one (author). The most frequent membership was of the Kenya Flower Council (47) followed by Fresh Produce Exporters Association of Kenya (26), Milieu Project Sierteelt (17), Max Havelar (10) and Flower Label Programme (8). 60 of the farms had not adopted a code and no information was available for a further 11. Code adoption was more common on Kenyan-owned or joint-foreign-and-locally owned farms than on European-owned farms (Omosa, Kimani and Njiru, 2006).

These codes of practice set down certain minimum standards with regard to the working conditions at the flower farms that are much better than those set by the various Acts. Women who work in the code-adopting farms enjoy better terms than those working in the farms that have not adopted any code. These private bodies draw from a multiplicity of regulatory sources that are influenced by diverse perspectives in responding to the problems facing women working on flower farms and in the horticulture industry generally. I realised that it would be incorrect to assume that state law is the only body of rules that govern the behaviour of those working on flower farms. The legal pluralism perspective assisted me in analysing these rule-generating and rule-upholding processes that affect the position of women and gender relations in a situation where plural normative structures inform human interaction.

2.3.4 Sex and Gender

Gender is socially constructed whereas sex refers to the physiological differences between men and women. In a patriarchal society we have roles that are seen as feminine and others as masculine. Given the fact that there are more women than men working on flower farms in Naivasha I was able to analyse the effects of this division of roles on the working conditions in the farms. Women appeared to be having separate concerns from men, ranging from issues of

sexual harassment, health and safety, pregnancy and maternity. In terms of division of roles, there are more women than men working in pack houses where they work while standing for long periods whereas men preferred doing what are considered 'male jobs', like spraying, where they work for less hours and earn more than women. Women are naturally perceived to be more careful, more compliant and cheaper to hire than men. It is thus very important that when researching on the problems affecting women, the sex and gender perspective within the empirical approach to the issues had to be considered.

2.3.5 Human Rights Approach

The right to work is provided for in several Human Rights Instruments which will be analysed in detail in the next chapter. From a methodological point of view, however, one needs to understand the rights which are sought to be protected or violated when researching on issues affecting women. Articles 7 and 8 of the International Convention on Economic, Social and Cultural Rights contain a comprehensive set of key elements that are geared towards the achievement of both equality of opportunity and treatment at the work place. This perspective assisted me in referring back to the provisions of these instruments when analyzing data to determine the compliance or non-compliance of the state's obligations regarding the right to work. I was able to assess the extent to which the Kenyan labour laws comply or do not comply with the human rights instruments.

2.4 Research Methods

Research methods are a very critical component in the research process and as such it is essential to use methods that will assist you in getting the desired results. Before choosing what methods to use a researcher must be clear on the objectives of the research and the topic to be explored. Having chosen the topic to research, set the objectives of the study, formulated research assumptions and questions, the next step was to get into the field and to start collecting data. This entailed using both qualitative and quantitative methods to ensure that the data collected answered my research questions. I used primary sources which included interviews, group discussions, observations and photographs and secondary sources which included library

research, newspapers, articles, reports from previous studies done on flower farms in Kenya and other materials available on the internet.

Table of Respondents

| Respondents | Male | Female | Total |
|---------------------|-------------|---------------|--------------|
| Workers at farms | 3 | 13 | 16 |
| Trade Union workers | 3 | 0 | 3 |
| Doctors | 2 | 0 | 2 |
| CEO's | 0 | 2 | 2 |
| Labour Officer | 2 | 1 | 3 |
| NGO's | 1 | 0 | 1 |
| Total | 11 | 16 | 27 |

2.4.1 Individual Interviews

This method involved interviews with women who were working in the flower farms and those who had previously worked in the farms but had left for one reason or another. I also interviewed some men (especially those who spray the flower farms with chemicals) in order to get the inside story on how they perform their duties and whether they comply with the safety regulations. Of the workers I interviewed, none of them had been previously interviewed on matters relating to their working conditions, even though they appeared to be aware of the fact that several other workers had been interviewed previously in relation to the working conditions in flower farms. This method was useful to me because I had face-to-face contact with the respondents that gave me the opportunity to explore my themes of study in depth through reading body and facial expressions. Most of the respondents who agreed to be interviewed spoke to me freely and gave their story uninterrupted, thus revealing their lived realities. It is also the method that yielded the richest data, details and new insights in my research because it allowed me to be flexible in the interviews with particular individuals depending on the circumstances. I recall one instance where I had to cut short my interview because the respondent was running late reporting back to

work but I was able to resume the interview when she was free. By taking breaks during interviews I was also able to clarify initially vague answers and thereby obtain fuller, more useful responses.

This method however had some disadvantages. I found it time-consuming because the interviews lasted between 30 minutes to one hour. Sometimes I was forced to wait for the respondents to be free since they only have one day off a week when they also attend to their personal matters. Some of the respondents were not free to reveal some aspects such as the conditions of service and appeared to be withholding information because they were afraid that the collected data could be used against them.

2.4.2 Interview with Key Informants

A key informant is a person who has a professional background or unique skills related to the issues under study. With this in mind I chose to interview officials from various institutions that I considered critical to my study. I held interviews with key informants from the ministry of Labour Development and Human Resources Development who gave me an insight on what to expect my research in terms of collecting data and accessing the farms. I obtained a list of all the flower farms from the Naivasha District labour officer. He offered to take me on board during his routine inspections to the flower farms. He also confirmed that his office had received complaints regarding the themes I was investigating. I visited the offices of the Kenya Flower Council to get permission to interview employees of flower farms that have signed up its code of practice. The Chief Executive Officer gave a brief summary about what the organisation does and promised to let me interview its auditors after they had finished doing their yearly audits. In this way I obtained a better understanding of how the codes of practise are enforced.

I also interviewed the Naivasha District Occupational Health and Safety Officer and two doctors who gave useful insights on matters relating to occupational health and safety generally and in particular in relation to the problems reported on the flower farms. The main advantage of interviews with key informants is that it helped me get information from the main actors and I believe that this will increase credibility to the findings of this study. This too had its own disadvantages as it took me a lot of time to get appointments to talk to the key informants and

sometimes the informants would interject with their own impressions and biases. Mr Muthee the Naivasha District Labour Officer for example was of the view that owners of flower farms should assist in improving the living conditions at the Karagita slums since most of the flower farmers live there. This information was unnecessary because owners of flower farms cannot interfere with private property.

2.4.3 Group Discussions

I only managed to hold one group discussion with officials from the Kenya Plantation Agricultural Workers Union as opposed to the many I had intended because of the reasons I will give in the section dealing with limitations of the research process. The Union officials took me through what they do in the trade union movement, how they are organised and how they deal with grievances brought forth by workers. They too confirmed that the themes I was investigating were of concern to them as a union and were looking forward to when a long-lasting solution could be found.

I anticipated holding group discussions with selected groups from various farms so that I could get collective views of the problems facing workers in the floriculture industry. This could have a very good opportunity for me to get high quality data since group discussions are set up in a social context where people can consider their own views in the context of the views of others, and where new ideas and perspectives can be introduced.

2.4.4 Observations

Observational techniques are one of the one of the methods of gathering firsthand data because they provide the researcher with an opportunity to collect a wide range of behaviours, capture a great variety of human interactions and to generally explore the research topic. While using this method, I was able to learn about the way flower farms are structured and operate without letting the management know that I was actually collecting data when I visited one of the flower farms. The best opportunity was when I witnessed spraying taking place while we were in one of the greenhouse with my supervisor during her supervision visit. The setting was natural, flexible and unstructured giving us an opportunity to observe all that we could be able to and needed to know. We however spent more time than we had anticipated because we had little control over the

situation. I was also able to develop a holistic perspective on how a typical flower farm operates at all stages of growing the flowers up to the time they are ready for export. During the supervision visits, I managed to take my supervisor to the Karagita slums where most of the workers reside and we were able to observe for ourselves the living conditions of the population in the area. This method of data collection can be problematic in that the researcher does not necessarily know the full story and may draw unwarranted inferences that may distort the data (Bentzon et al, 1998:195).

2.4.5 Photography

I used photographs to capture situations that were pertinent to the research when I had the opportunity to do so. Photographs can be more telling than the way a person can be able to describe a situation even if he expresses himself in the best written prose. Photographs corroborate the findings of any research. I managed to take photographs to depict certain aspects of the themes I was investigating which are also likely to enhance the credibility of the findings. The situations captured by the photographs include: people working in a green house; spraying of flowers in a green house; women working in a flower pack house; how water is supplied at Karagita; permanent structures with mud walls and an earth floor at Karagita. These are explained in the presentation of the findings.

2.4.6 Secondary Sources

No research can be said to be complete without using secondary methods of data collection. I relied heavily on newspaper reports in formulating my assumptions and statement of the problem. They were very helpful in bringing out what was perceived to be the major problems faced by women who work on flower farms. The Women's Law library was also very useful in terms of accessing the relevant books I required in the process of writing the dissertation and the unlimited access to the Internet where I obtained very useful material. Most of the findings of previous researches that have been done have not been widely published in books that are readily available but they are available on the Internet. The publications I got from the Kenya Human Rights Commission and the Kenya National Commission on Human Rights were of great benefit in so far as they were relevant to my study. The main benefit I reaped from the use of secondary sources was that I was able to fill the gaps in my data that I was not able to collect due to the limitations of the research.

2.5 Limitations of the Study

This research had its challenges and limitations that affected the smooth and uninterrupted data collection and analysis.

The first challenge I faced was that as I was about to get to the field to get started with data collection my wife lost her first cousin and after a week she lost her grandmother. As required in our tradition I had to be involved in the funeral arrangements. This effectively cut short my research period by an initial two weeks.

The next challenge was to get permission from the relevant authorities to enable me get access to the flower farms. I had an informal talk with the Rift Valley Provincial Director of Occupational Health and Safety to explore the possibility of getting permission to access the flower farms but this did not seem to bear fruit. She instead directed me to go to the offices of the Kenya Flower Council, the Horticultural Ethics Business Initiative, and the Kenya Human Rights Commission to find out if I could accompany their auditors during the yearly audits. I travelled to Nairobi and had a difficult time in tracing the physical location of the offices. The telephone numbers given in the telephone directory were not working. While in Nairobi, I found out that movement was a big challenge because of the heavy traffic jam in the city. I finally found the physical addresses of the offices and realized that they are all outside the city centre and far apart from each other. This made it impossible to visit more than two offices in any one day.

The Kenya Flower Council wanted to see my proposal before they could allow me to get access to the farms that have signed up to its code of practice. I gave them my proposal but it took them a long time to get back to me. When the Chief Executive Officer finally gave a green light to arrange with the farms and agree on the days to visit them, I found out that no farm was willing to let me have group discussions with its workers because it was high season for the flower industry which starts in October and ends in March. The Executive Officer of Lake Naivasha Growers group who was assisting me to get appointments with the flower farms told me that I could only get access in January before the farms get busy again as they prepare for Valentine's Day.

Our general elections were to be held on 27th December 2007 and with the election mood setting in, I was not able to collect much during that month. The worst blow to the research came after the announcement of the presidential results. The post election that broke in the country made it literally impossible for me to move about during the whole month of January with the imposition of a 6.00 pm to 6.00 am curfew in Nakuru. I attempted to get to Naivasha to carry out group discussions in some of the flower farms that had agreed to give me access, but again the violence spread to Naivasha, with youths blocking the in Nakuru-Nairobi highway. Most of the workers at the flower farms were also displaced, compounding the problem.

Back in the field in Naivasha it was very difficult to get access to the women because they work for six days and only have one day off when they attend to their personal matters. Some of the women also feared being interviewed because they thought that if it is discovered that they gave damaging information about the farms where they work, they were likely to lose their jobs.

The Naivasha District officer who had agreed to take me on board during his routine inspections of the flower farms fell ill and was out of the office for the whole of December and January. I tried to see if would make the same arrangement with the Naivasha District Occupational Health and Safety during his visits but he, too, was affected by the post election violence and had temporarily moved out of the town.

I still managed to collect data that can be validly used to assess women's lived realities and the law, even in light of the above discussed limitations. This was so because I was able to get respondents with lived realities covering the themes of the research notwithstanding the fact that a lot more would have been collected had there been no or fewer limitations.

2.6 Conclusion

This chapter has analyzed the methodologies and methods used in the research. It has also outlined the advantages and disadvantages of each of the methods and also given the challenges faced and limitations of the study. The next chapter presents the findings of the research.

3.0 Chapter Three

3.1 Findings, Discussion and Analysis

3.2 Introduction

This chapter contains the findings of the research and a detailed discussion of the findings based on the analysis of the data collected. The research was based on the assumptions that: the Kenyan Labour Laws on sexual harassment do not adequately address the experiences of women working on flower farms in Naivasha; the Kenyan Labour Laws on occupational health and safety do not adequately address the experiences of women working on flower farms in Naivasha; the Kenyan Labour laws on the freedom of association and the right to form and join trade unions do not adequately address the experiences of women working on flower farms in Naivasha; the Kenyan Labour Laws on remuneration including equal pay for equal work and reasonable working hours do not adequately address the experiences of women working on flower farms in Naivasha; the Kenyan Labour Laws on maternity leave do not adequately address the experiences of women working on flower farms in Naivasha; and that the Kenyan Labour laws on housing of employees do not adequately address the experiences of women working on flower farms in Naivasha.

The research sought to answer the following questions which were derived from the above assumptions: whether the Kenyan Labour Laws on sexual harassment adequately address the experiences of women working on flower farms in Naivasha; whether the Kenyan Labour Laws on occupational health and safety adequately address the experiences of women working on flower farms in Naivasha; whether the Kenyan Labour laws on the freedom of association and the right to form and join trade unions adequately address the experiences of women working on flower farms in Naivasha; whether the Kenyan Labour Laws on remuneration including equal pay for equal work and reasonable working hours adequately address the experiences of women working on flower farms in Naivasha; whether the Kenyan Labour Laws on maternity leave adequately address the experiences of women working on flower farms in Naivasha; and whether the Kenyan Labour laws on housing of employees adequately address the experiences of women working on flower farms in Naivasha.

I will discuss the findings under the following themes; sexual harassment, unhealthy and unsafe working environment, the right to join trade unions, long working hours, remuneration, maternity leave and overcrowded accommodation.

This picture shows a typical green house measuring about 20 hectares



3.3 Sexual Harassment

Before the enactment of the Employment Act 2007 none of the Kenyan labour laws contained any provision relating to sexual harassment. However with the enactment of the Act, which came into operation on 20th December 2007, ‘sexual harassment’ has been defined by section 6. The section goes further to state that employers with more than 20 employees should issue a policy statement on sexual harassment and what should be contained in it but unfortunately it does not make it a criminal offence.

The research found that there were cases of sexual harassment that had been reported to the labour officer at Naivasha and to the officials of the ‘Kenya Plantation Agricultural Workers

Union' but no data was available from any of these officials to enable me gauge the frequency of the reports to see if the problem was rampant or not.

One of the male respondents told me that he was aware of at least four cases of sexual harassment. He said all the women in cases had left employment but were still staying in Naivasha town. He promised to try and trace them so that I could talk to them but it was not possible because he did not have time to do so. He has only one day off in a week and being a Muslim, he preferred going to the mosque for prayers. I therefore did not have a chance to get first hand information from the women. He gave an incident where one of the supervisors had a relationship with one of the women workers but when she got pregnant, she was sacked and the supervisor refused to take any responsibility for her situation.

Another respondent, a shop steward of the 'Kenya Plantation Agricultural Workers Union', told me that there were cases where supervisors asked for sexual favours from women in order to promote them or allocate them light duties. This was confirmed when I held a group discussion with three officials of the Union. Mr Wafula, the Assistant Secretary of the Union said that they had received reports of sexual harassment from women by supervisors and male workmates but, according to him, the issue had been addressed in all the farms where their members are working. He did not give any details about the nature of the cases reported nor did he have any statistics to support the prevalence of the abuse.

Mr Muthee, the Naivasha District Labour Officer, also confirmed that his office had received complaints of sexual harassment but he too never gave me the nature of the reports he had received, as I was not able to talk to him again when following up on the issues that arose from my initial interview. I wanted to follow up this issue with him after analysing the data I had collected but unfortunately he fell sick and was not available to make any further clarification during my follow up on the issues that arose from my initial interview.

Two respondents who work in a farm that has adopted the codes of practice told me that the issue of sexual harassment has been addressed on their farm. They told me that the management takes the issue so seriously that if such a case is reported, the supervisor or any other person is

summarily dismissed. I managed to interview a former worker who had quit her employment because of sexual harassment and she had this to say:

I used to work in one of the flower farms as a casual worker earning a daily wage of 120 Kenya shillings (approximately US\$ 1.90). I used to work at the pack house and sometimes I could work for long hours and be dropped late at night far away from my house which was sometimes unsafe. At the pack house I had a target of grading and packing a minimum of 3000 stems per day and thereafter I could work overtime with very little pay. One day, one of the supervisors called me and made sexual advances to me so that he could allocate me light duties. I refused his advances and that was the start of my problems. This supervisor started mistreating me by saying that I was not doing my work properly by not reaching the daily target. I was later sacked on the instigation of this supervisor. I could not report this matter to the police because I knew that I could not have enough evidence nor could I report to any superior person since I was directly under his supervision.

Research conducted on the flower farms by Dolan, Opondo, and Smith on gender, rights and participation in the Kenya cut flower industry found that sexual harassment was reported in all farms, particularly by women who were subject to sexual harassment from male supervisors. They attribute the persistence of sexual harassment to the hierarchical employment structure of companies, coupled with the lack of senior female staff, both of which intimidate women from reporting incidences of harassment. According to them, the respondents interviewed claimed that supervisors requested sexual favours in exchange for employment, time off, promotion, and bonuses and such matters could not be reported to the management because of poor communication channels between the workers and the management, thus exposing the women to work under fear of being dismissed at any time by the supervisors (Dolan, Opondo and Smith, 2004, Hale and Opondo 2005, WWW, 2007, Auret and Barrientos 2004).

It appears that it is very hard to get statistics on the issue of sexual harassment because the women who have fallen victim to it do not want to discuss the matter openly or it could be that since matters concerning sexuality are rarely discussed in public, no body is keen to keep statistics. The findings of the above research did not have any statistics to enable me to come to a firm conclusion on the prevalence of the practice. Some flower farms seem to have taken the issue seriously based upon what was said by some of the respondents.

3.4 Health and Safety

The Ministry of Labour and Human Resource Development has well-organised department of Directorate of Occupational Health and Safety Services whose functions include: advising on the type and safe use of personal protective clothing and equipment; investigating occupational

diseases, accidents and dangerous occurrences; educating and training employers and employees on health and safety at workplaces; advising employers, employees and the general public on health and safety matters; carrying out occupational health surveys at workplaces; and assessing dangerous substances in industries such as dust, fumes, chemicals and other substances that affect the health of workers. The department set up an office in Naivasha in the year 2003 whose main task according to Mr Audi, the Naivasha District Health and Occupation Officer was 'to bring sanity in the flower farms in Naivasha' which is a clear indication that the Ministry was aware of the problems within the flower farms in relation to health and safety matters. According to him, workers at the flower farms work under very extreme working conditions. I will discuss the findings on issues relating to health and safety under the following sub headings.

3.4.1 Re-Entry Periods

The International Flower Coordination has set up standards that should be adhered to with regard to re-entry periods into greenhouses that have been sprayed with pesticides, depending on the type of chemicals that have been used. These standards that are contained in the guidelines which have been set after discussion with Flower Producers, Importers, Supermarkets, NGOs, International Unions and Specialists in Europe, Africa and South America. The guidelines provide that pesticide application in the greenhouses is strictly forbidden while unprotected workers are present and that warning signs are required at each entrance of the areas sprayed, indicating the time and date when entry is safe. The following re-entry intervals must be strictly observed after spraying pesticides. In any event, the foliage has to be completely dry before harvesting.

- Highly toxic pesticides (WHO Tox I) and carcinogenics (EPA A+B): 24 hours
- Toxic pesticides (WHO Tox II) : 12 hours
- Less toxic pesticides (WHO Tox III+IV): 6 hours (IFC 1999).

The research found out that these re-entry periods were not being strictly observed by flower farms in Naivasha. I interviewed two men who work as sprayers in one of the farms who confirmed that the re-entry periods are not strictly observed. In this regard, he said:

I have just left work a few hours ago. I was spraying a class three chemical which requires a re-entry period of four to five hours. I finished spraying at 10 am and as I left the re-entry time was indicated as 11.30 am.

He said that there are times when they spray whilst women were working in the same green house without protection and jokingly told the women who were present during the interview that they would die of the effects of the chemicals before him. His explanation for the non-observance of the re-entry period was that spraying can be done in the night because it is too cold and that if the re-entry periods are strictly observed, flowers, like roses, would go to waste because they would have passed the stage when they should have been harvested and, as a result, this would cause huge losses to the owners of the farms. Mr Audi, on the other hand, told me that the violation of the re-entry period was due to the fact that flowers in Naivasha dry faster than in those countries where the re-entry periods were set because it is within the tropics. He said that the department was conducting a hygiene survey to enable the department to come up with re-entry periods based on the climate in Naivasha. His view was that the flowers should be harvested when they are completely dry.

Six of the women stated that they have been forced to work while in a green house when the flowers are being sprayed with only four bays separating the spraying and non-spraying areas. The men who are spraying wear protective clothing but the women do not wear any. We had a chance with my supervisor to actually observe spraying going on while we were in a greenhouse.

This picture was taken in a greenhouse where flowers were being sprayed while other people were working in it at the same time.



3.4.2 Complaints Arising due to Non-observance of Re-entry Periods

Mr Audi, the Naivasha District Occupational Health and Safety Officer, said that he received less complaints from men compared to women because women are in contact with flowers for longer periods than men. The complaints he received from women included skin diseases, gynaecological-related complaints such as irregular menstrual flow and allergies caused by dust that may sometimes contain chemicals. He was however quick to point out that none of these complaints are gazetted as occupational diseases.² The respondents who said they work while spraying is being done complained that they sometimes develop skin rashes because of contact with wet flowers and at times the temperatures are so high that some of the workers faint. The research done by 'Women Working Worldwide' found the reported effects of contact from chemicals without adequate protection include miscarriages, irregular menstrual flows, skin disorders and upper respiratory tract diseases (WWW, 2007, Dolan, Opondo and Smith, 2004).

Barrientos argues that an issue that would appear to affect many workers in agriculture is health and safety, which particularly arises from the use of pesticides in the production process. It is a particular problem for workers in confined spaces such as green houses where evidence has suggested that health and safety procedures in relation to the handling of pesticides and chemicals are often lax or violated. The effects of chemical exposure can include skin irritation, respiratory problems, nausea and dizziness and the longer term effects can be more serious, including a higher risk of serious illness and adverse effects on children (Barrientos, 2007).

The two doctors I interviewed said that they had not come across any cases of abortions or deformed births due to the effect of chemicals or any other complaint that could be classified as an occupational disease. Dr Omala said that there is likelihood that there are women who may have been affected by chemicals but have not followed up the issue to determine the extent of the effects.

² There are 40 occupational diseases gazetted in the Work Injury Benefits Act and the Occupational Safety and Health Act.

3.4.3 Personal Protective Equipment

The Law requires that workers working in certain areas be provided with personal protective equipment. For those handling and spraying pesticides, the following equipment is necessary: respirator (control filter regularly); long sleeved protective overall; plastic or rubber apron; long impermeable gloves to cover all exposed skin of the arms; rubber gumboots; closed to face goggles; and water-proof or plastic cap or hat. For the cultivating and grading workers, the following equipment is necessary: long sleeved overalls; plastic or rubber apron; plastic or leather gloves; waterproof boots or intact shoes; and a waterproof or plastic cap or hat (IFC 1999). The Occupational Safety and Health Act 2007 makes similar provisions in section 101.

The research found out that whereas most flower farms have provided some form of protective clothing to their workers, they were inadequate, while some farms did not provide any at all. Over 80% of the total number of the workers interviewed were either not satisfied with the quality of the personal protective equipment they were supplied with, or were not supplied with any at all. Mr Audi told me that most companies do not provide quality personal protective equipment. Some of them are of such poor quality that they wear out very quickly, thus exposing the workers to the effects of the chemicals. He gave an example of a spray suit which costs Kshs16,000 (US\$ 280) which appeared as good as new after six months, as opposed to one costing Kenya Shillings 1,500 (US\$ 22) which wears out very fast. The research done by Women Working Worldwide found that protective clothing was available but not all workers had access to the clothing and that some were buying their own equipment (WWW, 2007).

This picture shows women working in a pack-house while standing. They are grading roses and are not wearing regulation protective gloves or other protective clothing.



3.5 Freedom of Association

The research found out that not many women workers had joined trade unions either because they were not aware of the activities of trade unions or could not afford to pay the monthly subscriptions required by the union. Mr Wafula, the Assistant Secretary of the Kenya Plantation and Agricultural Workers Union, said that casual workers cannot become members of trade unions and are not entitled to the benefits contained in the bargaining agreement. He confirmed that there have been cases where some farms did not permit their employees to join their union but, according to him, the new Act addresses the issue. He attributed the poor enrolment of workers on flower farms into the union to the delay caused by the Industrial Court in resolving disputes. He was of the view that a time limit should be set within which disputes are solved. The union has had problems in cases where employers take too long to sign the collective agreements, which is also a factor which contributes to the low recruitment of members. Mr Muthee, the Naivasha District Labour officer, said that there are very few women who join trade unions because they see it as a men's affair and that, out of the 33 unions in the country, none of them is headed by a woman. He said that women should be encouraged to join trade unions and take up leadership positions so that they can address issues of gender equality. He was of the view that the Kenya Plantation and Agricultural Workers Union is very strong and effective in

dealing with workers issues. Only one out of the 13 women interviewed was a member of the union.

Mr Wafula, the assistant secretary of the union, said that the Tom Mboya Labour College offers courses to its members workers and that they also have training department which conducts training programmes for its members and in house training which targets low-rank employees.

The Union does not appear to be working in harmony with other civil society organisations in improving the working conditions of workers on flower farms. I found a notice pasted on the union's office warning its members not to deal with such organisations in the following terms;

Wafanyikazi jihadhari na walagai. Mujihadhari na watu ambao wamejitokeza na kujiita watetezi wa haki za wafanyikazi. Wamedanganya wengi kwamba wote watetea haki zao za kikazi. Vikundi ambavyo vinajiita Workers Rights Watch, Himan Righths, KEWWO na vikundi ambavyo vinajitakia makuu. Watu hao hawatambuliwi na sheria za kikazi) Labour Laws) Haki za kikazi zinatetewa na vyama vya wafanyikazi ambavyo viko chini ya muungano wa vyama vya wafanyikazi nchini (COTU) Tujiunge na vyama ili tuinge haki zetu za kikaz Umoja wa wafanyikazi upo katika vyama (Trade Unions). (Workers beware of idlers. Beware of people who have come up calling themselves labour law activists. They have cheated many workers that they can protect their labour law rights. Groups like Workers Rights Watch, Human Righths, KEWWO and other self-seeking groups. Our labour laws do not recognize those groups. All labour disputes and rights are dealt with trade unions that are under the Central Organization of Trade Unions (COTU) Let us join trade unions so that we can protect our rights. The unity of the workers is in Trade unions).

What one can decipher from the above message is that the Union is not happy with the activities of civil society in promoting workers rights. Mr Audi said that it is civil society that keeps his department on its toes when it comes to human right issues.

Omosa, Kimani and Njiru in their research found out that trade union membership in the cut flower industry was very low. She found out that only about 17% of workers in code-adopting farms belonged to any trade union and this was the case for 16% of workers in non-adopting farms. The low level of membership was associated with a low level of awareness of the existence of the trade union movement. Most workers were not aware of the trade union movement or even the procedures for becoming a member of a union. Other workers said the subscription fee was too high for them since they earned very little (Omosa, Kimani and Njiru, 2006).

3.6 Remuneration

The research found that all the workers in the flower farms earn wages or salaries ranging from 2,800 to 5,400 Kenya shillings (approximately 34 to 78 US\$) and an house allowance ranging from 800 to 1,400 Kenya shillings (approximately 12 to 20 US\$). These wages and salaries are above what is set by the Government as minimum wages but they are not based on what may be called 'a living wage'. Casual workers are paid between 100 and 120 Kshs (US\$1.80-1.90), which is much lower than the salaries permanent workers receive. They are also not entitled to other benefits like medical allowance enjoyed by some permanent employees. It has been argued that on top of receiving lower wages, casual workers work for long hours at short notice, sometimes under dangerous and unsafe conditions, have no employment security and less likelihood of access to training with limited career prospects (Omolo and Omiti, 2004). All the workers I interviewed were of the view that the wages they are paid are very low and cannot sustain their daily needs. They said that the salaries should be based on productivity as opposed to fixed minimum salaries that have no basis at all. One the respondents had this to say

I earn a salary of 3,200 Kshs and get house allowance of 800 Kshs and pay rent of 1,300 Kshs. My three children go to private schools at a cost of 1,250 Kshs per month. I buy water for use in the house on a daily basis. I find the salary too little to sustain my daily needs.

The assistant secretary of the 'Kenya Plantation Agricultural Workers Union' while agreeing that the wages that are paid to workers in the floriculture industry do not constitute a living wage, emphasised that when negotiating for collective agreements, they are guided by what other neighbouring countries pay. He argued that, if the wages are too high, they will discourage investors from investing in the country, which will have adverse effects on the economy. This perhaps explains why the Minister of Finance has to lay down guidelines or other directives relating to wage and salary levels and other terms and conditions of employment. And it would also appear that the Union has restrictions as to what they can bargain for in their collective agreements.

The research done by 'Women Working Worldwide' found that the salaries paid in Kenya, Uganda, Tanzania and Zambia were too low to sustain a decent living standard for workers. The

salaries are described in the report as ‘far too little’ and not sufficient to meet the basic needs of the workers and their families. The respondents in Uganda were earning a monthly salary of between 50,000-80,000 USH (US\$28-46), those in Tanzania were earning between 28,000 to 58,000 TSH (US\$24-50) per month, while the daily rate in Zambia ranged between 7,000 to 10,000 Zambian Kwacha (US\$1.80 to 2.50) (WWW, 2007:17). While low wages impact on both men and women, women who are usually solely responsible for their children, are particularly affected, as they cannot afford to pay for childcare while they are at work. Children may therefore be left unsupervised, out of school or separated from their mothers (Smith et al, 2004).

3.7 Hours of work

The Regulation of wages (Agricultural Industry) Order provides that working hours in a week shall be forty-five hours in a week. The collective agreement, however, provides that the working hours shall be forty-six spread over six days of the week. The research found some flower farms were not following these working hours at all but, instead, were giving their workers a target to be achieved for them to earn a daily wage. Those working in the grading and pack house told me that during peak hours they are given a target of packing between 3000 and 4500 stems of rose flowers for them to qualify to be paid a day’s pay. They complained that it was impossible for them to reach their target within the normal working hours, which meant that they had to work extra hours without pay. Pack-house workers are likely to work for long hours especially during peak hours. Flowers are harvested until 5.00 pm every day and they must be graded before workers can leave the in the pack-houses. One female pack-house worker is quoted by Smith as having said: -

Last year I had a small child and could even go back at 12.00 midnight and the child’s health was really affected. There is a time I stayed for two days without seeing my child because I was leaving very early in the morning and arriving home very late at night (Smith et al 2004).

The workers also complained that they did not know how the overtime was calculated and those who knew the rates complained that they were not being paid for all the hours they had worked overtime.

3.8 Maternity Leave

The research found that women were granted maternity leave ranging from two to three months. Those who enjoyed three months leave are the ones working in farms that have signed codes of practice. Casual workers on the other hand were not granted maternity leave. It was established that most farms do not assign pregnant women light duties. Lack of access to maternity leave creates anxiety about income security and can lead women to seek abortions and/or hide their pregnancies, both of which have health implications as well as undermining their reproductive rights (Smith, et al, 2004).

3.9 Housing

The research found out that the majority of workers in the flower farms are not housed by their employers and have to find accommodation outside their places of work. There are only three flower farms that provide housing facilities to their workers. Workers who are housed by flower farms live in permanent houses made of brick or stone walls, with a cemented floor and roofed with iron sheets. The houses are one roomed, have electricity and clean water supply. Each block of houses has separate toilets and bathrooms for men and women. Their compounds are generally clean since the flower farms have private garbage collecting facilities.

These are semi-permanent structures with mud walls and an earth floor in Karagita



The majority of those who find their own accommodation live in somewhat squalid conditions. The single rooms do not have a separate cooking area and are separated by a plain sheet. The houses do not have a supply of water and women have to buy water from vendors on a daily basis. The women use unsanitary communal pit latrines and bathrooms which are not disinfected.

This is how water is supplied in Karagita since there is no supply of clean running water



The lack of adequate housing is one of the main reasons why children remain with their grandparents or other relatives in the rural home districts. One worker had this to say in relation to her children

I am a single lady aged 32 years old with three children aged 10, 8 and 7 years. I get a salary of Kshs 5,240 (approximately US\$ 80.6) per month and a house allowance of Kshs 1000 (approximately US\$15.4) which all goes to the rent I pay for my one room. The house has no electricity so I use a lantern for lighting. The salary I get cannot cater for my needs. I can't even afford to go the salon to have my hair done. Since I can not afford to stay with the children, I have left them to stay with my parents at my rural home.

Security is also an issue of concern to the women living in the slum areas. The crime rate has increased because of the number of many unemployed people residing in the slums. Women are at a risk of being attacked when they are dropped far away from their houses especially when they work late.

3.10 Conclusion

This chapter has analysed and discussed the findings of the research on each of the themes that were the subject of investigation. It has been shown that women are affected differently, depending on what issue is of concern to them. It was evident that all the issues were generally found to be of concern to women. The next chapter gives a conclusion of this study and presents recommendations on what measures should be taken by various stakeholders in an effort to improve the working conditions of women in light of what has been discussed in this study.

4.0 Chapter Four

4.1 Law Review Governing Labour Issues in Kenya

4.2 Introduction

This Chapter analyses all the provisions of the law relating to right to work and the working conditions in Kenya. It is presented starting with the Human Rights Framework and the International Labour Organization Conventions and constitutional provisions. It then discusses the legislative reforms of Labour Laws that led to the enactment of the new labour law regime. The Chapter ends with a comparative study of the old and the new labour laws that were enacted by parliament and received Presidential assent on 26th October 2007.

4.3 Human Rights Framework

There are several principal sources of international law that define and describe the principle and framework of the right to work. These are contained in various Human Rights instruments and conventions, which in turn should be incorporated into the Constitution and other enabling statutes in order to give them efficacy within the Kenyan legal framework.

The first source of law that provides for the right to work is the 1948 Universal Declaration of Human Rights that has over the years acquired the status of international customary law. Articles 23 and 24 of the Declaration lay down the principles on the right to work. These include, the right to free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work without discrimination, just and favourable remuneration, social protection, the right to join trade unions for the protection of employees' interests and the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25 provides that everyone has a right to a standard of living adequate for the health and well being of himself and of his family, including housing, necessary social services and the

right to security in the event of unemployment or other lack of livelihood in circumstances beyond his control.

Articles 7 and 8 of the International Convention on Civil and Political Rights provide for protection from torture, cruel, inhuman or degrading treatment, slavery, slave trade, being held in servitude and from forced or compulsory labour.

Article 6 of the International Covenant on Economic, Social, and Cultural Rights requires state parties to the covenant to take steps to ensure that an appropriate and conducive environment exists for individuals to fully realize and exercise the right to work, be it in formal salaried employment or self employment and that each individual has the opportunity to gain his or her living by work which he or she freely chooses or accepts. The Covenant acknowledges that, in order to achieve full realization of this right, state parties should take steps including technical, vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and freedoms of the individual.

Articles 7 and 8 of the Covenant urge State Parties to recognize the right of everyone to the enjoyment of just and favourable conditions of work and single out the key elements of these conditions. These include: -

- Minimum remuneration including fair wages and equal remuneration for work of equal value without distinction on grounds of such person's sex, race, disability, marital status among other grounds;
- The remuneration in question must enable a person and his or her family to live decently. Thus if the remuneration is so negligible that it does not constitute a living wage to enable a person eat, feed and provide shelter for his or her family, it falls short of complying with the right to work as envisaged in the Covenant;
- Safe and healthy working conditions;
- Equal opportunities for promotion at the work place which shall be based on seniority and competence and no other consideration;
- Every worker must have reasonable limitation of working hours, periodic holidays with pay, remuneration for public holidays and rest and leisure;

- The right to form and join a trade union, subject only to the rules of the organization concerned, with no restriction other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order for the protection of the rights and freedoms of others;
- The right to strike as long as it is exercised in conformity with the laws of a particular country.

Article 9 of the Covenant urges state parties to recognize the right of everyone to social security, including social insurance.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination urges States Parties to the Convention to undertake to prohibit and eliminate racial discrimination in all its forms and guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration, the right to form and join trade unions, the right to housing, social security and social services among other rights.

Article 11 of the Convention on the Elimination of All Forms of Discrimination describes issues which may specifically occasion discrimination to women in relation to work. It requires State Parties to ensure that women, on a basis of equality with men, have the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. State Parties are further required to: prohibit dismissal on the grounds of pregnancy, maternity leave or marital status; introduce maternity leave with pay or other benefits without affecting loss of former employment and other allowances; encourage the provision of social services such as child-care so that parents may combine family obligations with work responsibilities and participation in public life and to provide special protection to women during pregnancy from types of work that is harmful to them. The Convention further provides that the protective legislation covered in article 11 should be reviewed, revised, repealed or extended in the light of scientific and technological knowledge.

Article 15 of the African [Banjul] Charter on Human and Peoples' Rights reiterates the provisions of the above Conventions on the right of every individual to work under equitable and satisfactory conditions, and to receive equal pay for equal work.

The implications of the above provisions are that Kenya, as a state party to the international and regional conventions that recognise the right to work, is required to seek the full realization of the right to work by enacting laws that are in line with the conventions. The ratification of the conventions does, of itself, make them applicable within the Kenyan legal system. Where there is a conflict between municipal laws and the provisions of international conventions that the Kenyan Government has ratified, the municipal laws shall prevail. I have discussed what the human rights instruments provide in relation to working conditions and I will use them to determine the extent to which the Kenyan Constitution and Labour Laws comply with them generally with regard to the working conditions of women working on flower farms in Naivasha.

4.4 International Labour Organization Conventions

Kenya has ratified 49 international Labour Conventions, 43 of which are in force. The International Labour Organisation has a number of conventions that seek to facilitate the right to work for everyone, eight of which are popularly referred to as 'core' or 'fundamental' conventions, which deal with important elements of the right. These are: Forced Labour Convention, 1930, (No 29); Freedom of Association and Protection of the Right to Organize Convention, 1948, (No 87); Right to Organise and Collective Bargaining Convention 1949, (No 98); the Equal Remuneration Convention, 1951, (No 100); Abolition of Forced Labour Convention, 1957, (No 105); Discrimination (Employment and Occupation) Convention, 1958, (No 111); Minimum Age Convention, 1973, (No 138); and Worst Forms of Child Labour Convention, 1999, (No 182).

The Forced Labour Convention enjoins members to take appropriate steps to suppress the use of forced or compulsory labour in all its forms within the shortest possible period except in exceptional circumstances.³

The Freedom of Association and Protection of the Right to Organize Convention recognises the right of workers and employers to establish and join organisations of their own choice,⁴ which organisations also have the right to establish and join federations and confederations with the latter having the right to affiliate with international organizations of workers and employers.⁵ The organisations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes and they may not be interfered with by the state⁶ and may not be dissolved or suspended by administrative authority.⁷

The Right to Organise and Collective Bargaining Convention gives workers the right to enjoy adequate protection against acts of anti-union discrimination in respect of their employment.⁸ Workers are protected from employers who make it a condition of employment that he or she shall not join a union or shall relinquish trade union membership or cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.⁹ The operations of workers' and employers' organisations are protected from interference from anybody or the use of financial or other means to control the organisation by persons other than its members.¹⁰

The Equal Remuneration Convention calls for the application to all workers of the principle of equal remuneration for men and women workers for work of equal value, which principle may be applied by means of: national laws or regulations; legally established or recognised

³ Article 1

⁴ Article 2

⁵ Article 5

⁶ Article 3

⁷ Article 4

⁸ Article 1

⁹ Article 1

¹⁰ Article 2

machinery for wage determination; collective agreements between employers and workers; or a combination of these various means.¹¹

The Abolition of Forced Labour Convention prohibits the use of forced or compulsory labour as a means of political coercion or education, labour discipline, racial, social, national or religious discrimination or as a punishment for holding or expressing political or ideologically views opposed to the established political, social or economic system or for having participated in strikes¹² and members who have ratified the Convention are urged to undertake to take effective measures to secure the immediate and complete abolition of forced or compulsory labour.

The Discrimination (Employment and Occupation) Convention prohibits discrimination in employment or conditions of work on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation or such other distinction, exclusion, or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.¹³

The Minimum Age Convention requires members to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons and in any case the minimum must not be less than 15 years.¹⁴

The Worst Forms of Child Labour Convention urges members to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency and defines a child as any person under the age of 18 years.¹⁵ It further states that “the worst forms of child labour” all forms of slavery or practices similar to slavery, such as the sale

¹¹ Article 2

¹² Article 1

¹³ Article 1

¹⁴ Article 1 and 2

¹⁵ Article 1 and 2

and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, as defined in the relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁶

The above conventions, though not binding on states that have ratified them, draw heavily on the human rights conventions and form good guidelines in labour matters.

4.5 Constitutional Provisions

The Laws governing labour issues in Kenya are contained in several Acts of Parliament but they are only applicable in so far as they are consistent with the constitution of the Republic of Kenya. The rights set out in collective agreements, extension orders of the collective agreements and individual labour contracts, also regulate labour issues. It is therefore necessary to have the core labour rights entrenched in the constitution so that they can be fully enjoyed.

Section 73 of the constitution provides that nobody shall be held in slavery or servitude nor required to perform forced labour but provides instances when certain acts shall not be considered as forced labour. Section 74 provides that no person shall be subject to torture or to inhuman or degrading punishment or other treatment.

Section 80 (1) provides for the protection of freedom of assembly and association which includes the right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his or her interests. Section 80 (2) (d) however provides that;

nothing shall be held to be inconsistent with or in contravention of section 80 (1) to the extent that the law in question makes provision for the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute

¹⁶ Article 3

a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration, and conditions whereby registration may be refused on the grounds that another trade union already registered or association of trade unions already registered, as the case may be, is sufficiently representative of the whole of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought), and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Whereas this provision provides for the freedom of assembly and association, the above proviso negates the very right it purports to protect as it simply takes with one hand what it has just given with the other.

The other rights related to an employee's freedom are the protection of the right to personal liberty (section 72), his or her freedom of movement (section 81), and the protection from discrimination (section 82). Section 82 (3) specifies the anti-discriminatory provision prohibiting different treatment on the grounds of race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex which are enumerated therein. The above provisions clearly show that the constitution has very weak provisions with regard to freedom of assembly and association. It has no provision that protects the right to work and it is for this reason that I sought to find out to what extent women's rights are protected in the light of this legal void.

4.6 Legislative Reforms

There are several Acts of Parliament that form the labour legislative framework in the country which relate to the scope of this study namely: - the Employment Act, an Act of Parliament to consolidate, with amendments, the law relating to employment, and for matters incidental thereto and connected therewith; the Regulation of Wages and Conditions of Employment Act, an Act of Parliament to provide for the establishment of Wages Advisory Boards and Wages Councils for the regulation of remuneration and conditions of employment, and for connected purposes; the Trade Union Act, an Act of Parliament to provide for staff associations, employees, associations and employees organizations, for the registration and control of trade unions, and for connected purposes; the Trade Disputes Act, an Act of Parliament to provide for the settlement of trade disputes generally and for the settlement of trade disputes in essential services; to provide for the establishment of Boards of Inquiry and a standing Industrial Court; to control and regulate strikes and lock-outs; to make provision regarding the collection of union

dues; and for matters incidental thereto; the Workmen's Compensation Act, an Act of Parliament to provide for compensation to workmen for injuries suffered in the course of their employment; and the Factories Act, Kenya, an Act of Parliament to make provision for the health, safety and welfare of persons employed in factories and other places, and for matters incidental thereto and connected therewith. Other Acts which have a bearing on labour issues but not directly related to this study include the National Social Security Fund Act, the National Hospital Insurance Act; the Export Processing Zone's Act; and the Industrial Training Act, among other Acts which need not to be mentioned herein.

The Government of Kenya had been under pressure to review its labour laws to make them consistent with the Human Rights Instruments and International Labour Organisation conventions and declarations it has ratified. This led to the setting up of a Task Force by the Attorney General within an International Labour Organisation project to review the country's labour laws on 18th May 2001 via gazette Notice number 3204. The terms of reference for the Task Force were:

- To examine and review all the labour laws including the Employment Act (Cap.226); the Regulation of Wages and Conditions of Employment Act (Cap. 229); the Trade Unions Act (Cap. 233), the Trade Disputes Act (Cap. 234), the Workmen's Compensation Act (Cap. 236), the Factories Act (Cap. 514) and make recommendations for appropriate legislation to replace or amend any of the labour law statutes;
- To make recommendations on proposals for reform or amendment of labour laws to ensure that they are consistent with the Conventions and Recommendations of the International Labour Organisation to which Kenya is a party; and
- To make recommendations on such other matters related to or incidental to the foregoing.

In order to achieve the above terms of reference, the Task Force was to have regard to the promotion of development consistent with the fundamental rights at work, the facilitation of private sector development through the establishment of a sound, equitable and predictable framework for collective labour relations and individual labour relations, the promotion of democratic participation in governance via the involvement of a diverse range of stakeholders in

the reform process, the cultivation of good, transparent and accountable governance to facilitate the expeditious and efficient resolution of disputes to minimise the risks associated with competition and fostering accessibility of labour laws to all stakeholders.¹⁷

The major points of concern that needed to be addressed were:

- Extension of the application of protective labour regulation into the informal sector;
- Harmonisation of the Kenyan labour legislation within the East African Community;
- Merging and redrafting the different Acts in order to produce a user-friendly and comprehensive labour legislation for the benefit of the people;
- The elimination of remaining colonial heritage in employment relations and contracts;
- The introduction of an Industrial Court of Appeal to overcome contradictory jurisdictional provisions between the High Court and the Industrial Court;
- Review registration procedures and trade union monopoly based on the Trade Unions Act (Cap. 233) in view of the non-ratification of the International Labour Organisation Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Review regulations on casual employees;
- Setting up of an administration system which promotes involvement and democratic participation of the social partners;
- Review possible limitations of excessive powers and influence of the Minister for Labour in industrial relations;
- Creation of an efficient labour administration system which is capable of effectively enforcing the laws;
- Review the election procedures for trade union officials, and implement a system of directly elected workers' representatives;
- The establishment of an affordable, not contribution based, workers social insurance scheme, complementing the National Social Security Fund;

¹⁷ Report by the Task Force on Labour Law Review.

- Promote equity and equality in employment by incorporating anti-discriminatory (gender, HIV/AIDS) provisions into the Employment Act (Cap. 226), and as well as provisions against discriminating sexual harassment (ILO, 1996-2008)

The tripartite party comprising members from The Federation of Kenya Employees, The Central Organisation of Trade Unions and the government reported to the Attorney General in April 2004 and handed to him five new laws to be enacted namely; the Employment Bill (to replace the Employment Act); the Labour Relations Bill (to replace the Trade Unions act and the Trade disputes Act and to replace The Regulation of Wages and Conditions of Employment Act); the Labour Institutions Act (to establish all labour institutions previously established by the repealed Acts to provide for their powers, functions and duties); the Occupational Safety and Health Bill (to replace the Factories and Other Places of Work Act); and the Work Injuries Benefits Bill (to replace the Workmen's Compensation Act). Newton Kulundu, the then Minister for Labour and Human Resource Development gazetted the five Bills, vide Kenya Gazette Supplement number 32- 36. The Bills were debated in parliament, enacted into law and received presidential assent on 22nd October 2007 which in turn led to the enactment of the following Acts on 26th October 2007 vide Kenya Gazette Supplement number 107 to 111: The Employment Act, Act no 11 of 2007 an Act of Parliament to repeal the Employment Act, declare and define the fundamental rights of employees, to provide basic conditions of employment of employees, to regulate employment of children, and to provide for matters connected with the foregoing; The Labour Institutions Act, Act no 12 of 2007 an Act of Parliament to establish labour institutions, to provide for their functions, powers and duties and to provide for matters connected thereto; The Work Injury Benefits Act, Act no13 of 2007 an Act of parliament to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes; The Labour Relations Act, Act no14 of 2007 an Act of Parliament to consolidate the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratisation of trade unions and employers organisations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes; and The Occupational Safety and Health Act, Act no 15 of 2007 an Act

of Parliament to provide for the safety, health and welfare of workers and all persons lawfully present at work places, to provide for the establishment of the National Council for Occupational Safety and Health and for connected purposes. The latter two Acts commenced on the same day immediately after being gazetted, whereas the other three were to commence by notice to be published by the Minister in the Kenya Gazette. The Employment Act No. 11 of 2007 commenced on 20th December 2007, thus repealing The Employment Act Cap 226, leaving the Labour Institutions Act, and the Work Injury Benefits Act as the only Acts yet to be operational.

4.7 Comparative Study of the Old and New Labour Laws

For the purpose of this research I will compare what the old laws provided for in relation to the themes under investigation and the changes made by the new legislation in relation to those themes because it will be beyond the scope of this research to discuss the full extent of old legislation and the new Acts comprehensively. I will now look at what each of the Acts provides for in relation to the themes of this research. The comparative study of the old and new labour laws is valuable because it will be a good background against which to assess the extent to which the situation for women working on flower farms has improved (or deteriorated), given the fact that the thrust of this research was to assess the areas of the law that were strong or weak and in need of reform.

4.7.1 Maternity Leave

Section 7(1) of the repealed Employment Act provided that annual leave for all employees which shall be twenty one working days with full pay after every twelve consecutive months of service and where the employment was terminated after the completion of two or more consecutive months during any twelve months earning period, one and three quarters days leave with full pay for each completed month. Section 7(2) provided that a woman employee was entitled to two months maternity leave with full pay, on condition that she forfeited her annual leave. The same provision is reiterated in rule 11 of the Regulation of Wages (Agricultural Industry) Order but that rule goes further to offer female employees protection from incurring any loss of privileges by reason of them being on maternity leave. Clause 11 of the collective agreement too provides that a female employee is entitled to two months maternity leave but goes on to add that she shall

not forfeit her annual leave for that year. It further provides that a female employee proceeding on maternity leave shall not be entitled to leave travelling allowance.¹⁸ This in effect implied that a female employee who was not covered by the collective agreement forfeited her annual leave once she took her maternity leave.

Section 29 of the Employment Act 2007 provides that a female employee shall be entitled to three months leave with full pay and that she has the right to return to the job she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave. However, for her to be entitled to the above benefits she must give not less than seven days notice in advance or a shorter period as may be reasonable in the circumstances in writing of her intention to proceed on leave on a specific date and return to work thereafter. She may also be required to produce a certificate from a qualified medical practitioner or midwife as to her medical condition. The section further gives female employees protection from forfeiting their annual leave on account of having taken maternity leave. The Act introduces paternity leave and provides that a male employee shall be entitled to two weeks paternity leave with full pay.

It is evident that the new laws make an improvement on maternity leave in so far as they now provide that women are entitled to three months maternity leave and that they do not have to forfeit their annual leave once they have taken their maternity leave. The new laws ought to have made provision for the protection of pregnant women to be given light duties appropriate to their physical condition and prevent their being brought into contact with chemicals or pesticides. It also ought to have provided that nursing mothers be given reasonable breaks to enable them breastfeed their young children.

4.7.2 Sexual Harassment

None of the Acts of Parliament dealing with labour laws in the old regime addressed the issue of sexual harassment at the place of work. This meant that any victim of sexual abuse access could only turn to the provisions of the Penal code or the Sexual offences Act for redress.

¹⁸ The Order and the Collective Agreement are appendices to this dissertation.

The Employment Act 2007 introduces a new provision with regard to sexual harassment. Section 6 of the Act provides that: -

- (1) An employee is sexually harassed if the employer of that employee or a representative of that employee or a co-worker-
 - (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains or implies-
 - (i) promise or preferential treatment in employment;
 - (ii) threat of detrimental treatment in employment; or
 - (iii) threat about the present or future employment status of the employee;
 - (b) uses language whether written or spoken of a sexual nature;
 - (c) uses visual material of a sexual nature;
 - (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.

- (2) An employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment.

- (3) The policy statement required under subsection (2) may contain any terms the employer considers appropriate for the purposes of this section and shall contain-
 - (a) the definition of sexual harassment as contained in subsection(1);
 - (b) a statement-
 - (i) that every employee is entitled to employment that is free of sexual harassment;
 - (ii) that the employer shall take steps to ensure that no employee is subjected to sexual harassment;
 - (iii) that the employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer's direction, who subjects any employee to sexual harassment;
 - (iv) explaining how complaints of sexual harassment may be brought to the attention of the employer; and
 - (v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where the disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.

Although the above provision may have been enacted with the best of intention to protect women from sexual harassment at the work place, it signally fails to make it an offence or to provide for its punishment. To ensure that women are fully protected from sexual harassment, the Act ought to have made it an offence. It is doubtful if the section, as it stands, will improve the situation of women with regard to sexual harassment.

4.7.3 Housing

Section 9 of the repealed Employment Act provided that an employer shall at all times and at his own expense provide reasonable accommodation for each of his employees either at or near to the place of employment or pay such employee such sufficient sum as rent in addition to his wages or salary as would enable the employee to obtain 'reasonable accommodation'. If,

however, an employee was placed at a disadvantage by the application of the section the minister could by a Gazette notice exclude the application of the section to that employee who could be dealt with in the manner specified in the notice. The Act did not say what constitutes 'reasonable accommodation' but gave labour officers powers to enter into any house which an employee was living for purposes of inspect it by dint of the provisions of section 50 (1) (a) for the purposes of determining whether the provisions of the Act were being complied with. Labour officers rarely used this section because it was doubtful if the officers could enter a privately rented house for purposes of inspection. It may have been enacted on the premise that all employees were to be housed by their employers.

Clause 11 of the collective agreement provides that an employee who is not provided with free housing by the employer shall be entitled to house allowance, in the sum Kenya shillings 1,200.00 (approximately US\$18.5) for those residing in cities and 1,000.00 (approximately US\$15.5) for those residing in all other areas. It further provides that an employee who is given reasonable housing accommodation and refuses to take it for personal reasons shall not be entitled to house allowance.

Section 9 of the repealed Employment Act and section 31 of the Employment Act 2007 are identical. The only difference being that the new Act excludes the application of that section to employees whose contract of service contains a provision which consolidates, as part of the basic wage or salary of the employee, an element of housing allowance which is otherwise intended to enable the employee to provide himself with housing accommodation or if the subject matter is covered by a collective agreement which provides for the consolidation of wages.

The new law regarding housing does not improve the situation of women with regard to housing or the granting of housing allowance that would enable them get housing accommodation which provides healthy and restful living conditions. The new laws should have set a minimum standard of housing accommodation that should be given to women working on flower farms and other workers generally.

4.7.4 Working Hours

The Regulation of Wages (Agricultural Industry) Order provides that the normal working hours in a week shall consist of forty-five hours of work at the rate of eight hours of work per day from Monday to Friday inclusive and five hours on Saturday. It also provides that an employee who works for any time in excess of the normal hours of work per week shall be paid overtime worked at the rate of one and half times the basic hourly rate in respect of any time worked in excess of the normal working hours and twice the basic hourly rate in respect of time worked on a rest day. Section 8 of the repealed Employment Act provided that every employee was entitled to at least one rest day in a week. Clause 2 of the collective agreement entered into by the Agricultural Employers' Association and the Kenya Plantation and Agricultural Union (hereinafter referred to as "the collective agreement") provides that all employees shall work for forty-six hours spread over six days of the week. The provisions relating to overtime are however the same as the ones provided for by the Regulation of Wages (Agricultural Industry) Order. The collective agreement has one curious provision that states that overtime shall be at the discretion of the management and that every employee shall be required to work overtime when called upon to do so. What this means, in effect, is that those employees will work at the discretion of the employer as and when the employer requires work to be done. This has serious implications for women especially those who have young children to look after. The weakness of this clause is that overtime is at the discretion of the employer instead of at the discretion of the employee who should decide when and how long to take an overtime piece of work.

The Employment Act 2007 provides that an employer shall regulate the working hours of each employee in accordance with the Act or any other written law. This regulation has been left to the wages council which is to be established once the Labour Institutions Act 2007 becomes operational. Since this Act has not become operational the working hours are still regulated by the Regulation of Wages and Conditions of Employment Act. The position of women relating to working hours has not improved since the new Act has not yet been gazetted. It will now depend entirely on the kind of regulations that the wages council will make.

4.7.5 Wages

The Employment Act does not make any provisions in relation to wages or salaries in general. This is dealt with under the provisions of 'The Minimum Wages and Conditions of Employment Act' and in the Regulation of Wages (Agricultural Industry) Order which is a piece of legislation subsidiary to the main Act. Under the stipulations of section 12 of the Act, the Minister has wide powers to make a wages regulation relating to the basic minimum wage in respect of employees generally, in any area in Kenya, on his own motion. This is despite the provisions of section 5 and 6 of the Act which mandate him to require 'The Agricultural Wages Advisory Board' to inquire into any matter relating to the regulation of wages and other conditions of employment and then submit its report to the minister, but he is not bound by the findings of that report. The practice has been that the Minister for Labour and Human Resource Development normally announces the minimum wages when he delivers his speech during Labour Day. Unionised employees' wages are fixed by collective agreements, which must be registered by the Industrial Court. Section 14(10) allows the Minister of Finance to set guidelines or other directives relating to wage and salary levels, which must be adhered to for the sake of economic stabilization.

The Labour Institutions Act 2007 provides for the establishment of an 'Agricultural Wages Council' which may recommend to the minister minimum remuneration and conditions of employment of employees in the agricultural sector or any sector in which no other wages order is applicable. The Act requires the wages council to take into consideration the following: the needs of employees and their families; the general levels of wages in the country; the cost of living, social security benefits and the relative living standards of other social groups; economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment and the need to encourage investment; the ability of the employers to carry out their business successfully; the operation of small, medium and micro enterprises; the cost of living; the alleviation of poverty; the minimum subsistence level; the likely impact of any proposed conditions of employment on current employment or the creation of employment and any other relevant factor.¹⁹

¹⁹ Section 44 (5).

As stated earlier, this Act has not been gazetted and as such the provisions of the Regulation of Wages and Conditions of Employment Act still apply with regard to the setting up of minimum wages. The minimum wages set by the Act are not based directly on an assessment made on a living wage, which is a wage that would enable a person to live a decent life. According to the International Labour Organisation the concept of decent work “sums up the aspirations of people in their working lives. It involves opportunities for work that are productive and deliver a fair income, security in the work place and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in decisions that affect their lives and equality of opportunity for all women and men” (ILO, 2006).

Much as the new Act may be said to be coming closer to legislating a living wage, the wages council’s recommendation to the minister is not binding on him to publish what has been recommended as the minimum wage. An assessment as to whether the position of women with regard to minimum wages has improved can only be done once ‘the Agricultural Wages Council’ has been set up.

4.7.6 Health and Safety

The repealed Factories and Other Places of Work Act contained adequate provisions relating to health and safety at the work place.²⁰ It also provided that clean sanitary conveniences be provided to employees with men and women having separate facilities.²¹ However, the minister has powers to exclude the application of the Act from certain factories and other places of work. Section 49 provided that female workers whose work is done while standing, shall be provided with suitable facilities to enable them to take advantage of any opportunities for resting which may occur in the course of their employment.

The Act further provided for the making of health and safety rules sufficient to cover the violations complained of on flower farms, which were to be enforced by health and safety officers.

²⁰ Section 13

²¹ Section 18

The Occupational Safety and Health Act 2007 has more comprehensive provisions relating to health and safety and gives occupational and health officers wide powers with regard to their duties. The position of women with regard to health and safety at the work place will only improve if there are effective enforcement mechanisms in place without which women will continue suffering from the effects of non-compliance of the provisions of the law. The new Act, like the repealed one, lacks enforcement provisions with strict penalties to ensure strict compliance.

4.7.7 Trade Unions

The formation, structure and organization of trade unions in Kenya is clearly provided for in the constitution, the Trade Unions Act (repealed), The Trade Disputes Act (repealed) and the Industrial Relations Charter. The trade union movement in Kenya is industry-based and this gives the Registrar of trade unions wide powers of refusing registration if there is already another trade union, which substantially caters for the interests in respect of which another trade union is sought to be registered.²² This provision draws from the provisions of section 80 (2) (d) of the constitution in so far as it seeks to regulate and control the trade unions. The Registrar has wide powers to cancel the registration of any trade union.²³ The provisions of section 80(2) (d) and those in the Trade Union Act can be traced back to the colonial days when the colonial government took rigid control of trade unions for the purposes of evaluating whether they had legitimate dealings consistent with government policy. The colonial government's fear was that these unions were likely to support the struggle for independence, hence the need to closely monitor their activities. The rigid registration provisions affect the freedom of association of employees as they are not allowed to join trade unions of their choice. It is tragic that we continue to see these kinds of laws on our statute books in the 21st century. The upshot of all this is that the government has a strong hand in the control of the activities of trade unions.

The New Labour Relations Act makes laudable provisions with regard to freedom of association in part II. It does not, however, provide for the freedom to join a trade union of one's choice nor

²² Section 16(1) (d) (1) of the Trade Union Act.

²³ See Section 17 of The Trade Unions Act.

bar the constitutions of trade unions from frustrating anyone who wishes to exercise this right. The gains made by the new legislation will not bear any fruit unless section 80 the Constitution of Kenya (which permits the refusal of registration of trade unions) is amended. The laws relating to the registration and regulation of trade unions are still weak. Unless we have a strong trade union that is able to have strong bargaining powers, the position of women working on flower farms is likely not to improve. Even with a strong trade union movement, unless casual employees are allowed to be unionised, the majority of women who are casual workers will not benefit from its activities.

The Employment Act 2007 tries to curb casual and piecemeal work by providing that where a casual employee works for a period or a number of continuous working days which amount in aggregate to the equivalent of three months or more or performs work which could not reasonably be expected to be completed within a period of three months, the casual employee's contract of service shall be deemed to subsist where wages are paid monthly and shall be entitled to the terms and conditions of employment to which he could have been entitled under the Act had he not initially been employed as a casual employee. This provision is likely to be abused by employers by re-employing casual workers after every three months to avoid the automatic conversion of casual employment to more secure or permanent employment.

4.8 Conclusion

This chapter has reviewed the law dealing with labour issues starting with the Human Rights Framework and the International Labour Organization Conventions and Constitutional provisions. It concludes with a comparative analysis of the old statutes and the new ones that have been enacted to repeal the old ones. It is evident that the new labour regime has brought considerable benefits especially if all the new Acts are brought into operation. All that now remains to be done is to identify and suggest reforms to the new labour law regime which will eliminate those laws which unjustifiably protect the vested and biased interests of employers to the prejudice of their workers.

5.0 Chapter Five

5.1 Conclusions

This study analysed the conditions under which women work in the floriculture industry in Naivasha under the auspices of Kenya's old labour regime. The study zeroed in on six themes that were singled out as critical areas affecting the welfare of women working on flower farms in Naivasha. The themes were maternity leave, sexual harassment, working hours, remuneration, housing conditions, health and safety, and the rights to organise and freedom of association.

The new labour laws make worthwhile considerable improvements on what was provided for in the repealed and yet to be repealed Acts. However, there is need to improve on the new laws. Such a drive is deemed imperative because it hoped that all the glaring gaps can be filled through the amendment of the new Acts where they fall short of providing for adequate protection to women working on flower farms.

5.2 Recommendations

- The Kenya Plantation Agricultural Workers union should carry out awareness campaigns to ensure that workers are aware of their rights and the benefits as provided for in national and international laws and encourage women to get into leadership positions. In this regard they should embrace the spirit of affirmative action to ensure that at least a third of the leadership positions are reserved for women. They should also include casual workers as members and extend Collective Bargaining Agreements to cover them.
- Parliament should enact the Equal Opportunities Bill 2007 whose objects are to promote equality of opportunity and to counteract direct and indirect discrimination on the grounds of gender, race, ethnicity, religion, disability or any of the prohibited grounds.
- The powers of the Minister in charge of Labour Development and Human Resources should be reduced so that he does not have the sole discretion of setting the minimum wages. The responsibility should be given to a permanent independent body which should not be under the control of any other person. The powers given to the Minister of Finance to set guidelines or other directives to wage and salary levels which must be adhered by trade unions when negotiating for collective agreements should be removed.

- The government should increase its budgetary allocations to the Ministry of Labour and Human Resource Development to enable it to employ enough personnel to implement the newly enacted Laws. We should have enough labour inspectors who should carry impromptu audits in order to be able to detect the non-compliance of the laws, especially the ones relating to health and safety.
- Section 80 (2) (d) of the constitution which has been analysed above should be repealed and replaced with the provisions of section 59 of the rejected proposed new constitution of Kenya which provided that every worker has a right to: fair remuneration; reasonable working conditions; form, join or participate in the activities and programmes of a trade union; and to go on strike. This will give trade unions and workers more space to fight for their rights.
- The government should be strongly encouraged to ratify the Right to Organise and Collective Bargaining Convention in order to strengthen the operations of trade unions.
- The Minister for Labour and Human Resources Development should be strongly encouraged to gazette the Labour Institutions Act 2007 and the Work Injury benefits Act 2007 because the new five Acts were passed as a package. Any delay in gazetting the two Acts could be tantamount to undermining the effectiveness of the other three Acts that are already operational.
- Section 6 of the Employment Act 2007 should be amended to make sexual harassment a criminal offence and provide for punishment for anybody who is guilty of the offence. In the alternative, the Act should be amended to state that anybody guilty of the offence of sexual harassment shall be dealt with in the manner provide for in section 23 of The Sexual Offences Act which states that:

(1) Any person, who being in a position of authority, or holding a public Office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.

(2) It shall be necessary to prove in a charge of sexual harassment that

- a) the submission or rejection by the person whom advances or requests are made or intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer.
- b) Such advances or requests have the effect of interfering with the alleged victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the (sic)

c) Public from a public office.

- The Employment Act 2007 should be amended to introduce a clause that provides for a more gender sensitive working environment with childcare facilities, light duties for pregnant women, and breast-feeding breaks.
- The codes of practice that are operational in Kenya should be harmonized so that they comply with the international code of conduct for easier monitoring.
- Since the new labour laws have not been operational for a long time and there some which are yet to be gazetted, future studies should be done to assess the efficacy of the new laws once they have been operational for some time.
- The government should enact laws that provide for the minimum standards of housing conditions or minimum housing allowance for all workers to enable them afford decent housing accommodation as this will be beneficial to women working on flower farms.

APPENDICES

Appendix 1

MEMORANDUM OF AGREEMENT

BETWEEN

Agricultural Employers' Association
(Hereinafter referred to as the 'Association')

AND

Kenya Plantation and Agricultural Workers' Union
(Hereinafter referred to as the 'union')

In the Matters of Minimum Wages and Terms and Conditions of Employment for Employees of Flower Grower Members of AEA.

- i) WHEREAS by terms of Recognition the Association and the Union agree that the Association has recognized the Union as a properly constituted body and the sole labour organization representing the interests of the employees within the membership of AEA.
- ii) WHEREAS THE association and the Union wish to enter into a Collective Bargaining Agreement to cover employees of Flower Grower Members of the Association, as per APPENDIX '1' OF THIS agreement. And provide that such Collective Bargaining Agreement conforms to the letter and spirit of the terms of Recognition between the Association and the Union.
- iii) WHEREAS the Association and the Union, meeting together in free heart and voluntary association enter into this common Agreement in the matters of minimum wages, terms and conditions of service for employment of Flower Grower members of the Association.
- iv) WHEREAS a Flower Grower member of the Association who wishes to be bound by this Agreement shall apply to the Association to be so bound by the Agreement with effect from the date of such application.

- v) WHEREAS the terms and conditions set out in this Agreement shall be effective to all unionisable employees except those defined as managerial, supervisory, confidential, and/or all
- vi) NOW THEREFORE, the Association and the Union having successfully concluded negotiations at their joint negotiating meetings agree as stated hereunder:-

1. PROBATION PERIOD

Probationary period for a permanent employee shall be two (2) calendar months.

- a) After successful completion of probation, an employee shall be confirmed into permanent employment; unless there is a reason to extend the probationary period, which should be notified to the employee in writing and provided that such extension does not exceed two months.
- b) During probation, either party may terminate employment by giving five (5) days notice, or five (5) days pay in lieu of notice.
- c) The employer shall issue a confirmation letter to an employee after successful completion of probationary period. Provided that, where an employee has completed the probationary period and is not issued with a letter, the employee will be deemed to have confirmed.

2. WORKING HOURS:

Working hours for all employees other than those in sub-clause (b) below, shall be forty-six (46) hours spread over six (6) days of the week.

- a) Working hours for stockmen, herdsmen and security guards shall be fifty-six (56) spread over six (6) days of the week.
- b) An employee who is stopped from working by his/her employer for any reason other the termination of his/her employment or dismissal shall be deemed to have worked as if stoppage had not occasioned by a breakdown of the plant or inclement weather conditions and the employer will deploy such employee in other duties.
- c) For notified/scheduled interruption of work, the employee shall compensate for the hours interrupted at any time to be agreed upon the employee and the employer.

3. WEEKLY REST DAY WITH PAY:

An employee shall be entitled to at least one (1) rest day with pay within every period of seven days.

4. OVERTIME:

Overtime shall be paid at the following rates:

- a) For time worked in excess of the normal working hours at one and half (1.5) times the normal hourly rates.

- b) For time worked on rest days and gazetted public holidays at twice (2) the normal hourly rate.
- c) Overtime shall be at the discretion of the management and every employee shall be required to work overtime when called upon to do so.
- d) Overtime shall be paid in cash through payroll, but on mutual agreement may be granted equivalent time-off.

5. GAZETTED PUBLIC HOLIDAYS:

- a) An employee shall be granted gazetted public holidays with full pay.
- b) If such holiday/s fall within leave period, the employee shall be granted the holiday/s in addition to his/her paid leave.

6. ANNUAL LEAVE:

After completion of twelve months continuous service, a permanent employee shall be entitled to twenty-two (22) working days leave. Application for leave must be filled one month in advance.

- a) Where employment is terminated during leave earning period, pro-rata leave at the rate of 1.83 days per month shall be given with full pay for each completed month of service.
- b) Where an employee is required to work at the request of the Employer instead of taking his/her annual leave; such employee shall be paid in cash for his/her leave days.
- c) A permanent employee shall be entitled to One Thousand Six Hundred (1,600/-) as leave travelling allowance once a year.
- d) Travelling allowance will not be paid to an employee who opts to encash his leave.

7. COMPASSIONATE LEAVE:

- a) An employee may at the discretion of the employer be granted compassionate leave.
- b) Compassionate leave will not be unreasonably refused and may, by prior arrangement by the employee with the employer be treated as paid leave and subsequently set-off against the employee's annual leave.
- c) When proceeding on compassionate leave, the employer may on request by the employee advance him/her accrued pay for the period worked less deduction. Such application to be done at least three days prior to the commencement of the leave.

8. SICK LEAVE:

- a) An employee shall be granted forty-five (45) days sick leave with full pay, followed by fifty (50) days at half pay in any twelve (12) consecutive months of employment.

- b) An employee shall not be entitled to such payments unless he produces a certificate of incapability certified by a qualified medical practitioner and company medical staff to certify the authenticity of such document covering the period of sick leave claimed.

9. MATERNITY LEAVE:

- a) A female employee shall be entitled to two (2) months maternity leave, provided that she shall not forfeit her annual leave for that year.
- b) A female employee proceeding on maternity leave shall be entitled to leave travelling allowance as per clause 6(d) of this agreement.
- c) Expectant and nursing mothers will not be deployed to work in areas which in the opinion of the Company's Medical Officer could endanger the life or health of the mother and child.

10. LEAVE FOR UNOIN OFFICIALS:

- a) The employer shall grant shop stewards time off with full pay of up to 2 days to attend official Union duties, provided prior permission is sought and granted by the employer.
- b) Transport and subsistence will be at the cost of the Union.
- c) Four (4) employees may be granted up to 15 days special leave per year with pay to attend to properly organized courses and seminars considered to be beneficial to the employee, the Union and the Employer.
- d) Employers shall grant Union officials paid leave to attend to disputes affecting the Employer and Employees.

11. HOUSING/HOUSING ALLOWANCE:

- a) An employee who is not provided with free housing by the Employer shall be entitled to a house allowance as per appendix 'ii'.
- b) If an employee is provide with reasonable housing accommodation and refuses to take such accommodation for personal reasons, such employee shall not be entitled to house allowance.
- c) If an employee's services are terminated for reasons other than gross misconduct, he//she shall be given one-month notice to vacate such company house. An employee who is summarily dismissed shall vacate immediately, or at the employer's discretion. Provided no house allowance shall be paid in lieu where no company house had been provided.

12. SAFARI ALLOWANCE:

An employee travelling on duty away from normal place of work shall be provided with allowances as follows: -

| | |
|---|----------------|
| Lunch | Kshs. 200.00 |
| Overnight accommodation- Nbi/Msa (including B/F & Dinner) | Kshs. 1,400.00 |
| Other towns | Kshs. 1,000.00 |

13. ACTING ALLOWANCE:

- a) After ten (10) days acting in a higher category/grade than his/her own, an employee shall be entitled to acting allowance.
- b) Acting allowance shall be the difference between an employee's basic wages and the basic wages of that grade being relieved.
- c) An employee required to act in a higher position shall be issued with an appointment letter to act in the said higher position.

14. DISPUTE AND INDIVIDUAL GRIEVANCES:

An employee wishing to put forward grievances in which she/he is directly and personally concerned shall in the first instance follow the company grievance handling procedure.

- a) In the event of such grievance not being settled, the Union shall have the right to pursue the dispute in accordance with the parties Recognition Agreement.

15. WARNING SYSTEM:

An employee who commits a misconduct other than gross misconduct shall be given warning in the following manner:

The first and second warning shall be recorded in the employee's file.

- a) If an employee with two warnings in his/her file commits misconduct within twelve months from the date of the first warning, he/she shall be liable to summary dismissal.
- b) If an employee with a warning in his/her file does not commit misconduct within 12 months from the date of the last warning, such warnings shall become invalid.
- c) If an employee refuses to accept a warning letter, the shop steward will be called to witness. If the employee still refuses to accept in the presence of the shop steward, this shall be treated as a serious offence and he/she shall be liable to disciplinary action in accordance with clause 18 of this agreement.
- d) An employee served with a warning shall have right of appeal to the employer within four (4) days from receipt of the warning and the employer will address the appeal within 4 days as well.

16. SUSPENSION:

An employee suspected by the employer of having committed an offence shall be suspended from duty for not more than one month and shall receive half-pay while his/her case is under investigations.

- a) If found innocent, the employee shall be paid the remaining half salary and be reinstated without loss of service or benefits.

If found guilty, appropriate action shall be taken as provided for in clause 17 or 18 this agreement.

17. TERMINATION AND RESIGNATION OF EMPLOYMENT:

- a) After completion of probationary period and up to five years continuous service with an employer, either party shall give in writing one month's notice or pay in lieu.
- b) After completion of more than five years of continuous service, either party shall give in writing forty-five (45) days' or 30 days' pay in lieu.

18. SUMMARY DISMISSAL:

- a) The employer reserves the right to summarily dismiss an employee for gross misconduct as per Section 17 of the Employment Act Cap 226.
- b) An employee dismissed for gross misconduct shall forfeit all benefits including notice, employers' contributions towards a pension or provident fund. However, he/she shall be paid for days worked and leave earned but no leave travelling allowance shall be paid.

19. UNIFORMS AND PROTECTIVE CLOTHING:

- a) Protective clothing shall be provided in accordance with the Section 53 of the Factories and Other Places of Work Act Cap 514.
- b) The employee must make sure that such protective clothing is kept clean and in good order.
- c) Serviceable protective clothing shall be issued to employees so entitled to and any unserviceable protective clothing shall be returned before a new issue is made.
- d) An employee who is provided with protective clothing and who fails to use them as specified will be liable to disciplinary action.
- e) For employees working using chemicals, washing should be done at the place of work.
- f) An employee shall either be issued with one standard bar soap for washing the protective clothing/uniform within the farm once a month or clothes will be laundered by employer.

20. MEDICAL ATTENTION:

Medical attention shall be provided in accordance with section 12 of the Employment Act, Cap226 read together with the Medical Treatment Rules, Legal Notice No. 157/1977).

21. DEATH OF AN EMPLOYEE:

In the event of death of an employee the Employer shall assist the family of the deceased with Seventeen Thousand shillings (17,000) towards funeral expenses, inclusive of transport and coffin.

22. RETIREMENT AGE:

Retirement age shall be 55 years for men and 50 years for women, or as stipulated under the National Social Security Act. Where no pension scheme is in force, the employee will be paid gratuity under clause 23 below.

23. GRATUITY:

- a) An employee whose services are terminated, or is retired after five (5) years' continuous service with the Employer, shall be entitled to gratuity at the rate of twenty-one (21) days basic pay for each completed year of service. This shall exclude employees who are covered by any existing pensions or provident fund.
- b) No gratuity shall be paid in case the employee is summarily dismissed from employment.

24. REDUNDANCY:

It shall be a condition in every contract that where the employment is terminated on account of redundancy the following principles shall apply: -

- a) The Union shall be informed of the reasons for and the extent of the intended redundancy.
- b) The employer shall have due regard to the seniority in time and skill, ability and reliability of each employee belonging to the particular category of employees affected by the redundancy.
- c) The redundant employees shall be entitled to notice as set out in clause 17 of this agreement.
- d) An employee declared redundant shall be entitled to nineteen (19) days' pay for each completed year of service.
- e) An employee who is housed by the Employer and is declared redundant shall be allowed to stay on the farm up to a maximum period of three months from the date of notice and in case of transfer of ownership of the farm, the grace period of three months shall not

apply but instead the employee shall, if so required, vacate the farm within a period of thirty days from the date of notice. Provided no house allowance shall be paid in lieu where no house was provided.

- f) An employee who is paid redundancy benefits under this clause shall not qualify for payment of gratuity under clause 23 above.

25. ESSENTIAL SERVICES:

The following categories of operations shall be regarded as essential services. No employee under these categories shall be involved in any strike actions or the downing of tools;

- Radio operators;
- Security guards;
- Medical Attendants;
- Irrigation Operators;
- Pesticide Applicators;
- Electricians.

26. TEMPORARY LABOUR:

Temporary labour may be employed for periods not exceeding 3 months in any one engagement. Where the service of such temporary labour is required beyond three (3) months, the employee shall be regarded as a seasonal worker. Provided that the temporary employee shall be entitled to: -

- a) Pro-rata leave of 1.83 fays for every completed month of service;
- b) Rest day after six continuous working days and on public holidays.
- c) Housing or House allowance as per Housing Clause.
- d) On termination of employment before expiry of the contract, two weeks notice, or two weeks wages in lieu of notice.

27. SEASONAL LABOUR:

- a) Seasonal employees may be employed from time to time to cover planting and harvesting seasons or other activities related to high volume of production and processing of flowers.
- b) Seasonal workers may be employed for a minimum period of three (3) months and a maximum of eight (8) months.
- c) Seasonal workers shall be entitled to special terms of contract as follows: -
 - i) They will be paid at the end of each month and upon request, advance payment will be given once a month;

- ii) They will be entitled to one months' notice or one months' pay in lieu of notice when their services are terminated before the expiry of the contract.
 - iii) They shall be entitled to pro-rata leave of 1.83 days for each completed month of service.
 - iv) A seasonal employee shall be granted maternity leave of two months or up to the expiry of her contract whichever is earlier.
- d) The employer shall give first priority to seasonal workers when employing permanent employees. Provided such seasonal workers meet all requirements for the vacant post and has a clean record.
- e) Where a seasonal employee is required to work beyond the maximum period of 8 months, such an employee shall be deemed to have been engaged as a permanent employee and his/her services as a seasonal worker shall be taken into consideration for purposes of calculating any long term benefit.

28. PAYMENT OF WAGES:

Wages shall be paid at the end of each month. Provided that a mid-month advance may be given on request.

29. BASIC MINIMUM AND JOB CLASSIFICATION:

See Appendix 'iii' for details.

30. GENERAL WAGE INCREASE:

All employees who are in employment as at 31st July 2005 will receive a general wage increase as shown in Appendix 'iv'

31. EFFECTIVE DATE AND DURATION:

This agreement shall be in force with effect from 1st August 2005 and shall be in force for two (2) years. Thereafter it shall continue in force until amended by both parties. Either party desiring to amend this Agreement shall give the other three-month's notice of intended amendment.

Appendix 'i'

List of Flower Grower Members of AEA who are Members of this CBA as at

| Name of Director | Name of Farm | Signature |
|------------------|--------------|-----------|
| | | |
| | | |
| | | |
| | | |

Appendix 'ii'

House Allowance

| Cities | Other Areas |
|---------|-------------|
| 1,200/= | 1,000/= |

Appendix 'iii'

THE EMPLOYMENT (MEDICAL TREATMENT) RULES
L.N. 157/ 1977

1. These Rules may be cited as the Employment (Medical Treatment) Rules.
2. (1) These Rules, unless the context otherwise requires, "medical treatment" meant treatment by a registered or licensed medical practitioner, treatment at a hospital, clinic, health centre, medical aid centre or in case of minor illness or injury, treatment by any other skilled or semi-skilled person, and in each case includes the provision of drugs, dressings and medical supplies as may be necessary.

(2) The medical treatment shall be provided at the expense of the employer, unless: -
 - (a) the illness was contracted during any period when the employee was absent from his employment without lawful cause or excuse; or
 - (b) the illness or injury is proved to have been self inflicted.
3. An employer shall take reasonable steps to ensure that every case of illness or injury of any employee occurring on his property is brought to his notice, by displaying on a notice board the necessity to report such illness or injury.
4. (1) Where there is reasonable cause to believe that any employee is suffering from illness or injury, whether contracted as a result of the employee's work or not, every employer shall, with the consent of the employee, cause to be provided to such employee medical treatment.

(2) The treatment provided under sub-paragraph (1) shall be at the cost of the employer unless provide free by the Government.
5. Every employer shall always have readily available at the place of work a sufficient quantity of aspirin, quinine, or some recognized medicine for the treatment of malaria, Epsom salt and a solution of a recognized antiseptic.
6. Every employer shall keep, or cause to be kept readily available at all times at the place of work, at least one first aid kit.

7. Every employer who employs not less than one hundred employees in any one place shall, where no public hospital or dispensary facilities are readily available near the place of employment, appoint a medical dresser or nurse, or other suitable person to supervise the treatment and care of the sick.
8. (1) Where it is likely to be necessary for an employee to go to hospital for medical treatment and some form of transport is necessary; his employer shall provide such transport as is reasonable.
 - (2) On the discharge of the employee from hospital, if the medical officer is of the opinion that some form of transport is necessary to take the employee back to his place of employment, the medical officer shall inform the employer to make arrangement for transport, and if the employer cannot be contacted the medical officer may himself make such arrangement for transportation of the employee at the expense of the employer.
9. An employer who fails to comply with any of the provisions of these rules shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings.

Appendix 'iv'

Basic Minimum Wages and Job Classification

| No | Job category | Minimum Wages |
|----|---|---------------|
| 1. | General Worker | 3,100.00 |
| 2. | Semi-skilled worker (Picker, Grader, Irrigator, Pesticide applicator) security, House servant | 3,300.00 |
| 3. | Tractor Driver | 3,900.00 |
| 4. | Clerks, Small Truck Drivers | 4,600.00 |
| 5. | Large Truck Drivers | 5,300.00 |

Appendix 'v'

GENERAL WAGE INCREASE:

| | | 1 st Year | 2 nd Year | Total |
|----|-----------------|----------------------|----------------------|-------|
| 1. | 2,800 – 3,000 | 14% | 14% | 28% |
| 2. | 3,001 – 3,700 | 12% | 12% | 24% |
| 3. | 3,701 - 4,300 | 11% | 11% | 22% |
| 4. | 4,301 - 5,000 | 10% | 10% | 20% |
| 5. | 5,000 and above | 9% | 9% | 18% |

SIGNED

For and in behalf of the KENYA PLANTATION AND AGRICULTURAL WORKERS'
UNION (KPAWU)

Mr. Francis Atwoli
General Secretary

Mr. Francis K. Waweru
Deputy General Secretary

Mr. Joseph Aluoch
Industrial Relations Officer

Mr. Jonathan Barasa
Industrial Relations Officer

For and on behalf of AGRICULTURAL EMPLOYERS' ASSOCIATION
(FLOWER GROWERS' MEMBERS AEA)

Ole Kamwaro Martine

Apollo N Kiarri

Mrs. Anne Kariuki

Michael Yugi

Ms Joyce Gema

Patrick Mutegi

Simon Harris

Hannah K. Ndegwa

WITNESSES:

Mr. Robert M. Muthanga

DATED THIS.....DAY OF.....2005

Appendix 2

THE REGULATION OF WAGES AN (AGRICULTURAL INDUSTRY) ORDER

L.N.121/1982, L.N.81/1985, L.N.123/1987, L.N.190/1989, L.N.208/1990.

Citation.

1. This Order may be cited as the Regulation of Wages (Agricultural Industry) Order.

Application.

2. This Order shall apply to all agricultural employees (excluding directors and managers) who are employed in an undertaking or part of an undertaking which consists in the carrying on, for gain, of one or more of the following activities—

- (a) the cultivation of land and use of land for any purpose of husbandry including horticulture, fruit growing and seed growing;
- (b) dairy farming and livestock breeding and keeping;
- (c) the use of land as grazing land, meadow land, market gardens or nursery grounds;
- (d) the use of land for woodlands when that use is ancillary to the use of land for other agricultural purposes.

Basic minimum consolidated wage.-

3. No person to whom this Order applies shall be employed at a basic minimum consolidated wage less favourable to him than that which is applicable to him under Part I of the First Schedule having regard to his age and to his occupation as specified therein to be determined by reference to the definitions contained in Part II of that Schedule.

Deductions for accommodation provided by the employer.

4. An employer who provides housing accommodation which has been approved by a Medical Officer of Health for the area in which the accommodation is situated may deduct from the wages of any employee in occupation of the accommodation a sum not exceeding thirty shillings.

Hours of work.

5. (1) The normal working week shall consist of forty-five hours of work at the rate of eight hours of work per day from Monday to Friday inclusive, and five hours on Saturday:

Provided that-

(a) in the case of a watchman the normal hours of work per week shall be sixty hours consisting of six shifts of ten hours each;

(b) in the event of inclement weather conditions, the employer may prevent or stop any employee from working for any time during the normal hours of work per day and the employee shall, if he has reported for duty and remains available for work during such time, be deemed to have worked for one-half of such time at his normal rate of wages per day, except that nothing in this paragraph shall be construed so as to prevent an employee from reporting for duty each morning.

(2) For the purpose of subparagraph (1), any employer who prevents or stops his employees from reporting for work for any period of time due to inclement weather conditions shall treat such employees as having reported for duty and pay them as stipulated in that subparagraph.

(3) Except as provided in subparagraph (2) and without prejudice to any contract of service being terminable by either party in accordance with paragraph 18, no contract of service shall be for less than the normal hours of work per week or in the case of an employee engaged after the start of the week, for less than the normal hours of work per day on each of the remaining days of the week, and any employee who is forced by his employer to work less than normal hours of work per day shall be paid at a rate not less than the employee's daily rate of wages.

(4) An employee who is stopped from working by his employer for any period of time for any reason other than termination of employment, dismissal or inclement weather conditions, shall be entitled to his full rate of wages per hour or per day, as the case may be.

Overtime.

6. Every employee who works for any time in excess of the normal hours of work per week as specified in paragraph 5 shall be paid for the overtime thereby worked at the following rates—

(a) one and a half times the basic hourly rate in respect of any time worked in excess of the normal hours of work; and

(b) twice the basic hourly rate in respect of any time worked on a rest day.

Holidays with pay.

7. (1) The days specified in the Second Schedule shall be holidays with full pay.

(2) Where an employee, other than a stockman, herdsman or watchman, is required to work on a day which by virtue of subparagraph (1) is a holiday with full pay he shall be paid in respect of any overtime so worked at twice the basic hourly rate.

(3) Stockmen, herdsmen and watchmen shall be paid for any time worked on a day which by virtue of paragraph (1) is a holiday with full pay at one and one-half times the basic hourly rate.

Leave with full pay.

8. (1) Every employee shall be entitled—

(a) to not less than twenty-one working days' leave with full pay after every twelve consecutive months of service with his employer; or

(b) where the employment is terminated after the completion of two or more consecutive months of service during any twelve months' leave earning period to not less than one and three-quarters days leave with full pay in respect of each completed month of service in such period.

(2) Notwithstanding the provisions of subparagraph (1), an employer and his employee may agree on the dates on which leave may be taken; and in the event of an employee being required

to work for a whole calendar year without leave, he shall be paid his normal wages plus an extra sum calculated on the basis of his daily wages in respect of leave due to him.

(3) The leave referred to in subparagraph (1) shall be additional to all public holidays, weekly rest days and any sick leave taken by an employee in accordance with paragraph 10.

Compassionate leave.

9. (1) An employee may, at the discretion of the employer, be granted compassionate leave.

(2) Compassionate leave shall not be unreasonably refused and may, by prior arrangement by the employee with the employer, be treated as paid leave and subsequently set off against the employee's annual leave.

Sick leave.

10. (1) After one month's continuous service with an employer an employee shall be entitled to sick leave with full pay up to a maximum period of thirty days, and thereafter to sick leave with half pay up to a maximum period of thirty days, in each period of twelve months' continuous service.

(2) An employee claiming to be entitled to sick leave under subparagraph (1) shall produce a certificate of incapacity signed by a medical practitioner, or a person acting on his behalf, in charge of a dispensary or a health centre covering the period for which the sick leave is claimed.

(3) An employee shall not be entitled to sick leave where the incapacity is due to gross neglect on his part.

(4) An employee's absence from duty on account of illness shall not be a reason for his dismissal.

Maternity leave.

11. Female employees shall be entitled to two months' maternity leave with full pay:

Provided that—

(i) a female employee who has taken two months' maternity leave shall forfeit her annual leave in that year;

(ii) a female employee on maternity leave shall not incur any loss of privileges by reason of her being on such leave.

Safari allowance.

12. An employee who is required to perform work away from his principal place of employment shall be entitled to be paid safari allowance as follows—

(a) for any period not exceeding his normal daily hours of work ... 7 00

(b) for any period exceeding his normal daily hours of work including an overnight stop in the

Nairobi Area or Mombasa Municipality 50 00

(c) for any period exceeding his normal daily hours of work and including an overnight stop elsewhere40 00

Refund of fare.

13. Where an employee proceeds on annual leave he shall be entitled to a refund by the employer of the bus fare or third class rail fare to and from his home in respect of himself and his wife; except that an employee shall not qualify for a refund under this paragraph unless he produces receipts to indicate that the fares in respect of which a refund is sought have been paid.

Acting appointment.

14. Where an employee is required to act in a grade higher than that in which he is normally employed, he shall work at his normal rate of pay for the first ten days and thereafter at the basic minimum wage for that higher grade, and shall also be entitled to any other benefits or privileges attached to that higher grade.

Redundancy.

15. (1) It shall be a condition in every contract that where the employment of an employee is to be terminated on account of redundancy the following principles shall apply—

(a) the employee's union shall be informed of the reasons for and the extent of the intended redundancy;

(b) the employer shall have due regard to the seniority in time and to the skill, ability and reliability of each employee belonging to the particular category of employees affected by the redundancy;

(c) the redundant employee shall be entitled to one month's notice or one month's wages in lieu of notice;

(d) an employee declared redundant shall be entitled to fifteen days pay for each completed year of service as an ex-gratia payment.

(2) An employee declared redundant shall be allowed to stay on the farm up to a maximum period of three months from the date of notice and in the case of transfer of ownership of the farm the grace period of three months shall not apply but instead the employee shall, if so required, vacate the farm within a period of thirty days from the date of notice.

(3) Notwithstanding anything contained in subparagraph (2) payment of benefits under this paragraph shall only be made after the employee has left the farm if required to do so.

Severance pay.

16. (1) An employee shall be entitled to seven days' pay for every completed year of service if his services are terminated by the employer otherwise than for gross misconduct, except that—

(a) the qualifying period for any entitlement under this paragraph shall be seven years' continuous service;

(b) the payment of benefits under this paragraph shall only be for services rendered up to the 1st July, 1966.

(2) Notwithstanding anything contained in subparagraph (1) payment of benefits under this paragraph shall only be made after the employee has left the farm if required so to do.

Cultivation of plots.

17. Where an employee is permitted to cultivate a piece of land for his personal use on his employer's property a deduction of a sum not exceeding five shillings per month for each one-half acre of land so cultivated may be made from the employee's wages.

Procedure in case of misconduct not warranting dismissal.

18. (1) An employee whose work or conduct is unsatisfactory or who is otherwise in breach of contract which in the opinion of the employer does not warrant dismissal shall be warned in writing and the following procedure shall apply—

(a) the first and second warnings shall be entered in the employee's employment record and the shop steward of his union shall be informed accordingly;

(b) the second warning shall be copied to the branch secretary of the union;

(c) if an employee who has already received two warnings commits a third breach of contract he shall be liable to summary dismissal.

(2) Where an employee completes two hundred and ninety-two working days from the date of the second warning without further unsatisfactory work or conduct or breach of contract any warning entered in his employment record shall be cancelled.

Termination of employment.

19. (1) Every contract of employment shall be terminated in the following manner—

(a) in the case of an employee who has completed more than five years' continuous service with the employer, forty-five days' notice shall be given by either party in writing or otherwise by the payment by either party, in lieu of notice, of not less than thirty days' wages;

(b) in the case of an employee who has completed the probationary period and up to five years' continuous service with an employer, thirty days' notice shall be given by either party in writing or otherwise by the payment by either party, in lieu of notice, of not less than thirty days' wages.

(2) Notwithstanding the provisions of subparagraph (1) the first two months with an employer may be treated as a probationary period and during that period the contract may be terminated by either party giving twenty-four hours' notice.

(3) Nothing in this paragraph shall prejudice the right of either party to terminate a contract summarily for lawful cause.

L.N 35/2004, L.N 41/2005

SCHEDULE BASIC MINIMUM CONSOLIDATED WAGES

| | Per Month KShs. | Per Day KShs Cts. |
|------------------------------------|-----------------|-------------------|
| 1.Unskilled employees | 2,536 | 106.45 |
| 2.Stockman, herdsman, watchman | 2,928 | 124.00 |
| Skilled and Semi-skilled employees | Per Month KShs. | Per Day KShs Cts. |
| 3.House servant or cook | 2,894 | 110.20 |
| 4.Farm foreman | 4,573 | 193.25 |
| 5.Farm clerk | 4,573 | 193.25 |
| 6.Section foreman | 2,961 | 125.90 |
| 7.Farm artisan | 3,030 | 128.80 |
| 8.Tractor driver | 3,213 | 136.50 |
| 9.Combine harvester driver | 3,540 | 150.20 |
| 10. Lorry driver or car driver | 3,715 | 157.50 |

PART II—DEFINITIONS

In this Schedule—

"farm clerk" means a person who is employed full time in the farm office and who is capable of keeping farm records and maintaining accurately books of account; and to qualify for the minimum wage as a farm clerk the employee must be in possession of a certificate to the effect that he has passed the Certificate of Primary Education examination and gained not less than fifteen points;

"farm foreman" means a person who is in overall control of all labour on a farm or, in the case of larger farms a person who is in overall control of one section of the farm's activities but in either event a farm foreman shall be required to be sufficiently trained and experienced in his job so as to be left in complete charge for limited periods;

"section foreman" means a person to whom supervisory responsibilities have been delegated (as opposed to a foreman commonly known as a Nyapara whose normal task is only to supervise the work of a limited number of unskilled workers in the field) and includes a senior pig-man or senior poultry-man who is in charge of a substantial number of livestock and who has under him one or more labourers;

"lorry driver or car driver" means a person employed as either a driver of a load-carrying vehicle or of a car and who is in possession of a current driving licence for the class of vehicle concerned;

"tractor driver" means a person who has completed six months as a learner driver and has satisfied his employer that he is able to take complete charge of a tractor and operate it and all implements associated with it so as to complete a given task in the field without supervision; and includes an employee in charge of a harvester which is not self-propelled but which is drawn by a tractor;

"farm artisan" means a person who is capable of carrying out the elementary tasks of either masonry, plumbing, carpentry or vehicle mechanics associated with work on a farm with a reasonable proficiency, but does not include employees erecting ordinary fencing on farms;

"combine harvester driver" means a person who can fulfil the requirements of a tractor driver and who is also able to operate a self-propelled combine harvester.

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