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**KENYA HUMAN RIGHTS  
COMMISSION**

## **‘WILTING IN BLOOM’**

The Irony of Women Labour Rights in the  
Cut-flower Sector in Kenya

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# List of Abbreviations

AEA	Agricultural Employers Association
BSCI	Business Social Compliance Initiative
CBA	Collective Bargaining Agreement
CEDAW	Convention on Elimination of Discrimination Against Women
COTU	Central Organisation of Trade Unions
CSOs	Civil Society Organisations
ETI	Ethical Trading Initiative
FFP	Fair Flowers Fair Plants
FIDH	International Federation for Human Rights
FKE	Federation of Kenya Employers
FLO	Fair-trade Labelling Organisation
FLP	Flower Label Programme
FPEAK	Fresh Produce Exporters Association of Kenya
HCDA	Horticultural Crops Development Authority
ICESCR	International Convention on Economic Social and Cultural Rights
KEWWEDO	Kenya Women Workers Education Development Organisation
KEWWO	Kenya Women Workers Organisation
KFC	Kenya Flower Council
KHRC	Kenya Human Rights Commission
KPAWU	Kenya Plantations and Agricultural Workers Union
LARC	Labour Awareness Resource Centre
MOL	Ministry of Labour
MPS	<i>Milieu Programma Sierteelt</i>
SMEs	Small and Medium Enterprises
SOMO	<i>Stichting Onderzoek Multinationale Ondernemingen</i>
VPIs	Voluntary Private Initiatives
WB	World Bank
WLR	Women Labour Rights

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# Executive Summary

The KHRC has worked together with many local, regional and international Civil Society Organisations (CSOs) and trade unions to campaign and lobby for improvement of workplace and living conditions for workers in the cut-flower sector. Consequently, KHRC has published three reports between 2001 and 2006 which informed various interventions. KHRC was also actively involved in the review of the previous labour laws and the constitutional review process, both which culminated a new set of five laws in 2007 and a new Constitution of Kenya (2010) respectively.

In line with KHRC goal for the year 2011-2012, *Investing in the new Constitution for Accountability and Justice*, this study was commissioned to gain knowledge of the impact of the new labour laws and the Constitution of Kenya specifically to the cut-flower sector. The study focused on working conditions around six key areas: equal pay for equal work, maternity and paternity, child support, sexual harassment, dismissals, casual labour and contracting processes. The study paid due attention to labour institutions (be they employers or unions), employment policies and their implementation, to gauge levels of compliance with the labour laws and human rights plus freedoms as provided for in the Constitution. In this regard, the objectives of the study were to assess:

- (i) Legal and organisational policy provisions for women’s rights as workers;
- (ii) Level of understanding by workers of their labour rights as provided for in the labour laws, the Constitution and organisational policies;
- (iii) The situation of workers (specifically, women workers) with specific focus on working conditions;
- (iv) Alignment to or a mismatch between legislation, organizational policy and reality;
- (v) Measures adopted by the employers towards improving employment practices, access to economic and social rights for women workers; and,
- (vi) Good practices on the six key areas mentioned above.

The study was conducted in Naivasha, Thika and Athi River where 15 companies were purposefully sampled based on size, ownership, location and workers migration patterns. However, only 10 companies cooperated fully. A total of 738 workers were interviewed both onsite and off site, being 5% representative sample of workers taken for all farms where onsite interviews were conducted and 7.5% where off site interviews were conducted for purposes of triangulating findings. Management interviews were conducted in 10 companies, with 28 respondents where KHRC had access to the workplaces, alongside policies and documentation review. The ratio of management to workers interviewed in these companies was 1:16.

Further, Secondary data was collected from 15 organisations including the Ministry of Labour, Kenya Flower Council (KFC), Agricultural Employers Association (AEA), Federation of Kenya Employees (FKE), 3 district labour offices, 4 medical officers, 3 branch-level union officials (former and current), 2 CSOs and finally, the municipal councils’ members of Naivasha, Thika and Mavoko. Other key informants interviewed include employees of 14 day-care centres and 2 chiefs.

Kenya is a key player in the global cut-flower market, which in 2010, generated US\$7.5 billion. The global market is dominated by Netherlands which accounts for about 55% of total global exports. The other top exporters are Colombia (18%), Ecuador (9%) and Kenya (6%). Statistics show that the sector has continued to grow in both volume and value with significant growth being recorded between 2006 and 2009, with the value during this period increasing from US\$ 275Million to US\$ 422Million. Locally, the export of cut-flowers as a percentage of total exports has also grown from 7.85% in 2006 to 9.44% in 2009.

The cut-flower sector falls under the agricultural industry, with applicable laws being the Employment Act, Labour Relations Act, Labour Institutions Act, Work Injury Benefits Act and the Occupational Health and Safety Act (OSHA). The legal provisions on non-discrimination, equal pay for equal work, prohibition of sexual harassment, provision of maternity and paternity leave, prohibition of unfair termination of employment, protection of employee health were found to lay a solid ground for protection of workers. In spite of this, challenges remain with regard to compliance with labour laws and the Constitution. There are additional international instruments like the United Nations Guiding Principles for Business and Human Rights which outline the UN “Protect, Respect and Remedy” framework.

According to the study, there is an increase in women headed households in the cut-flower sector with over 55% of women workers being single mothers. This is compounded by the fact that women are ‘time poor’ because of their dual roles in the household economy and the labour market. On average, women work longer hours (12.9 hours per day) compared with those of men (8.2 hours per day), yet women earn less because more of these additional hours are not remunerated. The hours of work in the cut-flower sector are way above the national average with work days of 16 hours being common during peak seasons.

The key institutions which include the Ministry of Labour and trade union movement, which play a key role in industrial relations as well as informing workplace policies and practices were found to be wanting in terms of response and in their human, technical and financial capacities. The Ministry of Labour was found to be understaffed with only 84 labour officers’ country-wide responsible for the enforcement of labour rights. This staffing constitutes 42% of the needed number of staff for the ministry to operate efficiently. The Ministry is equally under-resourced in terms of budget with a 40% budgetary deficit, which makes activities such as labour inspections and enforcement of

labour rights difficult to undertake. In addition, the Productivity Centre and the Curriculum Development Centre in the Ministry are not operationalized resulting in a poorly equipped labour force to deal with the demands of the labour market.

The trade union movement was found to be moribund and also not representing the best interest of workers. The study found there are only 5 officers of the Union in the five cut-flower growing regions who suffer the same conditions that workers suffer. Low wages, lack of job security and lack of social security are but some of the problems affecting the officers of the union. These officers were found not to have necessary skills and tools to carry out the representative function. Moreover, women who form the majority of workers in the sector are not included in the Kenya Plantations and Agricultural Workers Union (KPAWU) leadership structure with all the 5 branch officials being men. The budget for the branch officials for all their monthly expenses is Kshs. 4,000 which can hardly cover office expenses let alone the logistics needed for outreach activities.

On the other hand, the study found that civil society organisations in the labour movement have declined considerably with organisations such as the Kenya Women Workers Organisation (KEWWO) and the Labour Awareness Resource Centre (LARC) closing down leaving a void in a previously vibrant labour movement. Involvement of CSOs as stakeholders in key labour functions and voluntary private initiatives has also substantially declined. The labour movement needs strengthening and capacity building to defend labour rights.

On legal and organisational policy provisions for women's rights as workers, the study findings indicate that companies have adopted internal policies to deal with workers rights and obligations. These policies are to a large extent informed by law and codes of practice applicable to different workplaces. 8 out of 10 workplaces visited had documented policies while two companies Maridadi and Sunbird reported to be in the process of documenting their workplace policies. Even though the study found high compliance with regard to documentation of policies, 89% of workers reported not to be consulted when policies are developed and 68% not to be trained on the workplace policies. The companies can benefit from regular review of policies through a process that includes the workers. Other major findings include:

- a) *Equal pay for equal work*: Whereas companies have adopted equal pay for equal work principle, the practice is different with 69% of respondents reporting women and men do not to earn equally, as more men are concentrated in managerial positions and women serving in management are mainly relegated to lower level supervisory jobs that do not pay any better than the manual labourers. Further, 86% of workers expressed dissatisfaction with Collective Bargaining Agreement (CBA) as a tool of moving towards better wages, as it provides very low wages with a minimum of Kshs. 4,050 per worker, per month. Indeed the study findings indicate

companies pay more than the negotiated wages with Van den Berg Roses paying 68% more than the negotiated minimum. Finally, the practice of paying overtime hours 'served in kind', through equal time off during low production seasons, was identified to diminish earnings for workers. Overtime hours worked means extra pay by the worker on childcare among other reproductive roles.

- b) *Maternity and paternity leave:* The study realized significant improvement compared to the period before labour laws were enacted, with good practices in some companies like breastfeeding time for 1 hour during the day after maternity period, light duties for pregnant women with no overtime work requirement. Some illegal practices were however identified in some companies which amount to discrimination on grounds of pregnancy. For example, there is use of short term contracting to deny employment benefits. There is pre-employment pregnancy testing (urine test) with every contract renewal; unpaid maternity leave for female workers. Moreover, there are practices by Fair-trade certified companies for women to proceed on their annual leave and maternity leave at least two months before confinement and therefore limiting the post-delivery period to less than two months. Strangely, there is a requirement that men produce official marriage certificates in order to proceed on paternity leave. That is, the general practice is for workers to fill pre-employment forms that have details of their spouse or to produce a letter from the local chief accompanied by a birth notification form.

Further still, the high number of children per mother was found to be of concern. Over 55% of women are single mothers with an average 3 children. Whereas female workers are predominantly between 20 and 25 years of age, the need of reproductive health care (including family planning) to enable them make informed choices cannot be accessed. That is, while the Ministry of Public Health runs facilities that are outside the workplace, hours of work for women are incompatible with access to the facilities.

- c) *Child care:* Provision of day-care services for children has been provided for in the Convention on Elimination of Discrimination against Women (CEDAW), which Kenya has ratified and now is part of the laws of Kenya under the Constitution. The study findings indicate children of cut-flower workers are the most vulnerable category as they lack proper childcare facilities and services. Day care centres are run in small crowded rooms with tens of children being left in tiny 10 by 10 inches' rooms that lack basic facilities like beds, playgrounds, lack hygienic standards and access to healthcare. Mothers leave food for their children but these day cares have no facilities to warm the food or preserve the same. The end result is malnutrition, spread of contaminable diseases, child abuse and neglect. Lack of proper care for the workers children has a direct impact on workers morale, productivity and output as it leads to

absenteeism at work to attend to sick children. Some companies like Redland Roses and Shalimar have invested in modern day-care facilities that offer professional services for workers children.

- d) *Sexual harassment*: There was recorded significantly improvement compared to pre-2007 period, closely associated to prohibition of the same in the Employment Act and also focus through Voluntary Private Initiatives (VPIs). 46% of workplaces sampled were found to be free of sexual harassment. Thika flower farms were found to have the highest number of complaints due to the geographical set ups, where farms are located deep inside coffee plantations which present an environment conducive for sexual harassment and sexual predators. Working late hours was found to endanger women. Generally, for all companies, 67% of respondents reported sanctions against sexual harassment are not adequate to deter the vice.
  
- e) *Summary dismissal*: The study findings indicate this as one of the most abused provisions, with the Employment Act provisions ground for dismissal being interpreted too liberally by companies. 84% of workplaces reported high cases of unfair dismissal with 65% reporting dismissals to be used to deny employment benefits. Grievance and appeals procedures were reported to be ineffective in 93% of workplaces.
  
- f) *Organizational practices*: The practices that were found to have improved between 2001 and 2006 but some bad practices were still found to persist in some workplaces. Families sharing houses, spraying of chemicals when workers are in greenhouses, denying workers work breaks, long working hours and unpaid overtime are part of the bad practices recorded in isolated farms.

The study recommendations include:

1. Stakeholders to lobby in the budget-making process to ensure the Ministry of Labour is properly resourced in order to hire adequate staff, training and capacity building of labour officers as well as provision of logistics.
  
2. Provide a Wages Order for Cut-flowers, which is compliant to the terms and conditions of the sector where the minimum wage is based on net profits of the companies among other factors.
  
3. Working with the KPAWU to build accountability mechanisms and establish an independent union for cut-flowers as well as building a mutual and beneficial working relationship between the union and the CSOs.

4. Abolition of illegal agency fees levied by the KPAWU and other dues deducted from workers illegally as a condition of membership to the KPAWU.
5. Participation of workers in labour monitoring through VPIs and where companies sign social contracts on improvements that needs to be realised.
6. Implementation of national and international standardization measures and they be driven through multi-stakeholder initiatives that include workers and civil society organisations.
7. Training and capacity building of employers and employees on workplace policies including labour laws, international labour standards and international human rights instruments like the UN guiding principles on Business and Human Rights.
8. Strengthening the CSOs that work on labour rights and increasing their participation in multi-stakeholder initiatives.
9. Further studies are recommended on the impact of standards and search for sustainable ways of improving productivity and competitiveness of the cut-flower sector.

# 1.0 Introduction to the Study

## 1.1 Study Background

The Kenya Human Rights Commission (KHRC) has worked together with other local, regional and international civil society organisations and trade unions in campaigning and lobbying for improvement of conditions for workers in the cut-flower sector. Between 2001 and 2006, KHRC published three research reports namely: a) *Beauty and Agony: A case of Working Conditions in the Flower Industries in Kenya* (KHRC, 2001); b) *Manufacture of Poverty: The Untold Story of EPZs in Kenya* (KHRC, 2005); and c), *Economic Development or Human Right's? Assessing the impact of Kenya's Trade and Investment Policies and Agreements on Human Rights*, jointly published with International Federation for Human Rights (FIDH) and *Stichting Onderzoek Multinationale Ondernemingen* (SOMO) in 2006.

These reports pointed to gross violations of labour rights by companies in the sector that largely went unmitigated due to failure by government to protect workers from violation of their rights. A summary of key findings from these missions is outlined in Table 1 below.

Further, KHRC was actively involved in the review of the labour laws which culminated in the new set of five statutes in 2007 including: the Employment Act 2007; Labour Institutions Act, 2007; Labour Relations Act 2007; The Work Injury Benefits Act, 2007; and, the Occupational Health and Safety Act, 2007. The purpose of the labour laws review was to strengthen labour rights and afford necessary protection for workers against recorded violations. These laws are complemented by the Constitution of Kenya (2010) which domesticates provisions on the International Convention on Economic, Social and Cultural Rights (ICESCR) by providing in the Bill of Rights economic, social and cultural rights of individuals.<sup>1</sup>

It has become imperative for KHRC to take stock of the gains made by these lobby and campaign activities, the new labour laws and the Constitution of Kenya 2010 in delivering improvement for workers with focus on specific conditions for women workers in the cut-flower sector. In line with KHRC goal for the operational year (2011-2012), *investing in the new constitution for accountability and Justice*, KHRC implemented some projects aimed at improving access to economic, social and cultural rights. One of the key projects is this research on women's labour rights which focuses on working conditions around six key areas including: *equal pay for equal work; maternity and paternity leave; child support; sexual harassment; dismissal; and, casual labour and contracts*. This study considered labour institutions, employment

<sup>1</sup> See Articles 43 and 44 of the Constitution. ICESCR was ratified by Kenya in 1979 but no laws were enacted between then and 2010 to domesticate its provisions in the local laws.

policies and their implementation in relation to compliance with the labour laws and the Constitution of Kenya.

**Table 1: Six Key issues arising out the KHRC and other Partners Missions between 2001 and 2006**

Issue Area	Trend between 2001 and 2006			Desired Outcome	Key
Forced overtime and long working hours	Red	Red	Red	Green	Needs Improvement
Sexual Harassment	Red	Red	Red	Green	Improving too slowly
Low Wages	Red	Yellow	Yellow	Green	Significant improvement
Exposure to Agrochemicals	Red	Yellow	Yellow	Green	Satisfactory standard achieved
Lack of Unionisation	Red	Yellow	Yellow	Green	
Security of Employment	Red	Red	Red	Green	
Repetitive strain injuries	Red	Red	Red	Green	
Lack of maternity protection	Red	Yellow	Yellow	Green	

Source: Research Data, 2011

The purpose of the research was to gain new data on the working conditions of women workers following the enactment of the new laws and the new constitution to determine whether they have led to improvement and better enjoyment of rights by workers. To achieve this goal, the study assessed the following:

- (i) Legal and organisational policy provisions for women’s rights as workers.
- (ii) Level of understanding by workers of their labour rights as provided for in the Employment Act 2007, Constitution of Kenya (2010) and organisational policies.
- (iii) The situation of workers (specifically women workers) with specific focus on working conditions.
- (iv) Alignment of or a mismatch between legislation, organizational policy and reality.
- (v) Measures adopted by the employers towards improving employment practices and whether the reform agendas improved access to economic and social rights and service delivery for women workers.
- (vi) Good practices on the above six key areas

### 1.2 Problem Statement

Literature review shows that women in Kenya are poorer than men. The World Bank’s Country Assistance Strategy recognizes that “women are more likely than men to be poor and [more] vulnerable to adverse shocks than men.”<sup>2</sup> In Kenya, 54 percent of rural and 63 percent of urban women and girls live below the poverty line<sup>3</sup>. Kenyan women are making a large (although frequently invisible) economic contribution, particularly in agriculture and the informal business sector, while men tend to dominate in the formal sector. Employment and national accounts data do not capture nonmarket

<sup>2</sup> Memorandum of the President of the International Development Association and the International Finance corporation to the Executive Director on the Country Assistance Strategy for the Republic of Kenya 2004

<sup>3</sup> Government of Kenya, 2009 Housing and Population Census



activities (where women predominate) and therefore fail to demonstrate the full contribution of women to the household economy and the extent of the female work burden.

Indeed, women in Kenya are ‘time-poor’ because of their dual roles in the household economy and the labour market. On average, women work longer hours (12.9 hours per day) compared with those of men (8.2 hours per day), yet women earn less because more of these hours are not remunerated.<sup>4</sup> The hours of work in the cut-flower sector are way above the national average with work days of 16 hours being common during peak seasons.

Moreover, the increase in single headed households accounting to over 55% in the cut-flower sector (Research Data, 2011) is a major concern in analysing women labour rights. The Children’s Act 2001 burdens women with the responsibility of caring for children born outside marriage, while a man is not automatically responsible for his children born outside marriage. It is only where the man has acknowledged the child, maintained the child, and cohabited with the child’s mother for 12 months after the child is born, or accepted parental responsibility that he is required to have responsibility over the child.<sup>5</sup>

International trade has had not only a positive impact on Kenya’s economy but also a significant impact on gender equality, particularly for export industries. Trade liberalization has led to an increase in labour-intensive exports from developing countries. Many of these industries tend to be dominated by female workers often employed for their manual dexterity. Women employed in the production of manufactures for export typically earn more than they would have in traditional and informal sectors, leading to their improved status and bargaining power within their households.<sup>6</sup>

Despite the advantages, trade liberalization is often coupled with persistent occupational segregation by sex, both vertical and horizontal.<sup>7</sup> Increased trade can both widen and decrease gender wage gaps. On one hand, trade often rewards most those workers with greater skills. If women lack skills relative to men, this may increase the likelihood that women will be employed as temporary workers, with increased job insecurity and less ability to negotiate wages or other working conditions. This indeed has proved to be the case for women workers in the cut-flower sector in Kenya. On the other hand, increased international competition can put pressure on firms to cut costs, resulting in less discrimination against women with similar skills to men.<sup>8</sup>

<sup>4</sup> Saito, K, H. Makonnen and D Spurling 1994: ‘Raising the productivity of women farmers in Sub-Saharan Africa’ Discussion paper 230, World Bank Washington DC.

<sup>5</sup> See Sections 24(3) and 25 of the Children’s Act 2001. It is important to differentiate between care and providing which is the option most women and men think is natural as opposed to actual care in upbringing – KHRC Study Data, 2011.

<sup>6</sup> Randriamano 2005

<sup>7</sup> Radriamano 2005

<sup>8</sup> Ibid

The cut-flower sector has experienced significant growth and is a key player in the global market. However, problems remain with regard to the conditions faced by women workers and indeed male lower cadre employees. Hazardous work, low pay, job security coupled with discrimination and lack of labour laws enforcement are just some of the issues that characterize the Kenyan flower Sector.

## 2.0 Study Process, Sample

# Population & Methodology

## 2.1 Scope of the Study

This study was commissioned specifically to look at working and living conditions for women workers in the cut-flower sector in Kenya. The study focuses on assessing the gains made following the review of labour laws in 2007 and the enactment of the new Constitution in 2010. The process of conducting the study included women and men respondents with men being interviewed as a control group to compare conditions faced by men and women in the workplace. The findings of the study relate to actual conditions faced by women, and in some cases, also male workers.

## 2.2 The Process of Conducting Interviews

The primary research process included programmed visits to each of the companies sampled, CSOs that are operating in the areas, line Ministries, Departments and Agencies (MDAs) at local and national level that are relevant to labour, employer organisations, trade unions as well as producer organisations. Out of the 15 companies sampled, 10 provided the research team full co-operation; 3 allowed access to the farms but later withdrew cooperation while 2 of the companies did not to cooperate at all (Table 2 below). KHRC shared details of the research including the protocol with all companies sampled.

*Gatoka farm stopped the research team from proceeding when the team had held an opening meeting with the management, sampled workers for focus group discussions on grounds that the farm realised it needed to be independently represented by an employer organisation during the process in order to protect prevailing conditions from exposure. Aquila and Enkasiti farms denied the research team access on grounds that Aquila was too busy preparing for KFC audits and could not make time for the study. Enkasiti management reported that their director who could give the team access to the site is away and the farm management was under strict instructions not to admit visitors as the farm was undergoing renovations. Workers interviewed offsite were not aware of any these renovations. [Research Data, 2011]*

**Table 2: Companies Sampled for Study vs. those Accessed**

Company	Full cooperation	Withdrew cooperation	No cooperation
Aquila Flowers			X
Carnation Plants		X	
Enkasiti Flowers			X
Finlays - Flamingo Farm	X		
Gatoka Limited		X	
Harvest Limited	X		
Maridadi Flowers	X		
Nini Ltd	X		
PJ Dave	X		
Plantation Plants		X	
Redland Roses	X		
Shalimar Flowers	X		
Simbi Flowers	X		
Sun Bird Limited	X		
Van den Berg	X		

Source: Research Data, 2011

The study was conducted both onsite and offsite. Onsite activities included workers' interviews, work processes and participant observation, management interviews and reviewing of employment policies. Off site activities included worker interviews, day care centres interviews, participant observation, as well as key informants' interviews. Offsite data collection was done after verifying employment status through key informants and documentation review where applicable.

The offsite activities enabled the researchers to include farms that did not allow onsite activities in the study. The limitations to data triangulation through management interviews and policies review was addressed by broadening the worker sample size and confirming violations through separate worker interviews.

### 2.3 Sample population and methodology

#### 2.3.1 Sample Population

The study obtained data on flower growing areas in Kenya (Fig.3) and narrowed down to three key areas including Naivasha, Thika/Ruiru and Athi River. These three were selected based on their importance to the cut-flower sector in terms of farm sizes, location (rural, peri-urban and urban set-up) as well as migration patterns of workers. The study collected data from three employer organizations, Horticultural Crops Development Authority (HCDA) and other stakeholders on the farms per selected area as shown in Table 3 below:

**Table 3: Number of Farms per Area**

Region	Total No. of Farms	No. of Large Farms	No. of Medium Farms	No. of Small Farms	% of Total Farms in area
Naivasha	38	8	22	8	65%
Thika	13	0	13	0	20%
Athi River	9	1	7	1	15%
<b>Total</b>	<b>60</b>	<b>9</b>	<b>42</b>	<b>9</b>	<b>100%</b>

Source: Research Data, 2011

The main sampling strategy used was farm size with large farms being considered to be over 70 hectares, medium 15 – 69 hectares and small below 15 hectares. A 25% sample size was selected for the study.<sup>9</sup> The study further broke down the representative sample into the three areas as seen in Table 4 below.

**Table 4: Breakdown of Farms Selected for Study per Area**

Region	Total No. of Farms Sampled	No. of Large Farms Sampled	No. of Medium Farms Sampled	No. of Small Farms Sampled
Naivasha	8	2	5	1
Thika	4	0	3	1
Athi River	3	1	2	0
<b>Total</b>	<b>15</b>	<b>3</b>	<b>10</b>	<b>2</b>

Source: Research Data, 2011

The 15 farms were purposively sampled from the total number of farms in area based on: size, ownership, market, location, land ownership and certification. The study thus narrowed down to the 15 farms as depicted in Table 5 below.

**Table 5: Farms Sampled for the Study**

<sup>9</sup> Smallholder farmers were not included in this study.

Size	Naivasha Area	Athi River Area	Thika Area
Large	i. Finlay's Flamingo Farm ii. Van den Berg	i. P J Dave	None
Medium	i. Aquila Flowers ii. Plantation Plants Ltd. iii. Nini Ltd iv. Shalimar Flowers v. Maridadi Flowers	i. Carnation Plants ii. Harvest Limited	i. Enkasiti Flowers ii. Redland Roses iii. Simbi Flowers
Small	i. Sun Bird Limited	None	i. Gatoka Ltd

Source: Research Data, 2011

A total of 738 workers were interviewed both onsite and off site, as shown in Table 6 below. Of these, 74 were interviewed individually while 664 were interviewed through Focus Group Discussions (FGDs). Further, 5% representative sample of workers was taken for all farms where KHRC conducted onsite interviews while the sample size in farms that KHRC did not conduct onsite interviews was raised to 7.5% for purposes of triangulating findings.

**Table 6: Number of Workers Interviewed**

	NAME	Estimated Total Number of Workers	No of Workers interviewed	No. of SSI	No. of FGDs
1.	Aquila Flowers	800	60	6	7
2.	Carnation Plants	600	45	5	5
3.	Double Dutch Ltd	800	60	6	7
4.	Enkasiti	1,200	90	9	11
5.	Flamingo Farm	1,000	50	5	6
6.	Gatoka Roses	500	38	4	5
7.	Harvest Ltd	800	40	4	5
8.	Sun Bird Limited	500	25	3	3
9.	Maridadi Flowers	1,000	50	5	6
10.	Nini Ltd	500	25	3	3
11.	PJ Dave Flowers	1,500	75	8	9
12.	Red Lands Roses Ltd.,	500	25	3	3
13.	Shalimar Flowers Ltd.,	1,000	50	5	6
14.	Simbi Roses Ltd	600	30	3	4
15.	Van Den Berg (K) Ltd	1,500	75	8	9
	Totals	12,800	738	74	89
NB: SSI - Semi structured Interviews; FGD Focus Group Discussions					

Source: Research Data, 2011

Of the workers sampled, 219 had worked between 0 and 2 years, 216 between 3 and 5 years while 303 had worked in the company for a period above 5 years.

Of these, 327 were male workers while 411 were female workers. In addition to the workers interviewed, an additional 395 respondents completed the survey questionnaire for quantitative data.

Management interviews were conducted in 10 companies (see Table 2 above) where KHRC had access to the workplaces. The management interviews covered 28 respondents from management alongside policies and documentation review. The ratio of management to workers interviewed in these companies was 1:16. Primary data was collected mainly from surveys, interviews and participant observation with workers, management, day-care centres, key informants as well as workers representatives.

In addition to literature review, secondary data was collected from 15 organisations including the Ministry of Labour, Flower Council (KFC), Agricultural Employers Association (AEA), Federation of Kenya Employees (FKE), 3 district labour offices, 4 medical officers, 3 branch level union officials (former and current) 2 civil society organisations and Municipal councils in Naivasha, Thika and Mavoko. Other key informants interviewed include 14 day care centres, and 2 chiefs. Interviews were planned and sourced for the KPAWU and COTU but officials contacted could not participate. The study however interviewed 3 branch level and 18 shop floor officials of the KPAWU who requested anonymity for fear of reprisal.

### 2.3.3 Data Collection Methods

Data collection methods used included:

- *Participant observation*: this was used to assess the working and living conditions of workers in their natural working environment and in their living environment offsite. This included how workers responded to interview questions as well as management or worker relationships. Participant observation was used for all categories of respondents.
- *Semi-structured Interviews*: these are in-depth interviews using a set of guide questions.
- *Focus Group Discussions*: this method was used with a homogeneous group of workers randomly selected by the research team and interviewed away from management. FGDs were conducted both onsite and offsite to ensure that the study gains accurate data on both working and living conditions.
- *Survey*: the research utilized surveys with a structured checklist which made the respondents to select an answer. Quantitative data collection was also done to determine frequency: that is, how many or how often an incident took place. Survey questionnaires were used for both management and workers with workers being sampled through systematic random sampling.

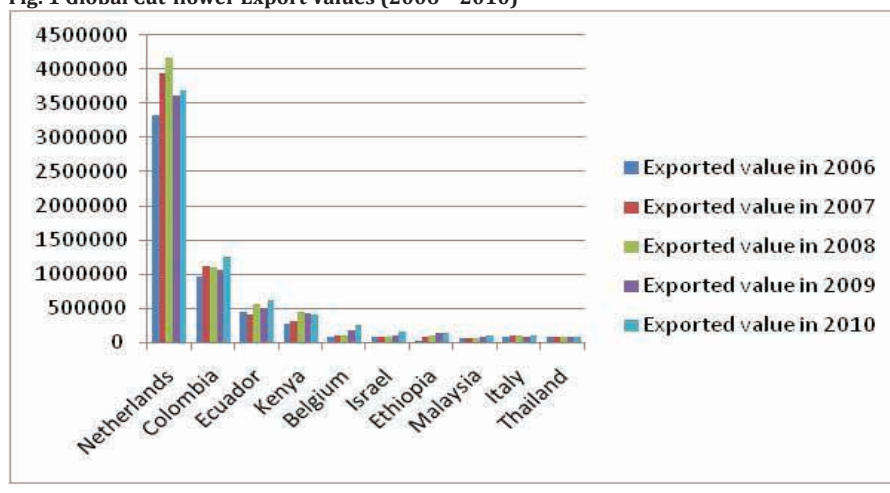
## 3.0 Overview of the Kenya Cut-flower Sector

From the onset, it is important to look at the cut-flower sector, its economic outlook, how it is structured and the players in the supply chain that have the responsibility and influence on the chain to deliver improvement of conditions for workers. The business environment is important in determining whether opportunities for improvement exist. Where the sector outlook is bleak, the conditions for those in the sector may not be any better than the performance of the sector. However, where there exists a growth area especially in both value and volume, therein also lies opportunities for growth for those who drive the performance of the sector.<sup>10</sup>

### 3.1 World Cut-Flower Market

Kenya is a key player in the global cut-flowers market, whereby in 2010, US\$7.5 billion was generated. The global market is dominated by Netherlands which accounts for about 55% of total global exports. The other top exporters are Colombia (18%), Ecuador (9%) and Kenya at 6%. See Figure 1 below.

**Fig. 1 Global Cut-flower Export Values (2006 - 2010)**



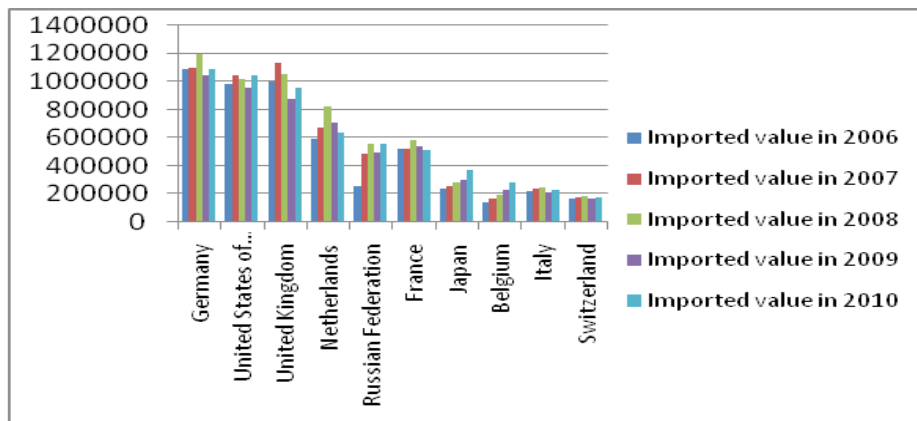
Source: Trade Competitiveness Map – International Trade Centre (UNCTAD/WTO)

The global consumption of imported cut-flowers is led by Germany at 19%, USA at 17%, UK at 16% and Netherlands at 13% (See Figure 2 below). These import statistics are exclusive of domestic production with most of the importing countries having a significant domestic production sector.

<sup>10</sup> Research Data, 2011



**Fig. 2: Main Markets Imported Cut-flower Value (2006 - 2010) - Value in Kshs Thousands**



Source: Trade Competitiveness Map – International Trade Centre (UNCTAD/WTO)

### 3.2 Value and Markets for Kenyan Cut-flower Exports

Kenya is in fourth position as an exporter of cut-flowers into the global market with its market share at 6% of the US\$7.5Billion sector in 2010.<sup>11</sup> The leading importer of Kenyan Cut-flowers is Netherlands through the Dutch Auction with Kenya having a 57% market share to the Netherlands, 24% to the UK and 5% to Germany as leading direct import markets, as shown in Table 7 below.

**Table 7: Market Share of Kenya Cut-flower**

Share in market value of Kenyan cut-flowers to main export markets

Unit: %

Importers	Share in value in Kenya's Exported, % in 2006	Share in value in Kenya's Exported, % in 2007	Share in value in Kenya's Exported, % in 2008	Share in value in Kenya's Exported, % in 2009	Share in value in Kenya's Exported, % in 2010
Netherlands	65	64	54	55	57
United Kingdom	23	22	33	30	24
Germany	4	5	4	5	5
Russian Federation	0	1	1	2	3
Japan	2	2	2	2	2
France	1	1	1	2	2
Switzerland	2	2	1	1	1
United Arab Emirates	1	1	1	1	1
Norway	-	-	0	1	1
Australia	0	0	0	1	1

Source: International Trade Centre Trade Competitive Map

<sup>11</sup> International Trade Centre Trade Competitive Map 2010

Statistics show that the sector has continued to grow in both volume and value with significant growth being recorded between 2006 and 2009, with the value during this period increasing from US\$275Million to US\$422Million. Locally, the export of cut-flowers as a percentage of total exports has also grown from 7.85% in 2006 to 9.44% in 2009. This growth is also reflected in growth of % export as a share of world exports and also growth in export value per annum with 15% growth in 2009.

**Table 8: Performance of Kenya Cut-flower Sector (2006 – 2009)**

Performance of Kenya Cutflower Industry 2006 - 2009						
Year	Exports value in 000US\$	Exports as a share of total exports (%)	Exports as a share of world exports (%)	Growth of exports in value (% p.a.)	Growth of exports in volume (% p.a.)	Growth of share in world exports (% p.a.)
2006	274943	7.85	5	13	13	-8
2007	274943	7.85	5	13	13	-8
2008	313412	7.68	7	14	0	1
2009	421484	9.44	6	15	-1	8

Source: International Trade Centre Trade Competitive Map

Regionally, Ethiopia has emerged as a competitor to Kenya recording an annual growth of 20% over the last 4 years.<sup>12</sup> This growth is reflective of the growth in the global cut-flower market and it is expected that Kenya will remain competitive in the sector with productivity improvement measures being necessary to harness the growth.

From foregoing, the sector therefore presents an opportunity for inclusive growth for both workers and farmers supplying the global market. This reports looks at how the growth can be harnessed to sustainably benefit workers especially women workers who are the engine that drives the sector.

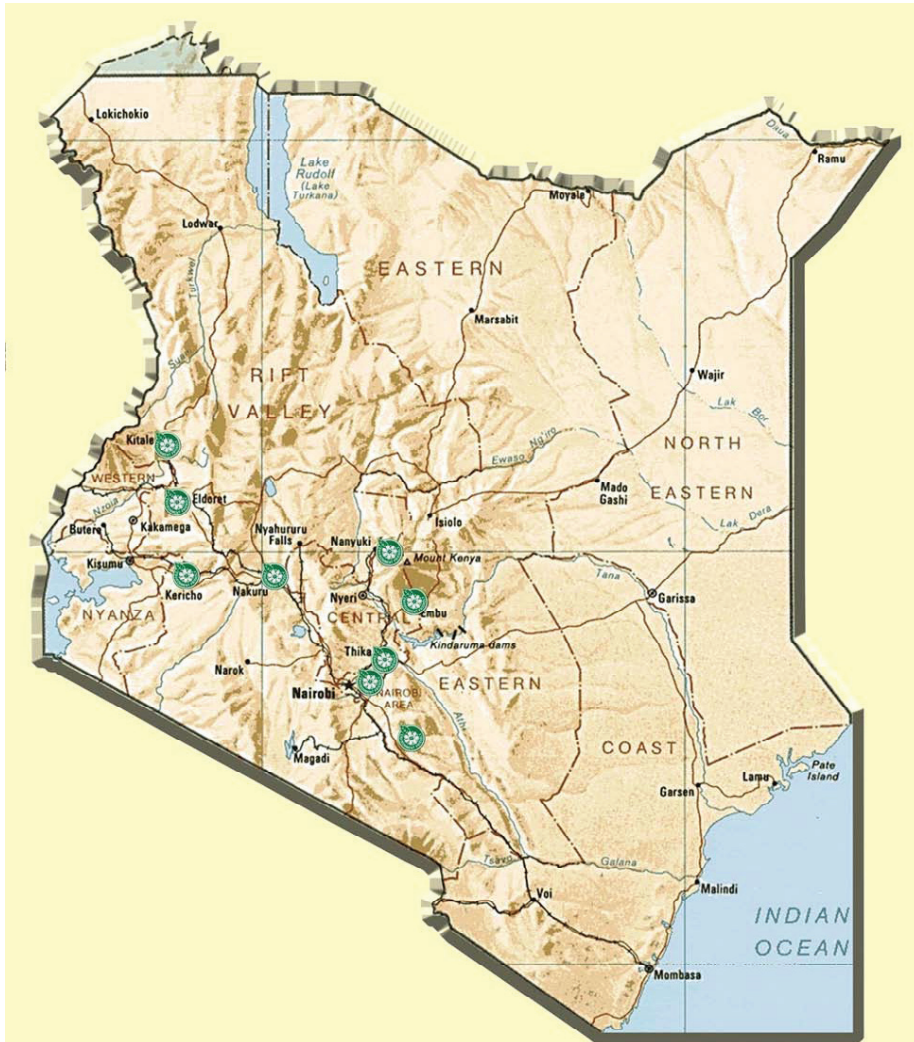
### 3.3 Characteristics of Kenya Cut-flower Sector

The Kenyan cut-flower Sector emerged in the 1970's alongside the horticultural sub-sector which also includes fruits and vegetables.<sup>13</sup> Cut-flowers, fruits and vegetables share some similar characteristics in terms of growing conditions and perishable nature of the products. Kenya enjoys ideal tropical and temperate climatic conditions, which makes it favourable for flower production in several parts of the country. The main flower growing areas in Kenya are Central Rift Valley (around Lake Naivasha, Nakuru), North Rift (Mt. Elgon, Eldoret, Kitale and Kericho) Central Kenya (Mt. Kenya region, Limuru, Kiambu, Thika and Kinangop) and Nairobi environs as shown in Figure 3 below.

<sup>12</sup> ITC Trade Competitive Map 2010

<sup>13</sup> Jensen 2005

Fig. 3: Flower-growing Areas in Kenya



Source: Kenya Cut-flower Cluster 2007

The value chain (as depicted in Figure 4 below) can be viewed from three perspectives: large-scale flower producers, medium-scale growers and small-scale growers. The large-scale growers are vertically integrated across the entire value chain. Produce and production characteristics distinguish fresh produce chains from industrial-produce chains and even from non-perishable agricultural chains. Managing these chains is complicated by the fact that production and wholesale parts of the chain consist of a large number of Small and Medium Enterprises (SMEs).<sup>14</sup> Furthermore, international trade makes it possible to serve demand-driven retail with a large number of assortments of produce that maybe out of season in the importing countries or those that are not produced domestically.

<sup>14</sup> There are hundreds of SMEs scattered across the country operating at level A, B and C of the supply chain as shown in Figure 4 below.

The players in the supply chain including the Dutch Auction and supermarkets play a major role in influencing conditions in the chain. Further, relational value chains governance structures have emerged where interactions between buyers and sellers are complex, with mutual dependency and a high level of specificity.<sup>15</sup> The 24% market share to the UK involves direct marketing by companies to mass retailers like Tesco, Marks & Spencer, Sainsbury and others who require suppliers to meet certain quality, labour and environmental criteria. The Dutch Auction operates a market relation with companies being able to access buyers on spot without the level of demand for compliance required by mass market retailers. This option presents an opportunity to enhance governance structures in exporting companies.<sup>16</sup>

These SMEs supply specialised products to the larger plantations/exporters or directly to importers and in some way integrate with the rest of the sector to reach the mass market retailers or the florists through the Dutch Auction. There has been a lot of focus on the larger more visible companies who have vertically integrated supply chains to the market.<sup>17</sup>

Locally, the tendency by CSOs that clamour for labour rights, has been to focus on the more visible companies with vertically integrated value chains like Oserian, Finlays and Redland Roses among others, when discussing workplace conditions in the cut-flower sector. However, this approach has left out hundreds of SMEs where most workers are employed. The supply chain diagram points to the need for a wider approach that brings into fold the SMEs that dominate the sector.

Indeed, the Dutch Auction is very important as it enables in a very efficient way, the production of these SMEs to be split up and packaged in small quantities of different varieties to be composed for the hundreds of florists who dominate retail in Europe.<sup>18</sup> In like manner, the Auction sits in a primal position to serve as a platform that enables organisations dealing with labour rights to work with the SMEs to deliver inclusive growth for the companies and their workers.<sup>19</sup>

*“Gender inequality is a serious economic issue in Kenya. Addressing it will lead to improved outcomes not only for women themselves, but for families and the society as a whole.”*

*—David Nalo, Permanent Secretary, Ministry of Trade and Sector (Quoted from World Bank Report on Gender and Inequality)*

<sup>15</sup> Geleti et al 2005

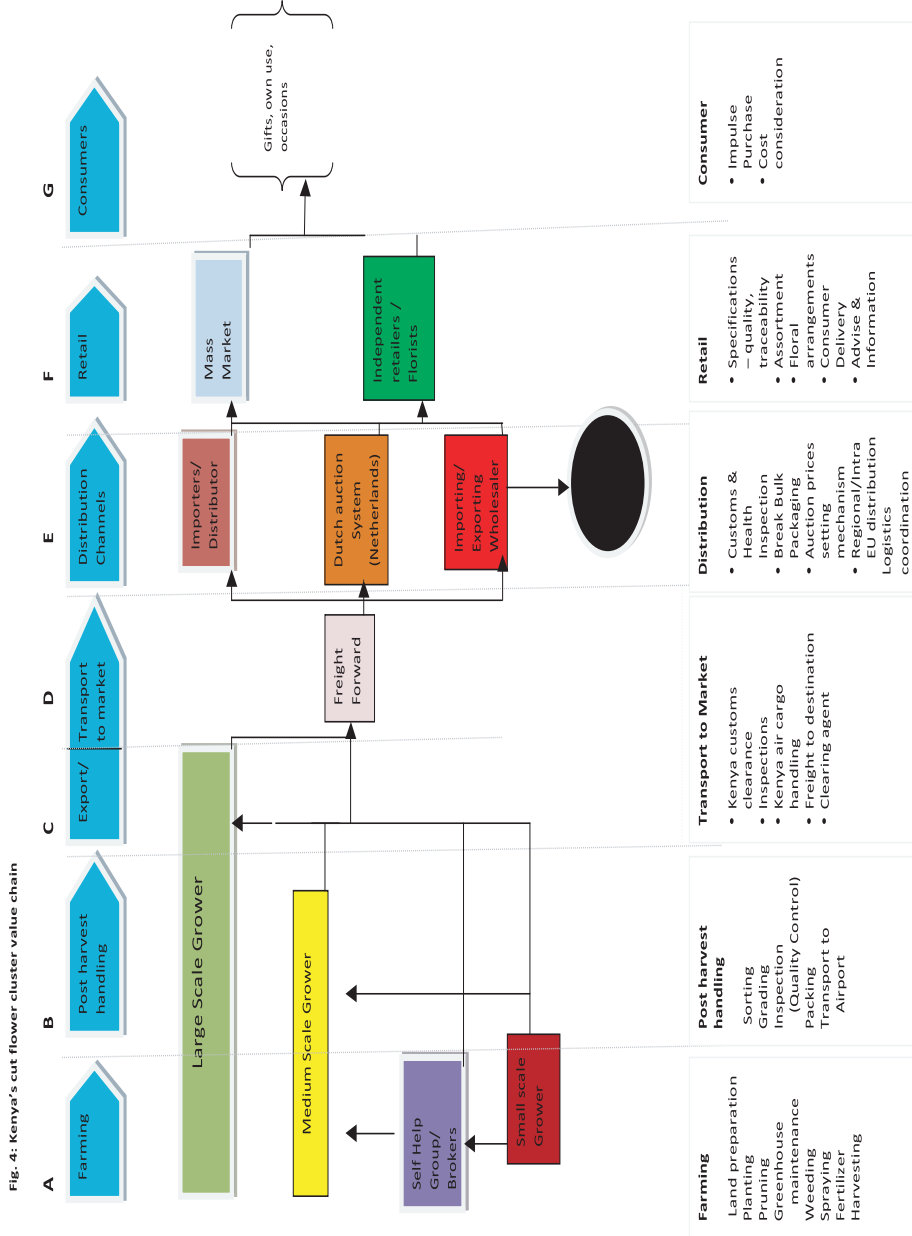
<sup>16</sup> Kenya Flower Cluster 2007

<sup>17</sup> See for example, KHRC (various publications) such as *Beauty and Agony* or *Manufacture of Poverty* among others that only researched on the large companies.

<sup>18</sup> Bridging Empirical Findings and Theoretical Approaches; May 2007

<sup>19</sup> Research Data, 2011

Fig. 4: Kenya's Cut-flower Cluster Value Chain



Source: Kenya's Cut-flower Cluster: Microeconomics of Competitiveness, 2007

## 4.0 Guiding Legal and Institutional Framework

The guiding legal and institutional framework looks at the applicable statutes, constitutional provisions as well as international instruments that are applicable to the sector. The International Labour Organisation (ILO) and United Nation conventions are also considered as important sources of international law. Further, Kenya has a set of labour laws that came into force in 2007 to replace what was for a long time perceived as archaic statutes. These laws are complemented by a new Constitution in its provisions on fundamental freedoms and citizens rights. Important sources of the guiding framework include:

### 4.1 The Labour Laws – 2007

These 5 labour statutes include:

- **The Employment Act, 2007** repealed the Employment Act (Cap 226), declare and define the fundamental rights of employees, provide basic conditions of employment, prohibit employment of children, and provide for other connected purposes.
- **The Labour Relations Act, 2007:** this law commenced operation on 26<sup>th</sup> October 2007 by replacing or consolidating various laws relating to trade unions and trade disputes (repealed the Trade Unions Act and Trade Disputes Act), provide for registration, management and democratisation of trade unions and employers organisations and federations. Further, the law promotes 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, economic development and other purposes.
- **Labour Institutions Act, 2007:** this statute provides for the establishment of labour institutions by allowing their functions and powers. The Act saw the establishment of the National Labour Board to advise the Minister in charge of labour on various facets relating to the industry.
- **Work Injury Benefits Act, (WIBA) 2007:** the WIBA secures compensation for employees for work related injuries and diseases contracted in the course of their employment and for other connected purposes.
- **Occupational Health and Safety Act (OSHA), 2007:** this law repealed the old Factories and Other Places of Work Act (Cap 514) and provides for

the safety, health and welfare of workers and all persons lawfully present at workplaces, provides for the establishment of the National Council for Occupational Safety and Health and other connected purposes.

#### 4.1. 1 Protective measures for women workers under the Employment Act 2007

##### **(a) Anti-discrimination**

The Employment Act (2007) outlaws discrimination against women. Section 5(3)(a) expressly prohibits discrimination and harassment of actual and prospective employees on the basis of sex. Discrimination has played a major role in limiting betterment of conditions for women workers.

5(3)(a)“No employer shall discriminate directly or indirectly against an employee- on grounds of race, colour, **sex**, language, religion, political or other opinion, nationality, ethnic or social origin, disability, **pregnancy**, mental status or HIV status; in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.”

In addition, the Act under Section 5(1) (a) and (b) obligates the Ministry of Labour, labour officers and the Industrial Court as newly constituted, to promote and guarantee opportunities in employment. Employers have the duty and responsibility to eliminate discrimination in any employment policy or practice.

##### **(b) Equal Pay for Equal Work**

Section 5(4) of the Act requires that all men and women performing work of equal value shall be paid equal remuneration. This law prohibits the practice whereby female employees were paid less than their male counterparts performing the same work on the basis that ‘women have husbands to take care of them and therefore do not deserve the same pay as the men, even if they perform work of the same value’ [sic].

##### **(c) Prohibition of Sexual Harassment**

For the first time in Kenya’s history, there are provisions in law, under Section 6 of the Employment Act, prohibiting sexual harassment which the law defines to include use of language, whether written or spoken, of a sexual nature. In Section 6(2) of the Employment Act, it is provided that: *“an employer who employs twenty or more employees shall, after consulting with the employees or their representatives, develop a policy on sexual harassment which must include an explicit statement to the effect that every employee is entitled to employment that is free of sexual harassment.”*

##### **(d) 3 Months Maternity Leave with Full Pay**

Section 29 of the Employment Act reviewed the former provisions on maternity leave from two months with loss of annual leave to now three months without loss of benefits. Singularly, this provision has eliminated injustices and inequalities suffered by female employees

who were, in many cases, denied leave all together, or allowed leave for only one week, two weeks or, in most cases, one month which was not adequate to allow full recovery from delivery and enough time to tender to new born babies.

*"A female employee shall be entitled to three months maternity leave with full pay"*

At the expiry of her maternity leave, a female employee shall "...have the right to return to the job which 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." The significance of the provision is that unlike in the past, it ensures that women who have been on maternity leave are not dismissed from work and/or demoted, upon return from maternity leave. The three months maternity leave is in addition to annual leave and any sick leave, which are also provided for by the law.

**(e) Prohibition of Unfair Termination of Employment**

Section 46 of the Employment Act prohibits unfair termination of employment, which, in Section 46 (a), (b) and (g), includes termination on the basis of sex, going on leave or a female employee's pregnancy or any reason connected with pregnancy.

**(f) Protection of Employee Health**

The Employment Act obligates employers to ensure the provision of sufficient and proper medicine for employees during illness and if possible, medical attendance during serious illness. These provisions are in addition to provisions of the Occupational Safety and Health Act, No. 15 of 2007, which makes elaborate provisions for the safeguarding of employee health and safety. Provisions of the Employment Act and the Occupational Safety and Health Act are complemented by provisions of three other new employment laws, namely:

- The Work Injury Benefits Act, No. 13 of 2007, which deals with compensation in cases of work related injuries;
- The Labour Relations Act, No. 14 of 2007, which enables negotiations for workplace conditions; and,
- The Labour Institutions Act, No. 12 of 2007 which gives powers to medical officers to inspect workplaces.

*4.2 Strengthening Labour Rights through the Constitution of Kenya (2010)*

The Constitution has heralded a new dawn for workers by not only entrenching labour rights as fundamental rights under the Bill of Rights. The key changes in the constitution include:

**(a) Equality and Freedom from Discrimination - Article 27**

The *Constitution* makes provisions for equality of everyone under the law and recognises the right to equal protection and equal benefit of



the law. Equality under the law includes the right to full enjoyment of rights and fundamental freedoms without any discrimination based on the 16 protected grounds; and especially, the list is open-ended meaning that the contemplated grounds could be expanded. This is important for workers, since for the first time, they can look to the bill of rights for enjoyment of their rights and freedoms. Men and women are guaranteed equal treatment in all spheres including the economic, social and cultural spheres. This clause outlaws discrimination and complements the Employment Act in providing for its elimination in all workplaces.

*Article 27 (5): A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4) [including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, race, disability, religion, conscience, belief, culture, dress, language or birth].*

The government is obligated to take legislative and other measures, including affirmative action programmes and policies, which are designed to redress any disadvantages suffered by individuals or groups because of present or past discrimination.

**(b) Freedom of Association - Article 36**

The Constitution protects the right of every person to freedom of association, which includes the right to form, join or participate in the activities of any association of any kind. Further, the Constitution protects workers from being compelled to join an association of any kind. Further still, the registration of an association including a workers association cannot be withheld or withdrawn unreasonably. This provision is important to workers in the cut-flower sector as it negates the retrogressive provisions of Section 49 of the Labour Relations Act; a Section that empowers trade unions to collect ‘agency fees’ from non-members, which is an infringement of their constitutional right to freedom of association.

*(LRA) Sec. 49 (1) “a trade union that has concluded a collective agreement registered by the Industrial Court with an employer, group of employers or an employers’ organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union”*

This constitutional provision on freedom of association is important in protecting workers against violations by both employers and the labour organisations as it retains the sanctity of the individual’s freedom of choice, which most workers are still waiting to enjoy.

**(c) Labour Relations - Article 41**

The provisions under Article 36 above are complemented by provisions under Article 41 which makes provisions on labour relations. Kenya is among the leaders in legal jurisprudence by providing for fair labour practices as a fundamental right of every worker. This include the right to fair remuneration, reasonable working conditions, to form, join or participate in the activities and programmes of a trade union, and through the trade union, to engage in collective bargaining. This is a significant step for workers and human rights defenders as the basis of improvement is now firmly grounded in the Constitution. Collective bargaining is surely identified as a major tool for improvement of conditions. The involvement of workers and rights defenders in this process through an inclusive process should be realised to ensure workers can enjoy this fundamental right.

**(d) Economic and Social Rights - Article 43**

The Constitution provides the right to access the highest attainable standard of health, which includes the right to health care services, including reproductive health and to accessible and adequate housing, water and to a reasonable standard of sanitation. These provisions are based on the ICESR which was ratified by Kenya in 1979, which now form part of Kenyan laws under the Constitution.<sup>20</sup>

*4.3 Vision 2030*

In addition to the anti-discrimination provisions in the supreme law and other laws, the government has developed an ambitious national blue-print for development; Vision 2030. This plan sets out a national vision to be achieved through three key pillars, which include: political, economic and social pillars. Under the social pillar, Vision 2030 envisions a *just and cohesive society enjoying equitable social development in a clean and secure environment*. The social pillar has identified gender concerns and in particular equity in power and resource distribution between men and women as a priority. The pillar aims at increasing opportunities for and among women and further increase the participation of women in economic, social and political decision making processes.

*4.4 International Conventions and Treaties on Labour Rights*

The ILO is the international organization responsible for drawing up and overseeing international labour standards. It is the only 'tripartite' United Nations agency that brings together representatives of governments, employers and workers to jointly shape policies and programmes promoting *Decent Work for All*. The ILO has enacted various international conventions on labour rights that are ratified by member states to promote globally acceptable labour standards.

<sup>20</sup> See Article 2(6) of the Constitution of Kenya

In addition to the domestic laws and the *Constitution*, Kenya is a signatory to various ILO conventions which obligate the government to take certain measures to ensure the people’s rights are respected and protected. Key among these are the ILO core conventions that are applicable to member states.<sup>21</sup> Kenya is also a signatory to various human rights conventions and treaties. One such convention is CEDAW which has requirements on child support for working mothers that the country is yet to fully implement. Below is an analysis of important international conventions and the ratification status by Kenya.

**Table 9: International Treaties and Conventions vs. Kenya’s Ratification Status**

<b>International Treaties, specific to Women’s Rights</b>	<b>Status</b>
The International Covenant on Civil and Political Rights (1966)	Ratified
The International Covenant on Economic, Social, and Cultural Rights (1966)	Ratified
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Ratified
The African (Banjul) Charter on Human and People’s Rights (African Charter) (1981)	Ratified
The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (2003)	Ratified
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	Not ratified
Convention on the Political Rights of Women (1952)	Not ratified
Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962)	Not ratified

Source: *Research Data, 2011*

The work of ILO has been complemented by the work of the United Nations Human Rights Commission (UN-HRC) that has published *Guidelines Principles for Business and Human Rights*, which were unanimously endorsed by the UN-HRC in June 2011. The new set of global guiding principles for business is designed to ensure that companies do not violate human rights in the course of their transactions and that they provide redress when infringements occur.

The *Guiding Principles for Business and Human Rights* outline how states and businesses should implement the UN Framework (“Protect, Respect and Remedy”), in order to better manage business and human rights challenges. The framework is based on three pillars – the State *duty to protect* against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the *corporate responsibility* to respect

<sup>21</sup> C-29 Forced Labour Convention, 1930; C-87 Freedom of Association and Protection of the Right to Organise Convention, 1949; C-98 Right to Organise and Collective Bargaining Convention, 1949; C-100 Equal Remuneration Convention, 1951; C-105 Abolition of Forced Labour Convention, 1957; C-111 Discrimination (Employment and Occupation) Convention, 1958; C-138 Minimum Age Convention, 1973; C-182 Worst Forms of Child Labour Convention, 1999

human rights, which means avoiding infringing on the rights of others and to address adverse impacts that occur; and finally, greater *access by victims to effective remedy*, both judicial and non-judicial. The *access to remedy* principles focus on ensuring that where people are harmed by business activities, there is both adequate accountability and effective redress, judicial and non-judicial.

*"The HRC's endorsement establishes the guiding principles as the authoritative global reference point for business and human rights...they will also provide civil society, investors and others the tools to measure real progress in the daily lives of people."*

John Ruggie, the Secretary-General's Special Representative for Business and Human Rights

The access to remedy pillar with regard to grievance mechanisms under Guiding Principles 30 is crucial in its provision for "sector, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards duty to ensure that effective grievance mechanisms are available." The criteria for effectiveness of non-judicial grievance mechanisms include:

- (i) *Legitimacy*: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance process;
- (ii) *Accessibility*: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (iii) *Predictability*: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (iv) *Equity*: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (v) *Transparency*: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (vi) *Rights-compatibility*: ensuring that outcomes and remedies accord with internationally recognized human rights; and,
- (vii) *Continuous learning*: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Further, operational-level mechanisms should also be based on engagement and dialogue, where consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

#### 4.5 Labour Institutions in Kenya and their functions

The primary duty to protect lies with the State through institutions created under the law. These institutions operate through a tripartite *plus* arrangement with employer, employee organisations and civil society playing a key role in realisation of compliance with labour legislation. The various labour institutions evaluated include:

##### 4.5.1 National Labour Board

Section 5 of the Employment Act establishes the National Labour Board as the institution whose role is to advise the Minister for Labour on all matters concerning: employment and labour, legislation, labour relations, trade unionism, international labour conventions and code of good practice among others. Further, the Board is tasked with providing information on labour inspection and administration, vocational training, human-power development, productivity measurement and improvement and registration of trade unions among other functions.

The National Labour Board is constituted through a tripartite plus arrangement that includes three representatives from trade unions, three from employer organisations, six representatives from government (Ministry of Labour), a chair and not more than two independent members. COTU and FKE are the representatives of workers and employers organisations respectively.

The National Labour Board operates through committees with 4 standing committee created under the Act including: the Work Permits Committee, National Manpower Development Committee, Trade Disputes Committee and the Productivity Committee. The Board has powers to create additional committees.

##### 4.5.2 The Industrial Court

The Industrial Court consists of a Principal Judge and as many judges as the Judicial Service Commission (JSC) considers necessary. The Industrial Court has exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint relating to labour matters. The Act empowers the Chief Justice in consultation with the Minister for Labour and the Principle Judge of the Industrial Court to designate magistrate courts that can hear matters relating to labour laws. This provision once operationalized will go a long way in clearing backlog in the industrial court and bringing justice closer to the workers. The Industrial Court received a boost in February 2012 when the Chief Justice reshuffled judges and two additional judges recruited.

##### 4.5.3 Committee of Inquiry

The Minister for Labour is empowered under Section 28 of the Act to appoint a Committee of Inquiry through an order in the Kenya Gazette to inquire into

any matter which may be connected to or relevant to any trade dispute or to trade disputes in general, or to trade disputes of any type or class, whether or not such disputes have been reported to the Minister under the Act. The committees can be an important tool through which contentious matters relating to employment that may be the subject of dispute for workers can be inquired.

#### *4.5.4 Labour Administration and Inspection*

The Act creates the offices of Commissioner for Labour, Director of Employment and empowers the Minister to designate labour officers, employment officers and medical officers. Section 33 of the Act provides for the issuance of a certificate of authority to enter and inspect workplaces to labour officers, employment officers and medical officers.

All authorised officers are empowered, under Section 34, to enter any premises or place where persons are or may be employed for the purpose of monitoring or enforcing compliance with labour law. The Authorised officers may require the production of wage sheets or other employment records, inspect records kept by the employer, examine any person to whom a wage order applies, inspect and examine any land, building or structure where employees are employed or residing among other powers.

Employment officers in addition to the above are authorised to access all information held by the employer for the purpose of collecting labour market data. In line with these powers, medical officers are also empowered to carry out inspection and make orders that relate to the health of employees. The Act creates offences by companies under Section 39 of the Act and empowers the labour officers to charge employers in a court of law with offences committed under the Act and other employment laws. The labour Commissioner has been given far reaching powers under the Act to monitor and enforce the laws relating to employment and to prosecute errant employers.

Section 42 of the Act obliges the Commissioner for Labour and the Director of Employment to not later than the thirtieth of April each year, prepare and publish an annual report of the activities undertaken in their respective departments. The report is required to include details that range from the statistics of places of work inspected, findings in the course of inspection to statistics of industrial accidents and occupational diseases among other details. Labour rights defenders have an accountability tool that they can use to hold the state to account with respect to its obligation to protect by participating in the review and evaluation of such reports.

#### *4.5.5 Wages Councils*

Section 43 of the Act obligates the Minister to appoint a General Wages Council and an Agricultural Wages Council (AWC). The Minister is empowered after consultation with the Board to establish sectoral wages council where the Minister is of the opinion that it may be expedient to set minimum wages

and other conditions and/or the remuneration and other conditions of employment of any category of employees in any sector is not adequately regulated by Collective Bargaining Agreements (CBAs).

The membership of the AWC within which the cut-flower sector fall, consists of a chairperson, not more than three members representing trade unions and not more than three members representing employers and not more than three independent members. The role of the AWC is to investigate the remuneration and conditions of employment in any sector, invite and consider written and oral representations from interested parties and make recommendations to the Minister on minimum remuneration and conditions of employment for employees employed in agriculture.

The Minister for Labour has a duty under the Act to publish a Wages Order that takes into consideration matters enumerated in the Act setting minimum terms and conditions of service for workers. The publishing of the Wages Order with minimal wage increments in Kenya has traditionally coincided with the Labour Day celebrations on 1<sup>st</sup> of May each year.

The Agricultural Minimum Wages Order has been criticised for not meeting the minimum conditions of workers employed in commercial agriculture especially in the cut-flower sector. Workers in this sector have suffered the drawback of being classified under the same category as general agriculture. Agriculture is the backbone of the Kenyan economy with over 75% of workers employed in the industry mainly in small and medium enterprises. The Agricultural Wages Order is based on the reality of small agricultural enterprises including small-scale wheat, maize and other traditional subsistence farming activities.

Indeed, there lies an irony: the irony to lump a successful highly commercialised sector like the cut-flower with other sub-sectors of the agricultural industry. The minimum terms and conditions set in the Agricultural Wages Order are hardly enough for any worker to survive and require the supportive infrastructure of a rural small-scale economy where workers live on farm and grow their own food on plots of land allocated by employers or are availed food rations for survival.

The cut-flower sector is far removed from the other sub-sectors of the agricultural industry with workers being employed in farms that are located in up market areas of the city like Karen and workplaces being concentrated in towns like Naivasha municipality. The sector therefore requires an independent Wages Order which they should enact as workers are not adequately covered by the existing Agricultural Wages Order. The Labour Institutions (Amendment) Bill 2011 attempts to address this anomaly by amending the Labour Institutions Act 2007 and providing for remuneration of workers in Agriculture and Floricultural Sector through legislation as shown in Table 10 below.

**Table 10: Basic Minimum Consolidated Wages (Agriculture and Floricultural Sector)**

	<i>Occupation</i>	<i>month in KSh.</i>	<i>per day</i>
1	Unskilled employee	10,050	420
2	Stockman, herdsman, watchman	11,595	490
	<i>Skilled and Semi-skilled Employees:</i>		
3	Skilled general worker, house servant or cook flower cutter, irrigation	18,000	435
4	Farm foreman	18,000	765
5	Farm clerk, flower grader,	18,000	765
6	Senior foreman	11,725	500
7	Farm artisan,	12,000	510
8	Tractor driver	12,727	540
9	Combined harvester driver	14,020	590
10	Lorry driver or car driver	14,710	620

Source: *The Labour Institutions (Amendment) Bill 2011*

*“The enactment of this Bill will lead to betterment of the conditions of living of a majority of the Kenyan workers and also accelerate the implementation of the Bill of Rights in the new Constitution which places great emphasis on attainment of socio economic rights for citizens”*

John Mututho, MP for Naivasha quoted from the debate on the Labour Institutions (Amendment) Bill 2011.

The Labour Institutions (Amendment) Bill 2011 resonates with majority of the workers in the cut-flower sector who feel underserved by law and existing collective agreements. Whether the bill will pass through Parliament remains to be seen. Even where it passes through Parliament, there is danger of the Bill falling captive to litigation; as witnessed in the case of the Work Injury Benefits Act 2007 which is yet to be implemented.<sup>22</sup>

The Bill further appears to suffer the anomaly of lack of job valuation, mix between general agriculture and floriculture and also the difficult in interpreting the job categories intended. The categories of “stockman, herdsman, watchman, house servant, cook, unskilled employee, farm foreman, senior foreman” and so on, are not related to cut-flowers and are too contentious and may make the Bill unworkable as a solution for workers in cut-flowers. In addition, the job classification and categorisation does not seem to resonate with the reality in the sector and may need a proper job valuation exercise.

#### *4.5.6 Trade Unions and Employer Organisations*

The Labour Relations Act, 2007 provides for the establishment and registration of employees and employer organisations. The Act prohibits the recruitment of members for purposes of establishing a trade union or employers’ organisation unless that person has obtained a certificate under the Act from the registrar.

<sup>22</sup> The Labour Institutions (Amendment) Bill 2011 is contentious as it contravenes Section 14 of the Labour Relations Act on the procedure of setting up Wages Councils and sector specific wages orders. The bill may therefore be dragged through the courts of law like the Work Injury Benefits Act whose important provisions have not been implemented since 2007 due to litigation. The High Court in Petition number 185 of 2008 declared nine sections of the Work Injury Benefits Act unconstitutional including sections: 4, 7(1) and (2), 10 (4), 16, 21 (1), 23 (1), 25 (1) and (3), 52 (1) and (2) and 58 (2)



This Act therefore makes the employees and employers' organisations important labour rights institutions.

Further, the Act empowers employees to form trade unions or federation of trade unions, join trade unions or leave a trade union. It further provides for rights of members to participate in lawful activities, participate in election of officials and representatives and stand for election; be eligible for appointment and if elected carry out the duties of a trade union representative.

Under Section 14 (2) (1), the Labour Relations Act empowers the registrar to register a trade union consisting of persons working in more than one sector, if the registrar is satisfied that the Constitution contains suitable provisions to protect and promote the respective sectoral interest of the employees. Section 14 (1) (d) provides for registration of trade unions where there is no existing trade union which is sufficiently representative of the whole or a substantial proportion of the interests of which the applicant seeks registration.

Employers are empowered in like manner by the Act to form and register employer associations to protect their interests and negotiate with employee organisations. The Labour relations Act outlines important governance measures for employer and employee organisations, recognition and collective agreements as well as dispute resolution mechanisms.

The Trade Unions that have been established to represent workers and employers in the cut-flower sector include the Kenya Plantations and Agricultural Workers Union (KPAWU) and the umbrella body Central Organisation of Trade Unions (COTU). There have been attempts from different quarters to register a sector specific union and it is unclear why the union has not been registered, since there is no other sector-specific union representing the workers in the cut-flower sector. The workers may be better served through a sector-specific union as evidenced in Uganda through an independent floricultural union.<sup>23</sup>

On the other hand, the employers are represented through the Agricultural Employers Association (AEA) with a semi-autonomous Flower Growers Group (FGG) being the organ that negotiates with the union on conditions for workers in flowers. AEA is an affiliate member of FKE. Perhaps for Kenya, it may be necessary to have a sector-specific organ that represents workers in the sector.

<sup>23</sup> Uganda Floricultural Workers Union (UFWU) was established following a constitutional reference filed by the founders following a decision of the registrar of trade unions not to register the union as there was an existing union serving workers in the agricultural sector: the Uganda Plantations and Agricultural Workers Union (UPAW). The Union has now achieved 100% representation in the sector by bringing on board all players to subscribe to minimum terms and conditions negotiated by the union. UPAW works closely with CSOs key among them being Uganda Workers Education Association who conduct training for workers.

## 5.0 Study Findings

### 5.1 Organisational Policies, Attitudes & Practices

#### 5.1.1 Ministry of Labour

The Labour Institutions Act creates several institutions as seen above, falling under the Ministry, and in so doing they execute the State duty to protect labour rights and bears the responsibility of implementing the labour laws and the constitutional provisions under the Bill of Rights. The role of the Ministry of Labour is central to the realisation of women labour rights as the women of Kenya lack in mechanisms of accessing judicial means of enforcement. This study interviewed Ministry of Labour officials and also reviewed documentation relating to the operations of the Ministry with specific focus on the Ministry of Labour Strategic Plan (2008 – 2012). The status of the Ministry can best be summarised in the words of the Ministry as follows:

*“...inadequate staff, insufficient budgetary allocations and lack of budgetary provision for certain programmes, dilapidated and obsolete equipment, inadequate operational facilities, poor succession planning and management coupled with an ageing workforce, limited staff capacity, poor working environment, inadequate legal, institutional and policy framework, erratic disbursement of funds from the Treasury, disjointed schemes of service, difficulties in complying with e-government environment, and bureaucracy in procurement of goods and services”*

Ministry of Labour (Strategic Plan 2008 – 2012) P. 3

The Ministry admittedly falls way short of meeting its vision of “*a globally competitive workforce in a decent environment*”. This is directly linked to Kenya’s Vision 2030, which is premised on the assumption that Kenya will have a highly competitive labour force. To summarise the situation in the Ministry words:

*The weaknesses of the Ministry comprise deficiencies in resources and capabilities, which must be contained in order to realize the strategic objectives during the plan period. These include: a) Lack of legislative frameworks for some departments b) Lack of national policies on Employment, Occupational Safety and Health, Social Protection, Productivity, Industrial Training, Child Labour, Industrial Attachment, Incomes and Wage and Labour Export Policy.”*<sup>24</sup>

It is important that the Ministry of Labour is properly resourced to be able to protect labour rights. Drawing from the Ministry’s Strategic Plan, the

<sup>24</sup> Ministry of Labour Strategic Plan 2008 – 2012 P. 5

Ministry is severely understaffed operating at 42% human resource capacity, as showed in Table 11 below, while also operating at 33% under-budget with only 84 officer's countrywide working in the labour division.

There are important functions under the Ministry including the productivity centre and human resource units that are completely un-resourced. This is curious if one considers that the attractiveness of a country as an investment destination rests on its labour productivity and not the cheapness of labour as the Export Processing Zones Authority seems to suggest in its article on reasons why Kenya is an attractive investment destination (EPZ 2005).<sup>25</sup> The KHRC recognises the need to improve labour productivity through training, planning and productivity monitoring.

**Table 11: Ministry of Labour Personnel Allocation**

Department	Division/Cadre of staff	AE	In-Post	Variance
Directorate of Occupational Safety And Health Services (DOSHS)	Technical officers	170	58	-112
	Specialists and technicians	77	21	-56
	Support personnel	128	55	-73
Directorate of National Human Resource Planning and Development (DNHRP&D)	HR planning division	52	8	-44
	HR development division	47	20	-27
	Support personnel	28	9	-19
Directorate of Industrial Training (DIT)		50	39	-11
National Industrial & Vocational Training Centre (NIVTC)		118	42	-76
Industrial Training Centre - Kisumu		95	38	-57
Kenya Textile Training Institute (KTTI) - Nairobi		88	41	-47
Curriculum Development Centre - Nairobi		35	9	-26
Industrial Training Centre -Mombasa		86	32	-54
Technology Development Centre - Athi River		110	0	-110
Levy Training Inspectorate		79	15	-64
Department Of Micro and Small Enterprise Development		174	81	-93
Labour Department	Technical personnel for labour division	279	84	-195
	Technical personnel for employment division	115	42	-73
	Support personnel for labour division headquarters	208	158	-50
	Support personnel for employment division headquarters	26	53	27
Industrial Court		48	19	-29
Productivity Centre of Kenya		86	0	-86
Administration		82	62	-20
Human Resource Management Unit		76	36	-40
Human Resource Development Unit		5	0	-5
Central Planning and Monitoring Unit		37	16	-21
Accounts Division		55	35	-20
Finance Division		7	4	-3
Internal Adult Unit		8	6	-2
Procurement Unit		18	9	-9
Information and Communication Technology		5	6	1
<b>Grand Total</b>		<b>2,392</b>	<b>998</b>	<b>-1394</b>

Source: Ministry of Labour, Strategic Plan (2008-12)

The Ministry officials and some employer organisations reported that there are courses being developed through the Directorate of Industrial Training (DIT) to build the capacity of shop floor operatives. The trainings have been under 'development' for over 5 years and a syllabus for the same is yet to come

<sup>25</sup> Horticulture Industry in Kenya 2005; Export Promotion Zone Authority; Information for investors; Reasons to Invest in Kenya Pg. 13

to fruition. The trainings funded by DIT targets supervisory and management staff. There is need to fast track development of operatives training and not just technical skills but also rights based training funded through the DIT.

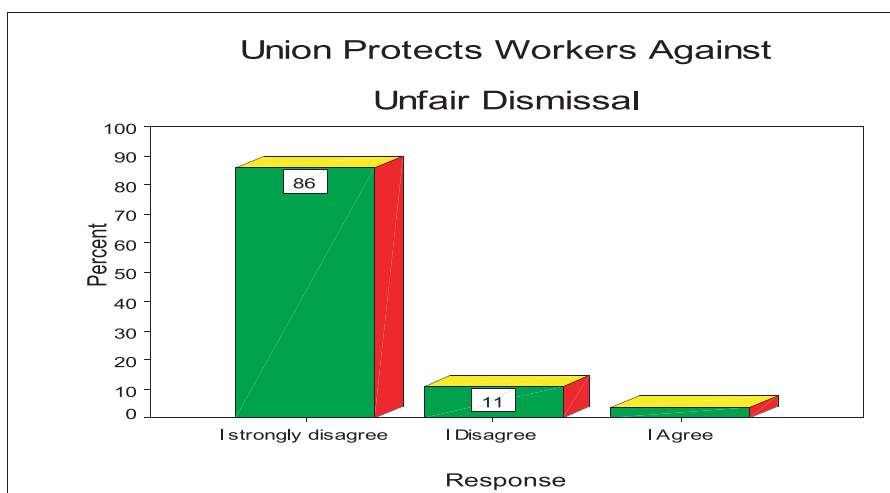
From Table 11 above, the nine officers at the Curriculum Development Centre are therefore overstretched if one considers that curriculum development is fundamental to industrial training in the different economic sectors. The CSOs have a role to play in national labour matters and should be involved at all levels of decision-making in order to shape development of policies and lobby for betterment of conditions for workers. There is no mention of CSOs as stakeholders in the labour Ministry Strategic Plan (2008 – 2012).

The budget for Ministry of Labour, for the years 2008 to 2012, is Kshs.15 billion (approximately 3 billion annually) compared to budgetary estimation of Kshs. 20 billion (5 billion required every year).<sup>26</sup> As evidenced, the Ministry is severely under-resourced. The opportunity of public participation in budget making presents a lobby opportunity for CSOs and other stakeholders to push for improved funding for the Ministry.

### 5.1.2 The Union (KPAWU and COTU)

There are an estimated 100,000 workers employed directly in the Kenya cut-flower sector supporting over half a million beneficiaries. Of these, an estimated 60% are members of the KPAWU with another 10,000 paying agency fees (*anonymous union officials*). The members pay union dues at 2.0% of their gross wages to KPAWU plus an additional Kshs.100 directly to COTU. The contribution to the labour union from cut-flowers alone is estimated to be well over Kshs. 200 million per year with total contributions from all members to KPAWU being in excess of Kshs. 1.6 billion (US\$19 million) annually, from agricultural workers.<sup>27</sup>

**Fig. 5: Workers response on Role of Union in unfair Dismissals**



Source: Research Data, 2011

<sup>26</sup> Ministry of Labour Strategic Plan 2008-2012; pg. 38

<sup>27</sup> Source: Senior KPAWU official; Research Data, 2011.

This revenue is meant to enable the union to serve the workers in a way that ensures respect of their labour rights and access to remedy where rights are violated. However, workers interviewed reported not to access remedy or effective representation with 97 % of workers surveyed reporting that the union does not protect workers from unfair dismissals or represent them in case of grievances, as seen in Figure 5 above. The study found cases of over 60 workers from different companies who had been dismissed for joining the union with no action taken by the union to protect them.

*20 workers were dismissed from Enkasiti farm in 2003 for joining the union. To date, these workers have not been represented against this unfair violation of their rights. The workers on farm live under fear and cannot organise. This is a failure of the union to represent its members' Anonymous worker -Enkasiti Flowers. This scenario was repeated for Aquila farm, Carnation Plants, Sunbird, among the companies that curtail the freedom of workers to associate.*

There are only 4 companies who have negotiated collective agreements with the Union: Oserian, Finlays, Shalimar and Mahee Flowers. 59 other farms negotiate under the umbrella of the Flower Growers Group of AEA with the collective bargaining agreement setting minimum terms and conditions for workers in the sector.<sup>28</sup> Even though it is important to have a sector benchmark, the KPAWU is still duty bound to represent members in individual companies and to address issues that affect them at operational level.

On the group collective bargaining agreement, the AEA encourages their members to pay more through Corporate Social Responsibility policies. Indeed, 80% of the companies visited provide better minimum wages than are negotiated under the agreement with some companies like Van den Berg paying 68 % more than the negotiated minimum of Kshs. 4, 050 per month.

The capacity of the Union at branch level is severely limited. There are a total of 15 branch secretaries countrywide with only 5 serving the flower growing areas of Naivasha, Kericho, Thika, Athi River, Ruiru and Nanyuki. Additional staff at the branch level in the flower-growing areas include an organising secretary for each area with the exemption of Ruiru and Athi River. In terms of logistics, it is only in Naivasha that has one motorbike with the rest relying on public transport and in most cases hiking lifts from farm managers where disputes are reported. Each branch has a budgetary allowance of Kshs. 4,000 per month for organisational expenses.

The reported number of staff in the KPAWU head office is 9 including support staff with only four officials being responsible for formal dispute handling. These four officials serve workers in tea, coffee, cut-flowers, sisal, fisheries, game ranching, wheat, fruits, vegetables and dairy sectors with an estimated workforce of over 10 million workers country wide. Evidently, it does not

<sup>28</sup> Of the 15 study respondents, Harvest, Maridadi, Nini, PJ Dave, Plantation Plants, Redland Roses, Simbi Roses and Van den berg are members of the KPAWU/AEA FGG Collective Bargaining Agreement. Flamingo farm, Carnation Plants, Enkasiti, Gatoka, Sunbird and Aquila have no CBAs.

seem feasible that the workers would be adequately served under such limited personnel and infrastructure.

Moreover, the union officials suffer the same conditions they are meant to represent workers against. There are no negotiated terms for union officials. Branch officials earn gross wages of between Kshs. 10,000 and Kshs. 15, 000. The wage paid to union officials is not adequate to provide a living. These union workers have no pension scheme and no means of protection from unfair labour practices; including arbitrary dismissals. Two former branch officials interviewed reported to have been victimised for agitating for more transparency in the KPAWU.

The governance structure in the union does not allow for fair competition of leadership positions in violation of the provisions of the Labour Relations Act and the Constitution of Kenya. Any person other than the incumbent aspiring for any position in the branch office or national office is required to pay a non-refundable fee of Kshs. 50,000 for branch level positions and Kshs. 100,000 for national office respectively. The incumbent is not required to make such payment while the applications and elections are received and organised by the incumbent.<sup>29</sup>

Any petition to call a special conference must be signed by over two-thirds of paid up members with the persons petitioning for the special conference being required to pay a non refundable fee of Kshs. 300,000 and the special conference being convened by the incumbent at a time, place and venue of the incumbent’s choice. The reality of members ever collecting signatures from two-thirds of workers in tea, coffee, flowers, game ranching, wheat, fisheries, fruits and vegetables among other agricultural sectors can only be designed to defeat.

The union branch officials were found to work under difficult circumstances. In Naivasha, 2 branch officials serve over 60 companies and were found not to keep in touch with all shop-steward committees. There is a complete disconnect between the functionality of the branch offices, shop-steward committees and the national office. The workers in the shop steward committees where companies were found to respect the right to organise were found to inspire confidence in workers. These committees felt let down by the union leadership as they lack training and support in handling major issues. Shop Stewards in two companies, who remain anonymous in this study for fear of reprisals, wondered why the union did not take into consideration or consult them while making important decisions like negotiations and signing CBAs despite petitions sent to the national office.

### 5.1.3 Employers’ Organizations

FKE and AEA are two of the well organised and respected organisations in the country representing employers in cut-flower sector, among other sectors. The organisations hold trainings for their members on labour relations and issue

<sup>29</sup> KPAWU constitution registered in May 2002

guidelines on compliance with labour laws and the sector CBA. Arguably, the AEA and FKE do not directly represent the interests of workers but as workers are an important factor for their members, the organisations have adopted policies and guidelines on Corporate Social Responsibility (CSR) and good governance. The AEA reported to be working towards enforcing minimum governance criteria for the members as a condition for membership.<sup>30</sup> Be that as it may, the employer organizations give the companies strength in numbers and provide a platform and opportunity to engage the sector on an ongoing basis to continually improve workplace conditions.

Moreover, the UN *Guiding Principles for Business and Human Rights* look to multi-stakeholder initiatives at local and national level as platforms for monitoring compliance and encouraging improvement. The employer organizations seem to be well-organized at local and national level. It can be argued that compared to workers organisations, employer organisations, bringing together the drivers of the economy, are better resourced to organise and operate more competitively than unions representing poor, low-income workers.

This study however finds this argument not to hold as evidently, the workers organisation(s), as a matter of fact, are equally if not better resourced than these employer organisations. The labour unions should therefore be able to compete for highly-qualified staff including lawyers, researchers, and labour specialists among others to effectively engage the perceived better prepared employers.

#### 5.1.4 National but Private Standardization Bodies

In addition to FKE and AEA, which are employer organizations registered under the Labour Relations Act, there are other registered voluntary producer organizations which drive labour standards in the sector. Key among them are the Kenya Flower Council (KFC) and the Fresh Produce Exporters Association of Kenya (FPEAK). KFC has gained recognition by the Kenya government and globally as a sector mouth-piece.<sup>31</sup>

KFC is a membership organization with 79 members representing 60% of growers in the sector and is the most representative of industry organizations in flowers. KFC was founded in 1997 as a sector body in response to the negative campaign levelled against the sector both locally and internationally for violation of labour and environmental rights. The key tool that binds the members of KFC is the code of practice to which all members must subscribe and adhere to. The KFC code makes provisions on labour rights as well as compliance with environmental standards. KFC has gained accreditation to ISO 65 which is an internationally recognised standard for certification bodies.

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<sup>30</sup> AEA is currently conducting compliance audits for new members joining the organisation to ensure they meet the minimum terms and conditions negotiated in the CBA.

<sup>31</sup> Interview, KFC Executive Director

Of the 15 farms sampled, 12 reported at the time to be members of the KFC.<sup>32</sup> Although the KFC expressed confidence in self regulation and monitoring through the code of practice, workers interviewed did not express the same level of confidence in the certification programme.<sup>33</sup> Majority of the workers reported to be excluded by the code as it is a 'company' driven initiative and process. The shop floor committees interviewed expressed the wish to be more involved in the certification process including receiving the audit reports and being allowed to make 'workers' shadow reports on working conditions that are considered during certification.<sup>34</sup>

The trade union representative in the KFC certification committee is not an official of the flower workers union and there exists no criteria for sector workers representation in the audits and certification process. The standard also does not require independent training of workers on their rights. Moreover, shop stewards committees interviewed felt that the KFC standard promotes workers committees formed by management as opposed to trade union based shop stewards committees which are more independent and better placed to participate in labour rights audits. Curiously, the AEA raised issue with the KFC standard use of the sector collective bargaining agreement as a benchmark for certification while over 20 companies in KFC membership have not signed the collective agreement; but yet gaining the KFC certification.

In spite of above challenges, KFC has played a major role in improving compliance in the sector with 79 companies in its membership especially on health, safety and sexual harassment among others, which were major issues of concern in the 1990's and early 2000's campaigns. The KFC reported to be open to work with all stakeholders in improving sector-wide compliance mechanisms. This was demonstrated through the Horticultural Ethical Business Initiative (HEBI) multi-stakeholder initiative where KFC and FPEAK led the sector in stakeholder engagement. According to KFC, HEBI remains an important platform for addressing sector wide issues including building consensus on improvement of conditions. The collapse of the HEBI initiative resulted in limited participation of CSOs that advocate labour rights in the operational level grievance, yet the mechanisms are important for growth in community of good practices.

#### *5.1.5 International Labour Standard Bodies*

In addition to the KFC which is the main local code of practice, there are other internationally recognised market standards that the sector has to comply with. Relational value chains driven by integrated value chain relationships with mass market retailers in Europe and to a limited scale the Dutch Auction have led to the emergence of international codes of practice on

<sup>32</sup> Aquila, Finlays, Gatoka, Harvest, Maridadi, Nini, PJ Dave, Plantation Plants, Redland Roses, Shalimar, Simbi, Van Den Berg

<sup>33</sup> It is important to note however that the study did not have a primary objective of evaluating the KFC code of practice and therefore the findings are limited as no detailed analysis specific to KFC was made.

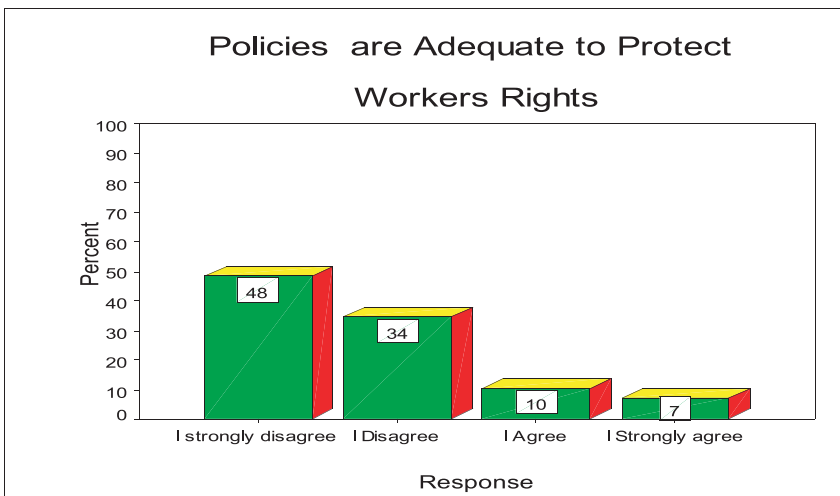
<sup>34</sup> Shop floor committees include welfare committees, grievance committees and shop steward committees in different workplaces.



labour standards including MPS Social (recognised in Dutch markets), Ethical Trading Initiative base-code (UK Markets), Flower Labour Programme (FLP), Business Social Compliance Initiative (BSCI) and Fair Flowers Fair Plants among other ethical standards. The standard requirements are based on ILO conventions and companies are required to demonstrate compliance through third party certification. In addition, companies are obligated to comply with national law and provisions in negotiated collective bargaining agreements.

Certification and audits against these international standards are driven through independent third party certification organisations which look to ISO 65 accreditation for justification of the certificates held by companies that they audit and certify. The study found these certificates not to reflect the highly complex and dynamic labour relations policies, regulations and practices applicable in the sector. The workers across all companies sampled in this study expressed dissatisfaction with ethical audits as they are structured today being 'the market tool' for improvement of labour conditions. Out of the respondents, 82% of workers stated that policies are not adequate to protect workers, as seen in Figure 6 Below.

**Fig. 6 Workers Opinion on Workplace Policies**



Source: Research Data, 2011

This is a direct verdict on the certifications as they are not worker driven processes. The immense consumer pressure that has led to the adoption of the codes of practice is wilting in the hands of code and certification organisations due to the lack of worker involvement and limited understanding by workers on the objectives, mechanisms and provisions of the different standards. The impact of codes of practice and how monitoring of conditions can be improved is a subject of great interest for the KHRC and its work going forward.

### *5.1.6 Companies and Workplace Policies*

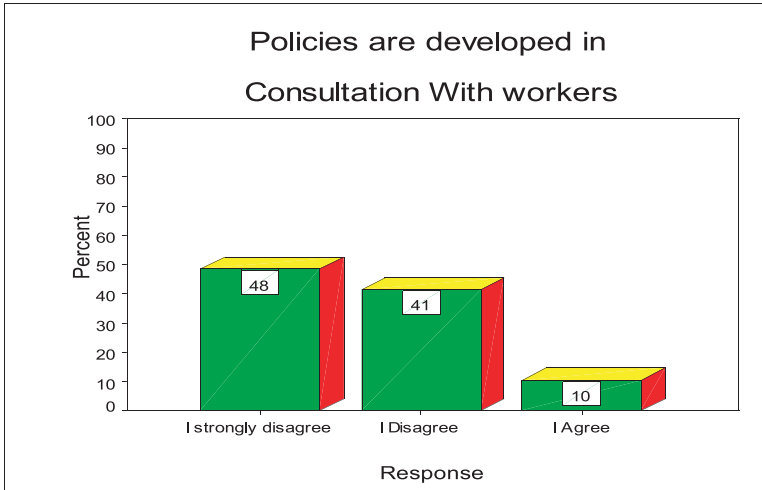
Size and ownership were important criteria in sampling. All companies sampled are registered as private limited companies under the Companies Act. Ownership profile for the companies was found to include: a) Dutch Companies including Van den Berg and Plantation Plants; b) some others from European such as Harvest, Flamingo, Maridadi, Nini, and Redland Roses; c) Asian (local & foreign) that include P J Dave, Enkasiti, Aquila, Carnation Plants, Shalimar, Sunbird; and finally d), Kenyan firms that include Simbi and Gatoka. Overall, there is no indication that ownership has a major impact on compliance across the board.

Large companies were found to put more efforts toward compliance compared to small companies. Comparatively, the large companies like Finlays- Flamingo, P J Dave and Van den Berg were found to have better conditions compared to small companies like Gatoka and Sunbird who were found to be struggling with basic requirements like employment policies. The medium farms were mixed in terms of compliance with companies like Simbi Roses, Shalimar Flowers, Redland Roses, Nini and Harvest overall scoring highly compared to the rest who were found to struggle with some fundamental requirements details of which are analysed in the workplace conditions findings. Consumer Codes of practice and market requirements with emphasis on Fair-trade standards was reported by management and workers to have contributed significantly to improvement in workplace policies.

The study found 8 out of 10 companies visited have written employment policies dealing with the entire human resource management scope. Maridadi and Sunbird farms reported to be in the process of developing the workplace policies. All companies had a human resource manager designated to deal with employment relations and industrial relations. Some of the big companies like Flamingo have specialised personnel in the department dealing with individual aspects of human resource management including industrial relations, health and safety, employment relations and gender. Some farms have support clerical staff while others use the production team to deliver on some human resource functions.

Even though there are documented policies, 89% of workers surveyed overwhelmingly reported not to be consulted on policies (as depicted in Figure 7 below), while 68% of workers reported not to be trained on policies (Figure 8 below).

**Fig. 7 Workers opinion on Workplace Policies**



Source: Research Data, 2011

On alignment of policies with labour laws, the study found that where the practices aligned to law, the policies equally aligned to the law. However, where the practices did not follow the law, the policies were found to circumvent the legal provisions. Table 12 below shows examples of mismatched policies and practices.

**Fig. 8 Opinions on training on policies**

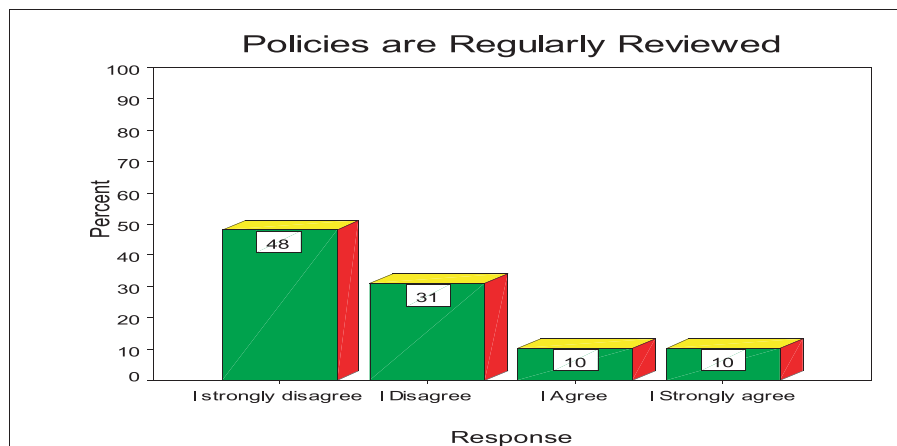


Source: Research Data, 2011

Table 12: Sampled Policies and Practices Vs. Adherence to Law

Issue Area	Policy / Practice	Legal Provision
Overtime payment	Overtime may be compensated in cash at premium rate or by giving the employee equal time off.	Overtime is compensated in cash at premium rate. Equal time compensation is not provided for in law beyond the 46 hours working week.
Paternity Leave: denial of paternity leave for male employees	An employee is required to notify the company of his need for paternity leave at least two weeks before it is required. An application for paternity leave shall be accompanied by a marriage certificate.	A male employee is entitled to two weeks paternity leave. No notice or evidence in the form of marriage certificate is required.
Maternity Leave: some employees are forced to proceed on maternity leave 2 months before EDD; which in some cases results to women taking less than two months maternity leave after delivery.	A female employee shall be entitled to three months maternity leave without loss of benefits. Maternity leave shall be taken at least one month before the date of expected confinement and the company may require the employee to take annual leave prior to proceeding on maternity leave.	A female employee shall be entitled to 90 days maternity leave on giving 7 days notice and without loss of benefits. An employee proceeding on maternity leave may apply to take annual leave consecutively
Maternity Leave payment: Female employees are not paid during the maternity leave period for 4 months unless they report back to work.	A female employee proceeding on maternity leave shall apply for the same and will be entitled to payment upon return to work with the dues being paid to the employee after working for one month.	A female employee shall be entitled to 90 days maternity leave without loss of benefits. An employee is entitled to be paid monthly.

**Fig. 9 Opinion on Review of Policies**



Source: Research Data, 2011

Regular review of policies and communication of the same to workers is another area that was found to suffer with 79% of sampled respondents reporting policies not to be regularly reviewed, as seen in Figure 9 above.

On women labour rights, there is a general trend in the sector to have workplace gender committees some made up of women only while others include women and men. These gender committees are charged with the responsibility of dealing with employment issues that affect women. The study found most of these committees to have been formed by management in response to private standards including the KFC, MPS, and FLO among others. The issues that these committees deal with are however limited to sexual harassment, breastfeeding time in Fair-trade certified companies and light duties for pregnant women.

The wider issues of women labour rights go beyond dealing with sexual harassment, pregnancy and breastfeeding time. Mainstreaming gender in the workplace requires in-depth capacity on gender and development including the ability to carry out gender needs assessments. There are many employment policies and practices that have major implications on gender but are not addressed as there is limited capacity to address them. Capacity building for women to participate effectively in leadership and decision making is severely lacking in the sector. Moreover, the women in the cut-flower sector are so "time-poor" to invest in their personal development.

The majority of the female workers are engaged in the lower cadre repetitive manual tasks. Over 55% of these women reported to be single mothers with an average of 3 children per woman. Even where these women are married, they are still solely responsible for all the reproductive labour in the family. The female workers reported high incidences of divorce, high stress levels and lack of childcare support as the negative spin off effects of the gender based discrimination (both labour and cultural) faced by women.

### 5.1.7 Civil Society Organisations

This study would be incomplete without an evaluation of the CSOs that work around labour rights. The 1990's and early years of 2000 witnessed the growth of a strong labour rights advocacy, which working hand-in-hand with international CSOs lobbied successfully for focus on improvement of workplace and living conditions for workers. Unfortunately, this advocacy has witnessed decline from local to national level. Important organisations like Kenya Women Workers Organisation (KEWWO) and Labour Awareness Resource Centre (LARC) have since downscaled operations, leaving a gap in the labour rights advocacy.

This gap is compounded with allegations of poor governance generally over time, levelled against some individuals in the CSOs, which has resulted in suspicion between the civil society, the trade unions and employers' organisations. Some examples cited range from awarding of questionable human rights awards to companies that are far from 'human rights compliance', to the collapse of HEBI as a national multi-stakeholder initiative. It is important to note that the research team found an employment agency in Naivasha collecting membership fees from workers in the pretext of being a human rights organisation. This employment agency issued workers with receipts stamped "Director Human Rights" that had no physical address or contact details after collecting Kshs. 200 from each worker. Thousands of workers have fallen prey to this 'inhuman rights practitioner' with the agency easily pocketing several millions from unsuspecting workers.

To illustrate, the KHRC has been victim to some unscrupulous individuals who have misappropriated the KHRC name and stationery to make awards and write threatening letters to employers under circumstances which KHRC had not been privy to in the build up to this study. One such award was made to Van den Berg Roses in the name of 'KHRC' by unscrupulous individuals. This is an indicator of hijack by some individuals for personal gain rather than a systematic failure of the system. KHRC is committed to the building of a strong labour movement through grassroots networks that are run by individuals who demonstrate the highest level of integrity.

*"At KHRC, we do not advocate for boycotts; the jobs are needed. Our strategy is to work in partnership with all stakeholders through social dialogue to look at mechanisms of delivering improvement and to building a community of good practices that can be replicated throughout the sector".*

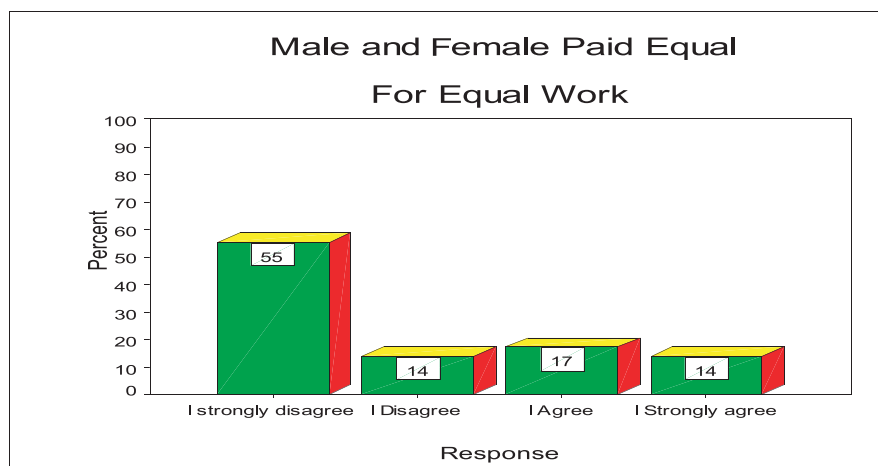
Virginia Munyua, Programme Officer

Be that as it may, there are however civil society organisations such as Kenya Women Workers Education Development Organisation (KEWWEDO) in Naivasha operating at grassroots level which were found to remain engaged in the labour rights advocacy. The need for internal reform and strengthening of the CSOs working in this sector, including involvement in multi-stakeholder fora, cannot be understated.

## 5.2 Equal Pay for Work of Equal Value

On equal pay, 69 % respondents surveyed disagreed that male and female employees receive equal pay as shown in Figure 10 below. In practice, it is problematic for companies to implement equal pay for equal work as other factors including duration of service come into play when companies increase the pay for individuals with longer serving employees earning more than recently recruited workers. Moreover, supervisory, line management and senior management positions are remunerated based on individual negotiations and thus reported existence of disparities in pay between men and women. A detailed analysis of pay in management is recommended as education opens opportunities for women

**Fig. 10: Women and Men Equal Opportunities in Employment**



Source: Research Data, 2011

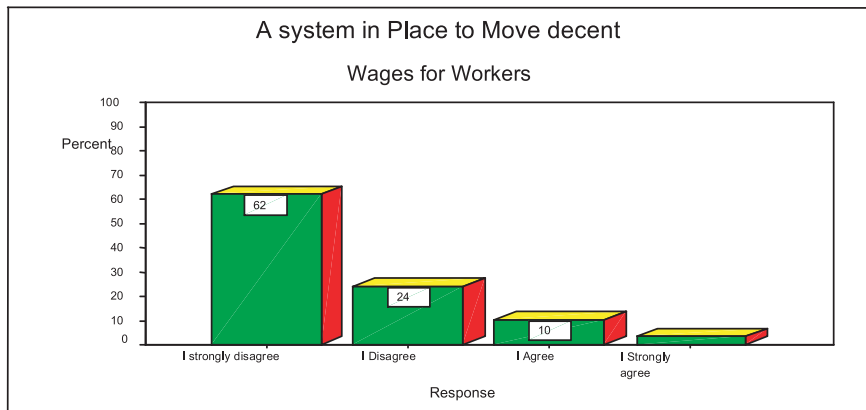
The classification of workers into 'un-skilled' and 'semi-skilled' in the CBAs was found to disadvantage term and seasonal workers and to fuel the practice of companies engaging workers on short term contracts. Management and workers interviewed concurred in that it takes between 2 and 3 months to train a total novice to undertake the manual tasks like harvesting and grading in the sector. The skills required for workers in the sector including harvesting, grading, scouting among others are not formally recognised as skills. This disadvantages workers as years of experience with a different employer are not recognised while seeking new employment. There is a tendency for some companies to employ term workers under 'un-skilled' category and permanent workers under 'semi-skilled' category claiming that they are 'new' workers regardless of term served or previous experience. However, these 'un-skilled' workers are as productive as the 'skilled' permanent workers within three months of training for new workers. Thus, there is no basis for the unequal pay for equal work.

The main challenge for most workers is decent wages rather than equal pay as the sector collective agreement signed by the KPAWU on 15<sup>th</sup> November 2011 provides for Kshs. 4,050 as the Minimum wage plus a house allowance

of Kshs.1, 800 in municipalities and Kshs. 2,000 in cities. 86% of respondents reported this wage to be too low and also do not envisage a system in place to move towards decent wages. This resonates with findings on the negotiated minimum being too slow in moving towards levels that workers can live on; as seen in Figure 11 below.

There is yet to be established a formula of determining what is fair remuneration. The Ministry of Labour has identified the lack of the *'Incomes and Wage and Labour Export Policy'* that would provide guidelines for wages to be paid by the exporting sector as a challenge to fair remuneration. There is however an attempt by the Member of Parliament for Naivasha, Hon. John Mututho, to bridge this gap by introducing in parliament the Labour Relations Act (Amendment) Bill 2011 to legislate on minimum wages for the sector.

**Fig. 11: Comparative Graph on Movement of Wages**



Source: Research Data, 2011

There are divergent opinions globally on the formula of arriving at 'fair remuneration' with some organisations advocating for the use of the contentious bread-basket methodology while others look to strengthening of labour unions and negotiations through use of a wage ladder as a more appropriate method of arriving at improved wages.<sup>35</sup> Interestingly, opinions do not differ, since wages in the sector like other labour intensive driven sectors are too low to provide a living.<sup>36</sup> This research comes at a time when the international labour movement including international trade unions and CSOs are gearing up for a living wage campaign in floriculture.

All companies interviewed reported to be paying equal to or above the negotiated wage as proof of working towards fair remuneration. It is however clear from the analysis of the labour institution that the Union lacks the will to effectively represent workers and therefore puts the below average 'negotiated minimum wages for the sector' in the CBA into question as the ladder to fair remuneration for workers.

<sup>35</sup>Breadbasket methodology is a methodology that bases pay on projected expenses for basic necessities in life for a worker. This includes food, healthcare, education, clothing, water and the like.

<sup>36</sup>Basic necessities for workers include housing, food, healthcare, education for their children, childcare, transport, water and clothes.



*“Van den Berg roses was found to be the company paying the highest wages for workers even though the pay for seasonal workers was found to be lower than that of permanent workers. The lowest paid employee earned a gross wage (basic + house) of Kshs 7,300. The company was found to base its wage on the AEA/KPAWU CBA with a ‘Van den Berg’ bonus paid to workers as an equalisation bonus. ”.*

Whereas the KHRC is supportive of there being a minimum benchmark wage in the sector that is negotiated and binding for all companies, the agreement however should not be a bar for negotiations by individual companies where workers attain the 51% simple majority. Thus, companies should be required to negotiate supplementary agreements on clauses that workers in individual workplaces consider important to their own situation.

Other monetary components that diminish the earnings for workers were found to include access to housing, transport to and from work, computation of overtime and bonus policies. Majority of workers live in informal settlements that have sprung up to serve the swelling number of labourers in the different areas. The demand for housing far outstrips supply which has driven house rents up in these informal settlements. The workers for example in Naivasha have to supplement their 'house allowance' with their basic pay; since it often not enough to pay the rent.

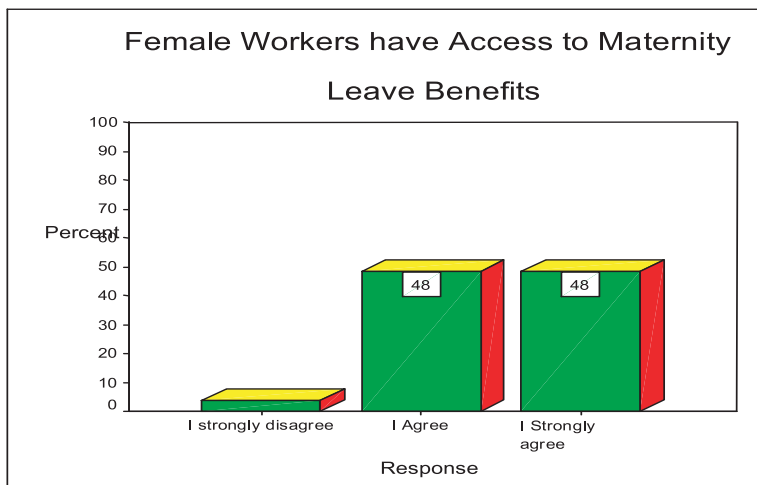
*‘The practice of not compensating overtime in cash in a sector where workers puts in long hours denies them an opportunity to supplement their incomes and leads to breakdown of families as women cannot participate effectively in family responsibilities while hours worked are not compensated’.*

*Research Data, 2011*

### 5.3 Maternity and paternity leave

Compliance on maternity provisions is high for permanent workers with 96% of those surveyed (as shown in Figures 12 and 13 below. Most workers are aware of their rights on maternity and paternity benefits. The number of permanent workers has increased over time hence the high level of compliance to the provisions.

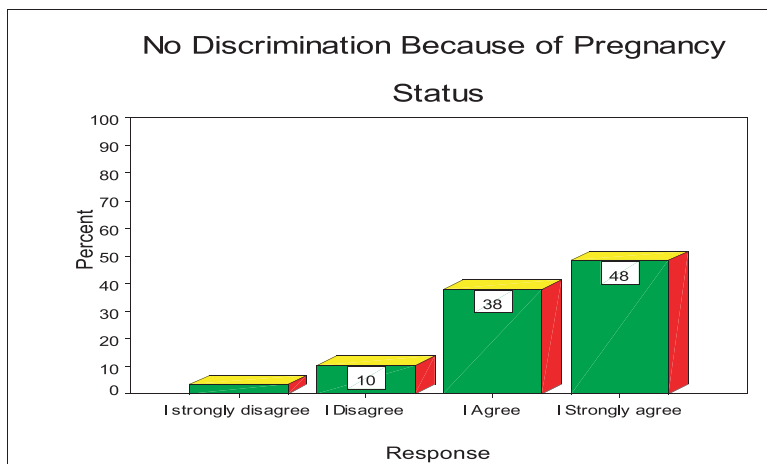
**Fig. 12 Access to Maternity Benefits**



Source: Research Data, 2011

*Workers reported maternity and paternity to be the most significant gains made through the new labour laws. Female employees reported the maternity leave period to be adequate for them to cater for their young babies.*

**Fig. 13 Clear policy on Maternity Benefits**

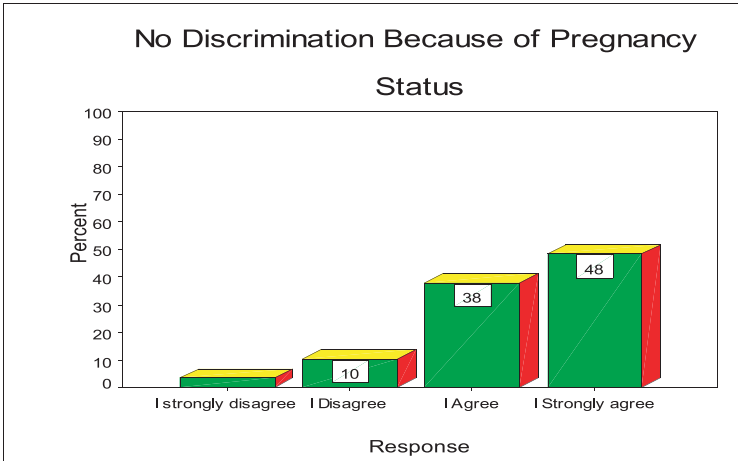


Source: Research Data, 2011

In spite of the improvement, challenges still remain. Some companies admittedly volunteered information on their preference to employ men for jobs that have been traditionally segregated for women; the 'silent reason' being that women are proving too expensive to employ. Some workplaces have moved from 70% women to 50% women and still going down. The state is obligated under

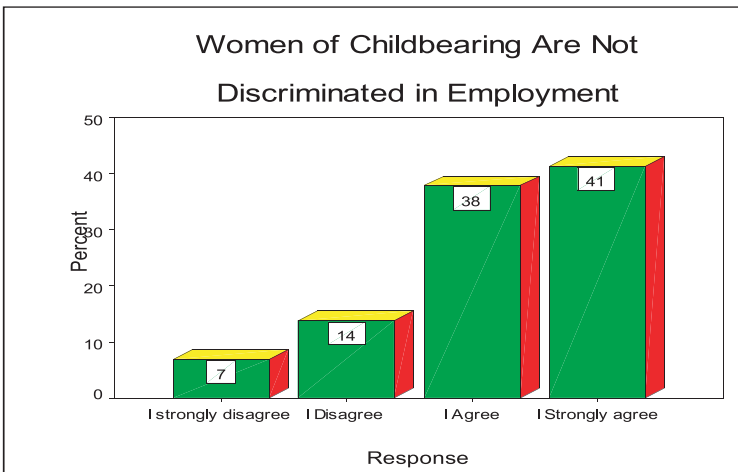
ILO convention 183 to put in place measures that ensure women do not get disadvantaged as a result of the increase in the maternity leave period. Most respondents were however still positive on the provisions on maternity leave with 79% reporting non-discrimination. Figures 14 and 15 below summarize.

**Fig. 14 Discrimination on Pregnancy**



Source: Research Data, 2011

**Fig. 15 Discrimination of Women in Employment**



Source: Research Data, 2011

Be that as it may, there are illegalities that were however found on the rights of workers to maternity and paternity benefits including:

- (i) *Pre-employment pregnancy testing*: urine tests were done and repeated every time workers had to renew their contracts: by two companies Van den Berg Roses and Plantation Plants.
- (ii) *Unpaid maternity leave*: this was seen in Aquila and Sunbird Farms.
- (iii) *Women to proceed on their annual leave*: this practice was seen in Fair-trade certified companies, where women proceed on their annual leave before their maternity leave at least two months before confinement and therefore limiting the post-delivery period to less than two months.

- (iv) *Production of official marriage certificates*: in the Carnation Plants and PJ Dave companies, they require men to produce official marriage certificates in order to proceed on maternity leave.<sup>37</sup>

This is a national concern. Further still, is the high number of children per mother especially in the low income bracket owing to lack of information on reproductive healthcare. The right to access healthcare including reproductive health services is recognised in the Constitution. Although some companies have onsite clinics providing limited family planning services based on hormonal methods, the study found work demands to be incompatible with access to reproductive and other promotional healthcare services for majority of the women workers.

The Ministry of Public Health, under which these services fall, reported access to the services as an important tool for women to make informed reproductive health choices. Most of the companies employ young adults between 20 and 25. These young adults need promotional health services including reproductive health education on an ongoing basis. The government facilities that operate these services open way after the workers have reported for work and close before they close their workstations. While general workers are allowed sick time to attend health facilities for curative care, there is no company that has a time off policy for preventive and promotional healthcare.

Some employers argued that workers can use their one day off per week to visit the health facilities. It is not obvious to workers that they need the services and therefore access must be based on promotional access rather than a laid back approach. Women are burdened by their reproductive roles that hours spent outside the workplace are spent in reproductive roles. This 'time poor' status of women necessitates a pro-active approach by all who bear responsibility and are in a position to influence improvement of such conditions. The Ministry of Public Health officials interviewed especially in Thika and Gatanga area reported to be in a position to take the full range of services to the workers; if and when the companies can facilitate access to workplaces.

*Good practices on maternity related aspects found in some companies include:*

- *Breastfeeding time for women;*
- *Light duties for nursing mothers; and,*
- *Pregnant and working mothers are not required to work overtime.*

Simbi, Shalimar, Redlands and Flamingo farms

#### 5.4 Childcare Services and Facilities

The study found that access to childcare facilities is not a legal requirement *per se*. But reading the Constitution progressively, one could find Article 53 quite general to provide for such. Express provisions on childcare facilities are provided for in the CEDAW. Progressively, Kenyan courts have directly applied CEDAW provisions as legal authority in a number of matrimonial property

<sup>37</sup> The general practice is for workers to fill pre-employment forms that have details of their spouse or to produce a letter from the local chief accompanied by a birth notification form.

cases to determine pertinent matters concerning women including forced marriages and property inheritance. While there was concern since Kenya was dualist in nature, the new Constitution is clear that all international law is deemed as part of the laws under the Constitution.

CEDAW devotes major attention to most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that “the role of women in procreation should not be a basis for discrimination”. The link between discrimination and women’s reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in Article 5, “a proper understanding of maternity as a social function”, demanding fully shared responsibility for child-rearing by both women and men.

Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health care or education. Society’s obligation extends to offering social services, especially child-care facilities that allow individuals to combine family responsibilities with work and participation in public life.

Special measures for maternity protection are recommended and “shall not be considered discriminatory” (Article 4). The Convention also affirms women’s right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. State parties are obliged to include advice on family planning in the education process [Article 1(h)] and to develop family codes that guarantee women’s rights “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights” [Article 16(e)].

Childcare services and childcare facilities are vital to the wellbeing of society as the manner and environment under which children are brought up has a bearing on the peace and stability of the country and its future economic outlook. This study dedicated 8 days, through participatory observation, to childcare facilities and services available to workers and their children between the ages 0+ to 3 years. The conditions under which the thousands of children are growing up are both shocking and repulsing.

Over 55% of women in the cut-flower sector are single mothers with average three children per woman. Majority of these workers have to leave their houses latest 6.00am to make their way to work between 7.00am and 7.30am; which is usually the reporting time in most workplaces. The women with young children both single and married alike have no supportive social infrastructure to care for these children. There is a proliferation of day care centres in the suburbs where workers live.

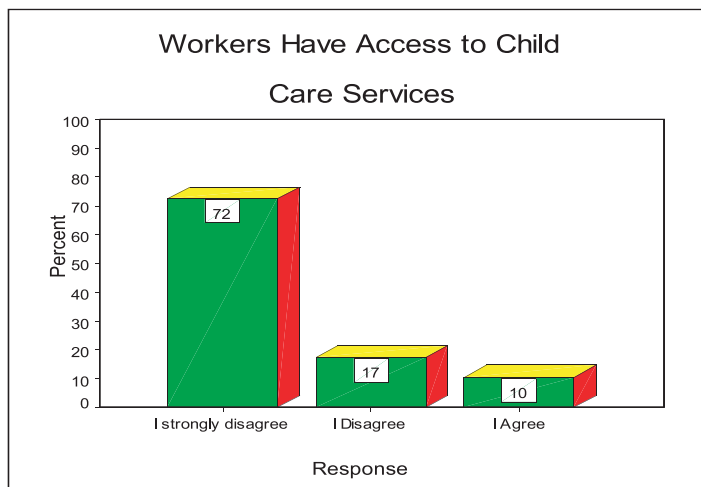
These ‘day-care’ centres are mainly single roomed 10 by 10 inches’ residences that are converted to be day-care facilities during the day. Women leave their children in these facilities and are required to leave food, including clothes for the children to change into during the day. The study found the facilities to

be unhygienic and unsuitable for human habitation let alone care centres for toddlers. Most of the toddlers are dropped with food which was found to go bad during the day as there are no facilities to preserve or warm it.

*One of the day care facilities visited in Thika area had 20 children of different ages cramped in a 10 by 10 inches' room with only one wet bed available for all the children. The centre had two care givers who forced children to remain seated on the cold cement floor for hours on end. The desperation on the toddlers faces is hard to capture in words and difficult to accept as a condition for any human being. One child was found to suffer a strange disease which was causing the digits in her limbs to fall off and was living in isolation from other children by demarcating a small area beyond which the toddler was not allowed to crawl. The research team was informed that the condition was genetic and the parents could not afford specialised care.*

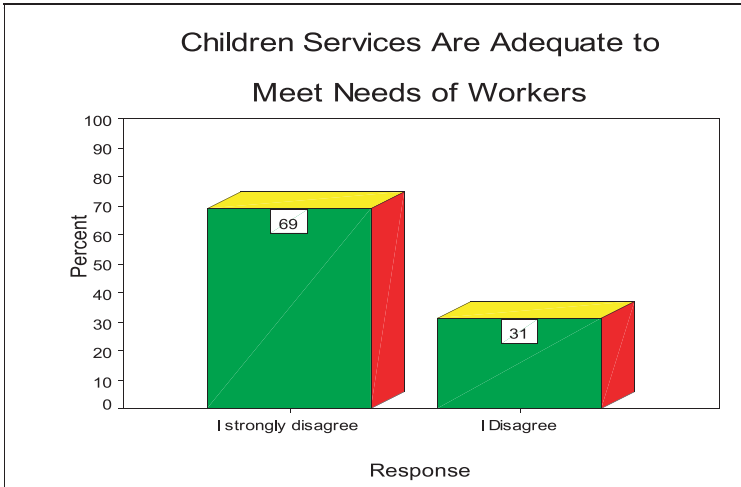
Research Data, 2011

**Fig. 16: Access to Childcare Services**



Source: Research Data, 2011

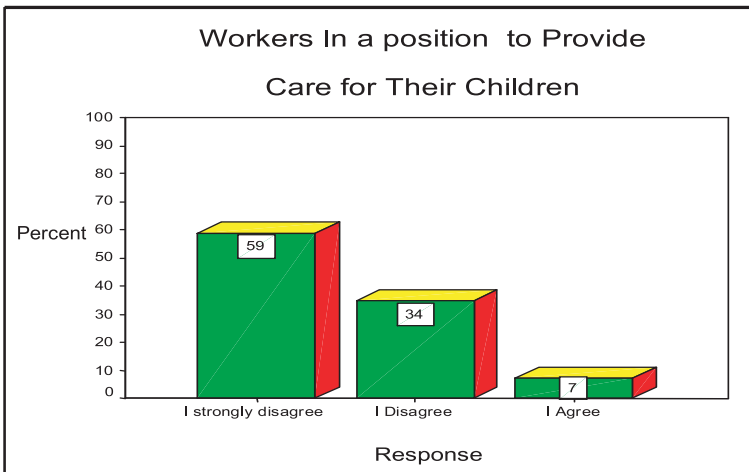
**Fig. 17: Childcare Adequate to meet Needs**



Source: Research Data, 2011

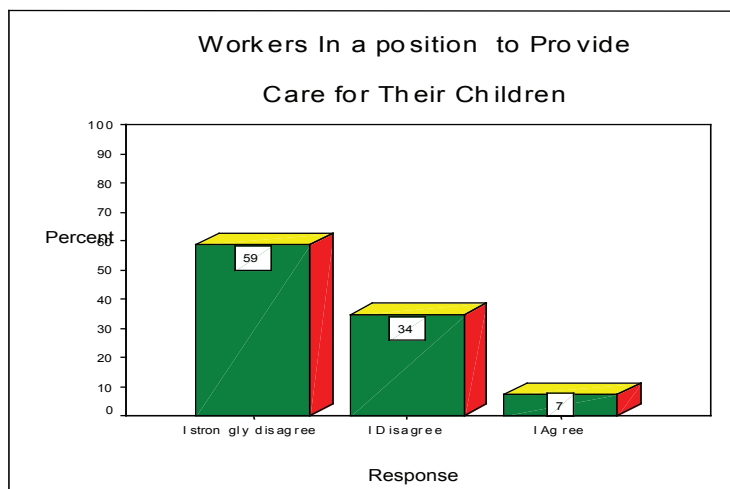
The day care facilities in Naivasha were found to have the worst conditions with reports of children dying from rickets by care givers, workers and the health facilities. Malnutrition and inability by some parents to provide food for the children were also reported with some of the care givers informing the study that it is not uncommon for women to leave their children without food in these facilities.

**Fig. 18: Child Abuse and Diseases**



Source: Research Data, 2011

**Fig. 19: Workers ability to Provide for Children**



Source: Research Data, 2011

The lack of policy and legal framework makes it impossible to regulate the operations of day care facilities and professionalise their operations. This has been blamed for the rampant cases of child abuse, deaths and spread of contaminable diseases. At best, it is the ugly manifestation of the poverty that afflicts the workers who drive our industries: Figures 16, 17, 18 & 19 show that this issue need to be addressed as workers, left alone, cannot address it.

The ability of workers to provide care for their children is severely limited. Access to childcare facilities is limited for 89% of respondents while 100% do not think facilities available are adequate to meet workers needs as seen in Figures 16 and 17 above. There is a direct relationship between the ability to provide childcare and the productivity of the workers where their children are not well provided for. According to Figure 18, 94% of respondents reported that children are vulnerable to diseases. These impacts on employee's attendance to work and quality of work. Under dismissals below, workers are absent in most cases to attend to sick children.

The day care centres charge an amount of Kshs. 40 per day for children below one year and Kshs. 30 per day for children between one and three years. This translates to Kshs. 1,040 for those children below one year and Kshs. 780 for children between one and three years. In addition, women are required to pay an amount of Kshs. 10 per hour in most care centres for time beyond 6.00p.m. When women work overtime, they have to pay extra for the care centres. This is a major reason for most women to demand payment of overtime in cash as it also costs them when they leave their children in the day-care centres.

Worse still, there is an endemic problem of refusal by men to participate in the upbringing of their children, which is partly rooted in culture. Male workers reported it to be taboo for them to care for their children as this is the sole responsibility of women. The many single women in the sector reported to have had their children fathered by fellow workers who abdicate their responsibilities. The Children's Act 2001 holds women responsible for



children born out of wedlock while men are only required to pay maintenance a process that requires costly judicial mechanisms out of reach for the class of women employed in the cut-flower sector. Due to the low levels of income, women reported that it is not uncommon for peer relationships which women use sex as a means of supplementing income. These relationships often result in unwanted pregnancies with the women carrying the burden of providing childcare services while men remain unaccountable for the same.

Most companies are sympathetic to the condition of their workers children but find it difficult to include childcare services and facilities as part of workplace policies. There are leading companies in these areas notable among them being Redland Roses and Shalimar Flowers found to be the only two companies in the sample population that had professional day care centre for their workers young children.

*Good Practice: Case Study at Redland Roses Limited*

*Red Lands Roses Limited operates a day care centre caters for 3 months to 3 years olds for their employees' children. According to Angela Ndegwa the Human Resource Manager, the centre opened door in 2006 to provide care for the employees' children in order to address challenge of absenteeism due to child care challenges. The centre hours of operation are synchronized with the working hours in the farm. This enables the employees to drop their children in the morning with the care giver, where they are cleaned, fed and participate in play activities with other children. Their food is prepared within the centre depending on varying ages and nutritional need. Their clothes are also laundered within the centre. The centre has a fully stocked clinic and a registered nurse who attends to the babies health needs and refers them to the company Doctor in Ruiru if need be. The centre also benefits from a visiting paediatrician who annually monitor the children's development and advice accordingly.*

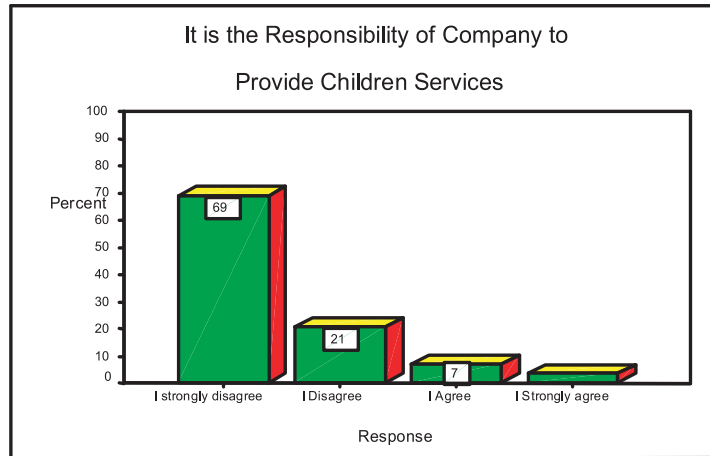
*The employees pay Kshs. 650 monthly contribution. The centre received a boost of 10, 000 € from one of the company clients which has been used to expand the facility. The company donates flowers free of charge to the day care centre which they sell at a shop in Muthaiga. The proceeds from these sales are used to run the day care facility.*

*The centre has contributed in reduction of cases of absenteeism by employees from work hence increased productivity and commitment to work, as the ladies are able to attend to their work well knowing that their babies are well taken care of. We however realize a gap once our children leave the Day Care centre, and in future the company would like to put up a Primary School in future to ensure continuity of the good standards of taking care of children through high standard education.*

Research Data, 2011

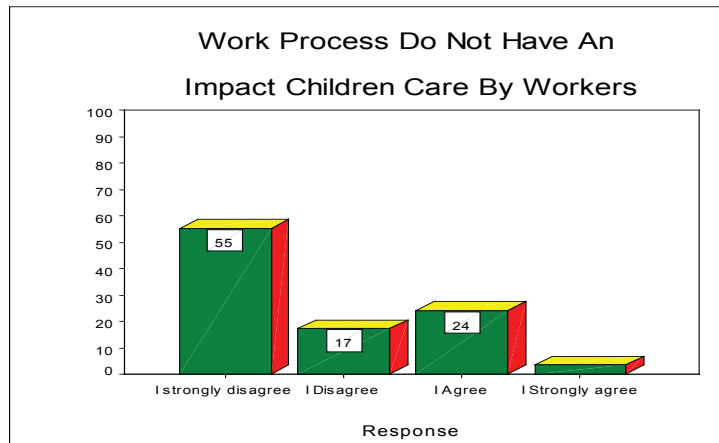
Although 80% of respondents did not consider it company responsibility to provide childcare services, (Figure 20 below), 72% considered work done to have an impact on the ability of workers to care for their children largely due to the long hours of work and lack of transport facilities, as seen in Figure. 21 below. Moreover, it is the lack of a living wage that has significantly contributed to the problem of day care experienced today.

**Fig. 20: Access to Childcare Services**



Source: Research Data, 2011

**Fig. 21: Work Process Impact on Children care by Workers**

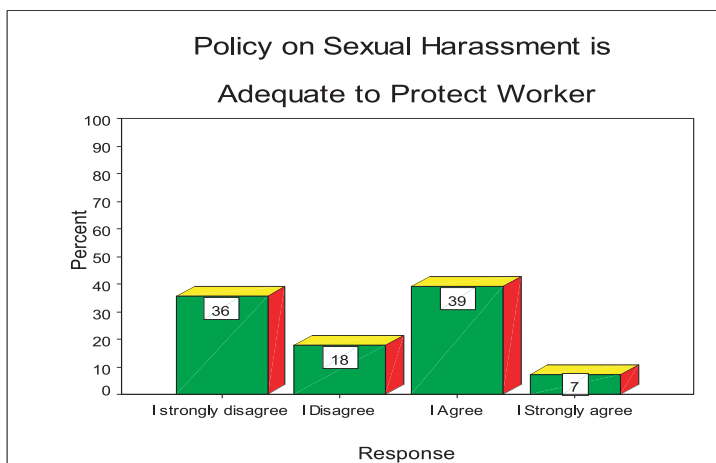


Source: Research Data, 2011

### 5.5 Sexual Harassment

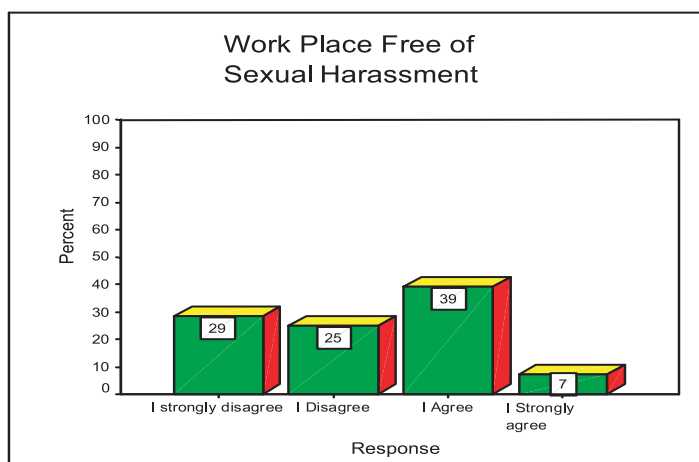
This study found that there is marked improvement on prevention of sexual harassment in workplaces with 46% of respondents reporting policies in place to be adequate to protect workers, as depicted in Figure 22 below. Workplaces have adopted sexual harassment policies to answer to the Employment Act with CSOs and development agencies supporting training programmes on sexual harassment notable among them being the ETI Supervisory Training. Standard bodies like KFC have also profiled sexual harassment by auditing and monitoring it, which has hence reduced incidences and forced companies to take action. The statistics resonate with the quantitative data results where workers in six of the companies visited expressed confidence in policies and measures to protect workers.

**Fig. 22: Policy on Sexual Harassment Adequate**



Source: Research Data, 2011

**Fig. 23: Workplace free of Sexual Harassment**

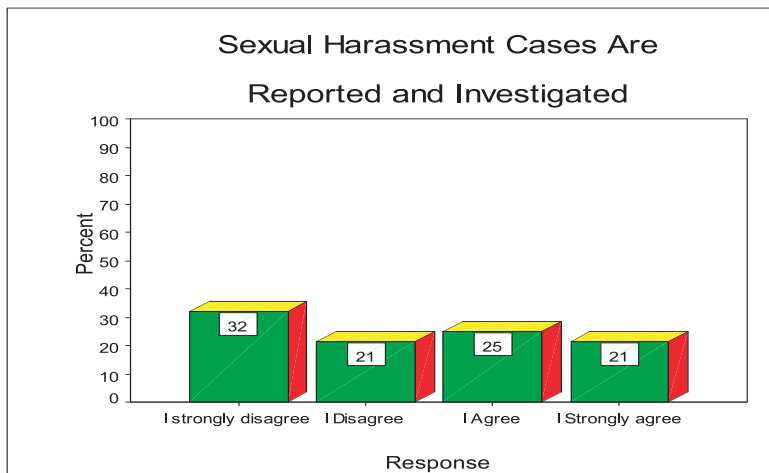


Source: Research Data, 2011

Management and workers in Redland Roses, Flamingo, Shalimar, Simbi, Harvest and Nini concurred that workplaces are free on sexual harassment. This is reflected in the quantitative data where 46% of respondents reported workplace to be free of sexual harassment, as shown in Figure 23 above. There is still a lot of work to be done with regard to workplace policies, training and sanctions.

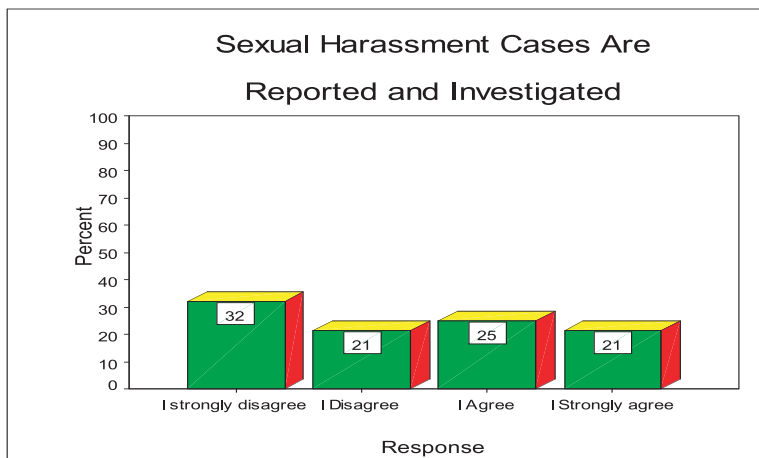
Sexual harassment is shrouded in secrecy but workers still indicate that some cases persist. For example Thika area reported the highest number of sexual harassment allegations. The unique set up of farms in Thika area where most companies are located deep in coffee plantations may be a contributing factor. In addition to sexual harassment, rape cases were also reported. With no transport and housing provided, workers have to seek accommodation in nearby suburbs and in the coffee plantations. The long distances that workers have to walk, make them vulnerable to sex predators. This environment was reported to provide opportunities for isolation of workers for purposes of sexual harassment.

**Fig. 24: Protection from Sexual Harassment**



Source: Research Data, 2011

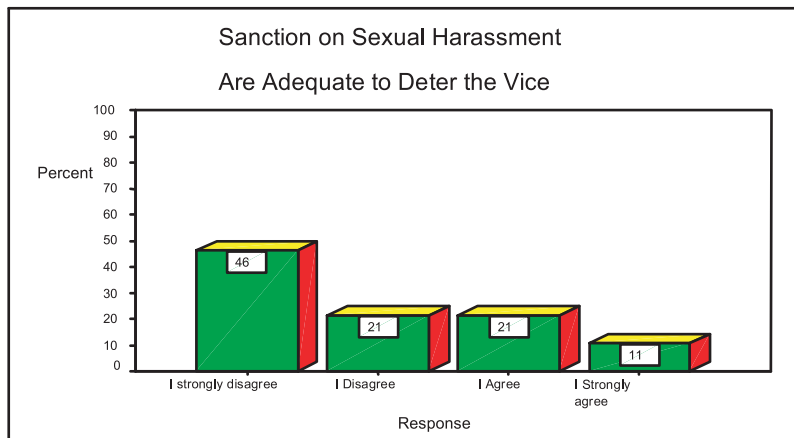
**Fig. 25: Investigation and Reporting of Harassment**



Source: Research Data, 2011

In most cases, the employment policies on sexual harassment were found to fall short in providing guidelines on investigation, level of evidence required and sanctions in case of violations, as depicted in Figure 26. Further, the women (sometimes referred to as 'gender') committees that deal with sexual harassment lack credibility in the eyes of male employees, whilst management in some companies claim that the committees are a tool for witch hunting.

**Fig. 26: Sanctions for Sexual Harassment**



Source: Research Data, 2011

The success of sexual harassment policies depend on level of training for workers and management, and the commitment to severely sanction or punish sexual harassment in the workplace. On the positive side, there is marked improvement on sexual harassment in over 50% of the farms sampled due to awareness raising and focus through codes of practice (Figures 22 and 23 above).

*Good Practice: Case Study at Finlays*

*Gender discrimination is endemic in many workplaces. However, as Finlays Horticulture's Corporate Affairs & Compliance Manager says, it's often a silent, subtle problem. Poorer and less educated women are often particularly vulnerable - they may know they are being harassed, but unaware of their rights and what the law says. And as cultural norms mean they may not be used to speaking up for themselves, this compounds their vulnerability. Finlays has in place gender committees which over the years has seen the improvement of female representation in supervisory roles from 10% of supervisors a few years back to a representation of 25% to date.*

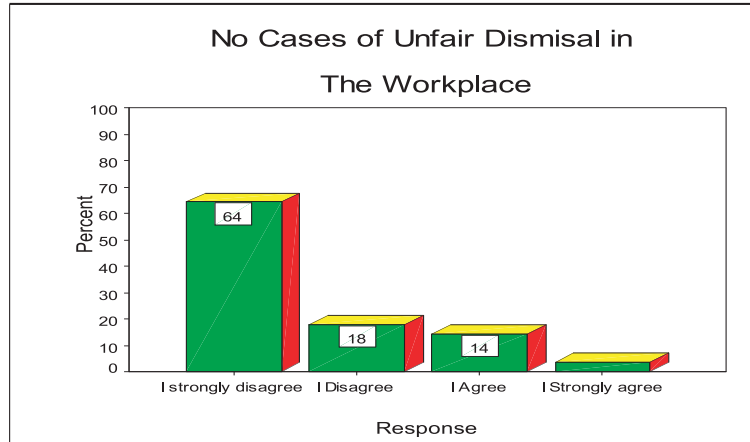
*Finlays Horticulture decided to undertake independent training of all their supervisors in discrimination and sexual harassment, using ETI's groundbreaking Supervisor Training Programme. The key aim was to change the attitude of supervisors towards women workers, and getting supervisors to understand the role of the gender committees, ETI has since trained 40 senior managers to become trainers themselves so they can roll out the programme to supervisors. To date the 40 managers who were trained as trainers have successfully carried out practice runs where they have cascaded this training to over 250 supervisors. Finlays Horticulture expects 400 supervisors to be trained by the end of the programme.*

Research Data, 2011

### 5.6 Termination and Dismissal

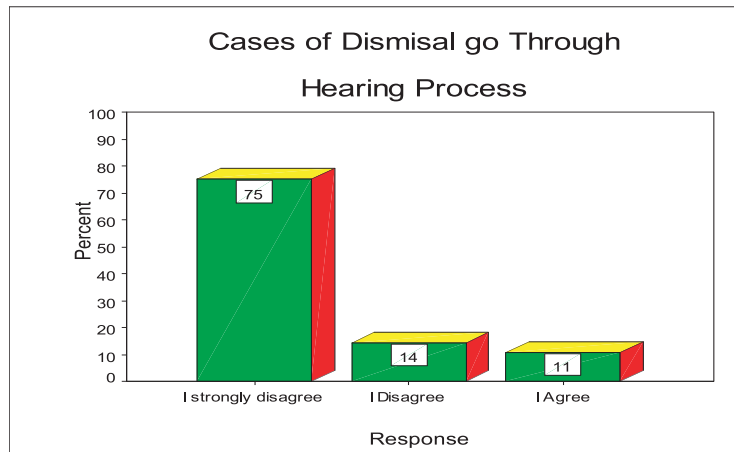
Termination and summary dismissal were found to be the most violated provisions in employment relations. 82% of respondents reported high cases of unfair dismissal while 89% of respondents reported workplaces not to have fair disciplinary hearing processes, as seen in Figures 27 and 28 below. Summary dismissal applies where the services of an employee are summarily terminated without notice or payment of benefits including gratuity which the employee would otherwise be entitled.

**Fig. 27: No unfair Dismissals**



Source: Research Data, 2011

**Fig. 28: Dismissals go through Hearing**



Source: Research Data, 2011

In the Employment Act, Section 44 deals with summary dismissal in cases of fundamental breach of contract arising from obligations under the contract. However, they were found to give employers unfettered powers while taking disciplinary action against their employees:

- (a) *Without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;*
- (b) *An employee wilfully neglects to perform any work which it was his*

*duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty under his contract, to have performed carefully and properly;*

- (c) *an employee uses abusive or insulting language, or behaves in a manner insulting to his employer or to a person placed in authority over him by his employer; and,*
- (d) *an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer.*

The high unemployment rate makes workers vulnerable to unfair disciplinary action as they are easily replaceable. In cases where workers serve for periods that require employers to pay them gratuity, the workers are put at risk as some companies avoid paying the gratuity by use of summary termination of employment. The study found numerable cases that resonate with the case of Beatrice included hereunder as a case study.

#### ***Case Study: Unfair Dismissal***

*Beatrice (name changed) is a single mother of two was employed in a leading farm supplying the Dutch market around Lake Naivasha. Beatrice received a phone call that her uncle working in the same area had been taken ill and rushed to hospital where he was admitted under critical condition. Beatrice left work at noon (during lunch break) after informing her supervisor that she was proceeding to visit her uncle in hospital where she was required to donate blood.*

*Beatrice arrived in the hospital and on her way back got delayed for close to two hours as she could not find a vehicle travelling to the farm in order to arrive before end of the work break. This cost Beatrice an hour of her employer's time. By the time Beatrice got back to the farm gate, it was already closed and she could not get in without management authorisation. Beatrice called her supervisor who she had informed of her predicament but the supervisor could hear none of it. An offence sheet was written giving her notice to show cause why disciplinary action should not be taken against her for absenteeism. Beatrice enumerated the reasons for her lateness in the offence sheet and requested management to take into consideration the fact that she had worked for over 6 years without a disciplinary infraction. In spite of this, her services were summarily terminated on ground of violating her obligations under section 44 (4) (a) of the Employment Act 2007.*

*As though that was not enough, she had to forfeit her earnings to the Savings and Credit Corporative Organisation as she was in debt. Beatrice lost her benefits of 30 days notice or pay in lieu and 22 days per completed year of service gratuity for the 6 years she had worked with the company. Due to high levels of unemployment, she could not find work and was forced to move her children back to Nyanza interrupting their schooling and now lives and works as a casual labourer on small scale farms.*

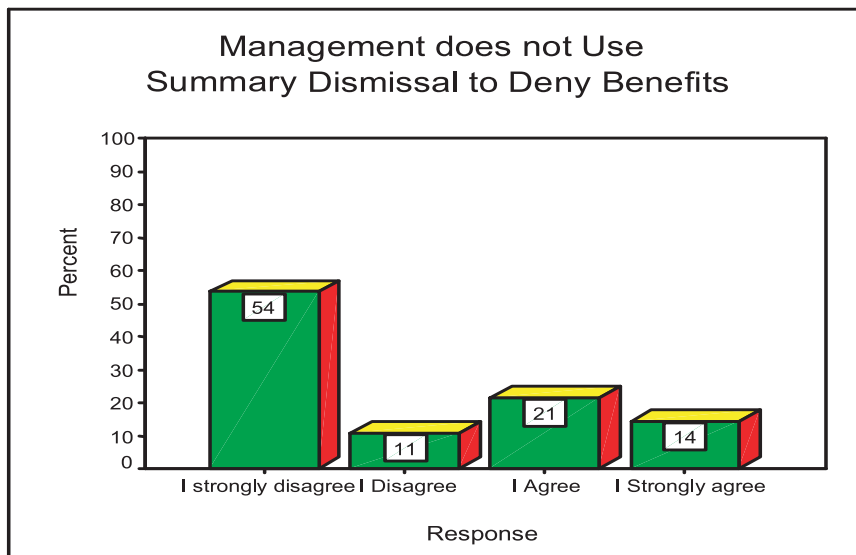
Research Data, 2011

Beatrice is not alone in this struggle. There are tens of workers interviewed in farms and offsite who reported to have lost their benefits in the same manner. The unfettered powers of employers to determine the destiny of their employees is an issue of concern.

*On Van den Berg farm, disciplinary action is taken against workers for going to the toilet on grounds that they are idling.*

The study proposes that the grounds for dismissal enumerated under section 44 (4) should define the threshold of evidence that needs to be reached. Reasons such as 'behaving in a manner insulting', 'carelessly and improperly performing work', 'fails to obey a lawful command' among others are matters of perception by an employer which an employee would not be privy to. The study found cases of dismissal on grounds such as 'failure to perform one's duties' without further explanations. There is need to invest time and training for both management and workers on disciplinary hearings and how to develop workplace disciplinary codes.

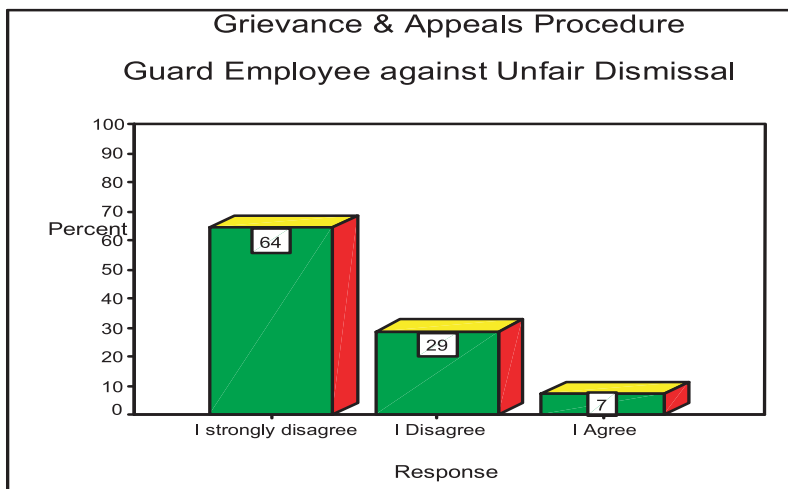
**Fig. 29: Summary Dismissal and Benefits**



Source: Research Data, 2011



**Fig. 30: Grievance and Appeals Procedure**



Source: Research Data, 2011

As seen in Figure 29 above, 65 % of respondents expressed opinion that dismissals are used to deny benefits while an overwhelming 93% reported grievance and appeals procedure not to work, as depicted in Figure 30. With the new Constitution and the Employment Act 2007, this is fertile ground for litigation and companies should for the sake of reducing bad business exposure, risks and costs associated with these suits, adopt measures that ensure fair disciplinary hearings. Training of disciplinary hearing committees and adoption of proper procedures must be done simultaneously.

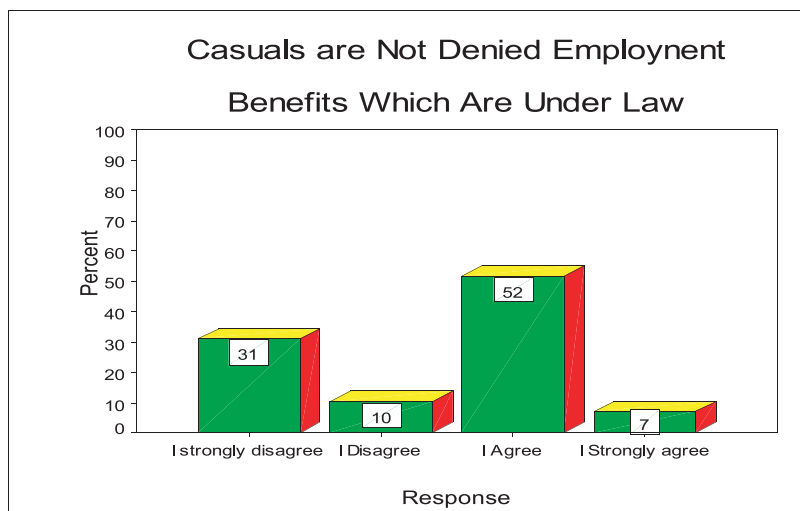
*“At Simbi Roses, the relationship between workers and management has improved significantly. This is attributable to the changes in disciplinary policy where workers are always given a fair hearing and are allowed representation by the shop stewards committee. The management is careful while evaluating disciplinary cases and always gives workers the benefit of doubt. This has increased workers freedom and positive attitude towards work. There retention level for workers is high and the staff morale is also high.”*

*Shop Steward – Simbi Roses.*

### 5.7 Casual Labour and Contracts

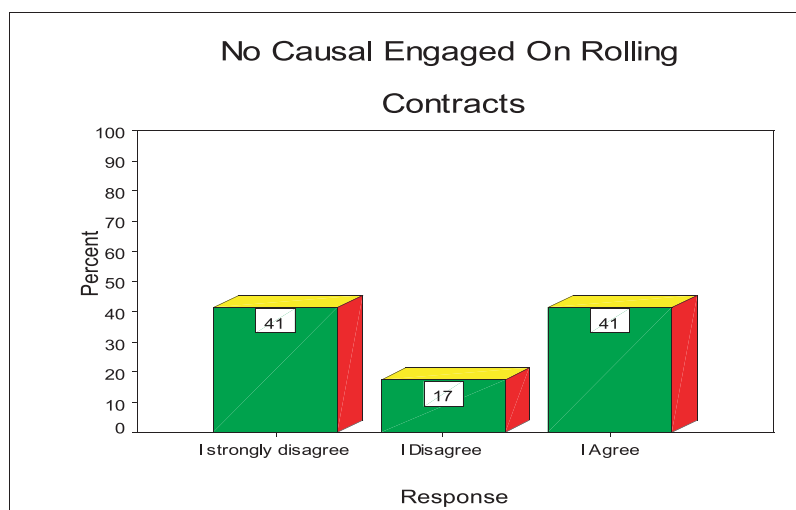
Employment of casual workers has improved with 59% of respondents stating that casuals are not denied benefits under the law, as shown in Figure 31. Similarly, 41 % of respondents also indicated that casual workers also transited to regular employment. The qualitative survey found workers in Harvest, Maridadi, Nini, Flamingo, Simbi, Van den Berg and Shalimar to employ workers as ‘short-term employees’ who automatically transit to permanent contracts. Workers at some companies were found to have worked for over three years as casuals but did not enjoy benefits such as leave. All workers at Sunbird had no contracts while PJ Dave did not issue long-serving monthly paid workers with payslips and did not pay them overtime.

**Fig. 31: Casuals and Benefits**



Source: Research Data, 2011

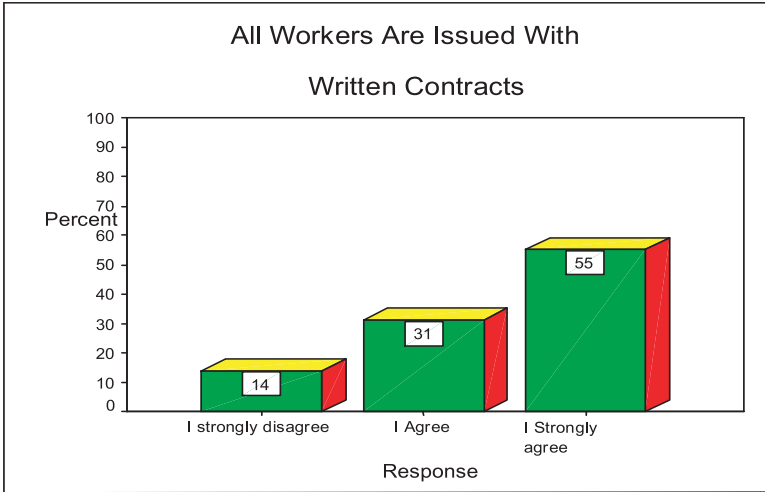
**Fig. 32: Rolling Contracts**



Source: Research Data, 2011

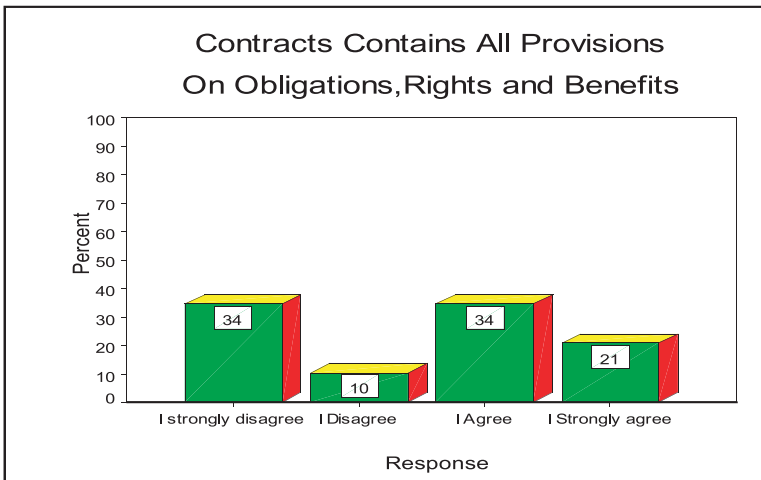
On the other hand however, temporary, seasonal and permanent workers were issued with contracts with 86% of respondents indicating this significant improvement, as depicted in Figure 33. In some cases however, the contracts do not contain all detailed rights and obligations of workers with the biggest challenge being contracts not being updated with reviews in terms of employment as Figure 34 shows.

**Fig. 33: Written Contracts for Workers**



Source: Research Data, 2011

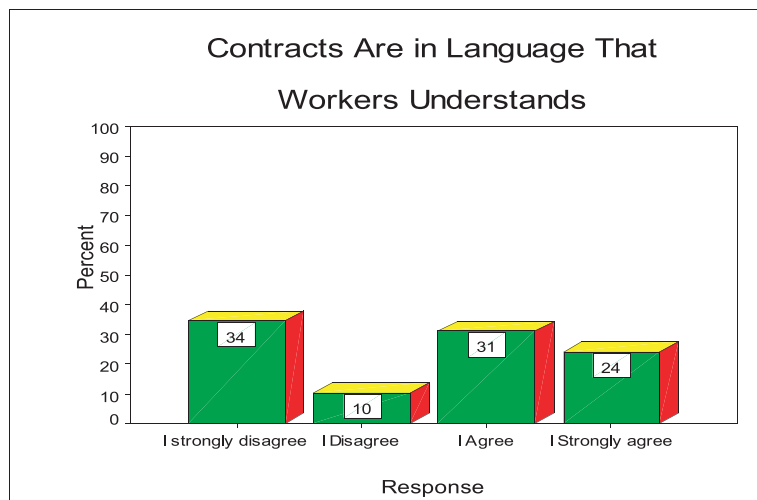
**Fig. 34: Comprehensive Contracts**



Source: Research Data, 2011

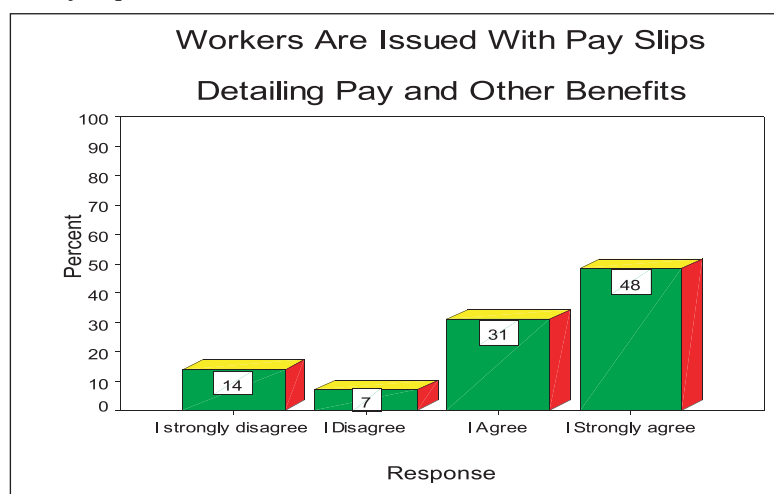
*At Carnation Plants, all workers are issued with one-year contracts with conditions benchmarked to the KPAWU/AEA FGG collective bargaining agreement. These workers are paid all dues including service for the one year served. The workers renew their contract annually. Although this is not a best practice as there is no guarantee of employment, the intention is not to deny the workers benefits and therefore presents opportunities of engagement with the Companies. There is need to support companies and management in labour planning to achieve the desired improvement for workers.*

**Fig. 35: Workers understand Contracts**



Source: Research Data, 2011

**Fig. 36: Pay-slips are Issued**



Source: Research Data, 2011

On understanding of contracts, 44% of respondents did not understand their contracts, as shown above in Figure 35. This can be attributed to the high levels of illiteracy among cut-flower workers. Independent representation is therefore necessary for workers to understand the terms of their contract to increase compliance. On a positive note also, 79% of respondents stated that they were issued with payslips detailing their pay and benefits.

### 5.8 Additional Findings – Health, Safety and Well-being

In agreeing on the purpose of the study and the six key areas that the study was to look at, health and safety did not come up as a critical area as significant improvement has been recorded in the Sector. However, in the course of the study, the team found specific serious health and safety violations which

necessitated the inclusion of the issue area in the report under additional findings. The issue areas under health, safety and well-being include:

- (i) Spraying of agrochemicals in greenhouses while workers were working inside, and therefore, not observing re-entry practice: this was reported in Enkasiti farm and Plantation plants.
- (ii) Workers are given breaks of 30 minutes per day with long-working hours, sometimes between 7.00am and 10.00pm. This was indicated by workers of Aquila and Plantation Plant farms. No rest days were allowed during this ‘busy’ period.
- (iii) Workers of Enkasiti are forced to share houses which are small rooms of 8 by 8 inches with no house allowance being paid for those workers who opt to live off the farm. The houses are close to greenhouses (less than 5metres) and spraying, burning of sulphur at night occurs when workers are in their homes. Enkasiti must immediately cease this practice and address these slavery-style violations by opening up for independent verification.
- (iv) Fumigation of cold stores while workers were working inside with the fumes finding their way to the grading hall area at Shalimar Farm was reported.
- (v) Cases of oedema reported by women in pack-houses as a result of standing for long work hours without work breaks.
- (vi) Extreme temperatures (cold in the grading and heat in the greenhouses) during the peak days (such as St. Valentine’s Day) without work breaks.

## 6.0 Conclusions & Recommendations

	Issue Area	Key Findings	Key drivers	Recommendations
1.	The failure by the labour Ministry to monitor and enforce labour rights compliance	<ul style="list-style-type: none"> <li>42% human resource capacity</li> <li>Obsolete equipments like computers and lack of transport means.</li> <li>No employment policies</li> <li>No wages council for floriculture</li> <li>Limited budgetary allocation to the Ministry.</li> <li>No participation by civil society organisations as stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>Limited budgetary allocation by government to labour.</li> <li>Lack of goodwill in government to support labour matters.</li> <li>Weak governance may be used to attract investment.</li> <li>Ageing workforce</li> </ul>	<ul style="list-style-type: none"> <li>Lobby activities to influence the budget making process and increase MOL allocations in order for Ministry to increase staffing, training of staff and logistics.</li> <li>Evaluating annual MOL reports.</li> <li>KHRC should be more actively engaged in tripartite plus relationship at MOL.</li> <li>Minimum export criteria to include labour rights compliance.</li> <li>Separate wages order is needed for cut-flower workers.</li> </ul>
2.	Poor governance and abdication of representation responsibilities by the KPAWU.	<ul style="list-style-type: none"> <li>Limited human resource capacity</li> <li>Undemocratic and poor governance structures.</li> <li>Limited resources at branch level.</li> <li>No training for shop floor committees and branch officials</li> <li>Demoralised workforce in the union.</li> <li>Lack of accountability on resources utilisation.</li> <li>Collection of dues from workers through illegal means.</li> </ul>	<ul style="list-style-type: none"> <li>Union is a tripartite partner and is there for in a position to influence new laws to suit its purpose.</li> <li>No demand for accountability is made on the union.</li> <li>Employers fear to antagonise union as speaking out may lead to industrial action.</li> <li>Failure to engage civil society organisations.</li> <li>Registrar of Trade Unions allows practice to continue unabated.</li> </ul>	<ul style="list-style-type: none"> <li>Demanding accountability from the labour union including registration of independent Union for cut-flower workers.</li> <li>Relationship building activities between civil society and the union.</li> <li>Improve worker participation in the union.</li> <li>There is need for change in policy and the law relating to payment of agency fees and payment of dues directly to COTU by workers. KHRC needs to refer this matter to court for interpretation.</li> </ul>
3.	The employer organisations have not managed to bring on board the large number of SMAEs in the sector.	<ul style="list-style-type: none"> <li>Self regulation and policing was found to be weak.</li> <li>Large number of companies who do not subscribe to the sector agreement.</li> <li>Employer organisations are perceived as rights defenders and not promoters.</li> </ul>	<ul style="list-style-type: none"> <li>There is weak regulation which creates a weak environment for compliance.</li> <li>No sanctions for non-compliance.</li> </ul>	<ul style="list-style-type: none"> <li>Lobby to Gazette Sector CBA to be applicable to all companies once signed.</li> <li>Minimum criteria applicable to all companies.</li> <li>Use of multi-stakeholder initiatives.</li> </ul>
4.	National certification standard organisations	<ul style="list-style-type: none"> <li>KFC is the main local standard</li> <li>Limited worker involvement in development and review of the code.</li> <li>Limited knowledge by employees on the provisions of the code.</li> </ul>	<ul style="list-style-type: none"> <li>Limited worker knowledge and participation.</li> <li>Limited involvement of local civil society organisations.</li> <li>Members fail to sign CBA.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthen monitoring through worker participation.</li> <li>Use of shadow reports.</li> <li>All members sign CBA.</li> <li>Participation of local CSOs.</li> </ul>

	Issue Area	Key Findings	Key drivers	Recommendations
5.	International certification standard and audit bodies	<ul style="list-style-type: none"> <li>Limited worker knowledge and involvement.</li> <li>Weak auditing/monitoring structures including number of days and auditor qualifications.</li> <li>Lack of grievance mechanisms for workers.</li> <li>Limited understanding of local laws, culture and practices.</li> </ul>	<ul style="list-style-type: none"> <li>Private standards are business driven.</li> <li>Certification organisations are foreign and lack local knowledge.</li> <li>Audits are short and often far removed to capture day to day realities.</li> <li>Disinterest by the union to use audits as a tool for bargaining and monitoring.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthen monitoring through worker participation.</li> <li>Strengthen codes through companies signing social contracts and reporting on implementation progress.</li> <li>Shadow reports to be used in certification.</li> <li>Participation of multi-stakeholders in evaluation.</li> </ul>
6.	Company policies that are not developed in consultation with workers, not communicated and not regularly reviewed.	<ul style="list-style-type: none"> <li>Policies are written by HR while other operational managers do not see the need for the policies.</li> <li>Failure to allocate time for policy training and communication.</li> <li>No demands made for employers to develop policies in consultation with workers.</li> </ul>	<ul style="list-style-type: none"> <li>Policies are developed to satisfy compliance requirements.</li> <li>Most workers are illiterate and therefore unable to read the policies.</li> <li>Workers are 'time poor' and therefore cannot read notice boards.</li> </ul>	<ul style="list-style-type: none"> <li>Training and consultation of workers in policy development and review.</li> <li>Continuous monitoring and review.</li> <li>Rights based training and capacity building of workers.</li> </ul>
7.	Limited engagement by civil society organisations in the labour movement.	<ul style="list-style-type: none"> <li>Important CSOs in labour have wound up under unclear circumstances.</li> <li>Individuals in the civil society movement have been accused of poor practices.</li> <li>Collapse of HEBI multi-stakeholder initiative which brought together civil society and employers round the table.</li> <li>Perception by companies that civil society organisations are trouble makers and not important stakeholders.</li> <li>Refusal by union to engage with civil society organisations.</li> </ul>	<ul style="list-style-type: none"> <li>Limited resources available to the labour movement.</li> <li>Suspicion in the relationship between the union and civil society.</li> <li>Individuals seeking to benefit from the workers misfortunes.</li> <li>Lack of accurate information on the conditions in industry.</li> </ul>	<ul style="list-style-type: none"> <li>Build strong CSO labour network</li> <li>Self regulation in CSO movement.</li> <li>Use of multi-stakeholder initiatives.</li> </ul>
8.	Equal pay for equal work	<ul style="list-style-type: none"> <li>Women and men doing the same job earn equally</li> <li>The pay in the sector is too low to provide a living.</li> <li>Seasonal workers in some companies earn less than permanent employees doing same work.</li> <li>Limited worker participation in collective agreement negotiations.</li> </ul>	<ul style="list-style-type: none"> <li>Lower cadre jobs are poorly compensated as a practice.</li> <li>Lack of an income and wage policy.</li> <li>Very low government minimum wage.</li> <li>Use of rolling term and seasonal contacts.</li> <li>Long hours of work.</li> </ul>	<ul style="list-style-type: none"> <li>Independent organisation and capacity building of workers.</li> <li>Strengthen workplace policies.</li> <li>Independent monitoring of conditions.</li> <li>Sharing learning on good practices.</li> <li>Use of shop floor union committees to negotiate and</li> </ul>

		<ul style="list-style-type: none"> <li>• Unpaid overtime and use of bonus schemes that are below overtime entitlement.</li> <li>• Women have fewer skills and promotion opportunities are limited.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of a national housing policy.</li> <li>• Employees are unaware of their rights under the law.</li> </ul>	<ul style="list-style-type: none"> <li>• monitor conditions.</li> <li>• Use of operational level grievance mechanisms.</li> </ul>
9.	Maternity and paternity leave	<ul style="list-style-type: none"> <li>• All companies have implemented policy for permanent workers.</li> <li>• Seasonal workers in some companies are not entitled to paid maternity leave.</li> <li>• Decrease in employment opportunities for women as a result of longer maternity leave period.</li> <li>• Some male workers are not entitled to paternity leave.</li> <li>• Discrimination of pregnant women in employment</li> </ul>	<ul style="list-style-type: none"> <li>• High cost of implementing maternity leave clause for companies.</li> <li>• Pregnancy screening when issuing contracts.</li> <li>• High maternity leave cases among women.</li> <li>• Inaccessible reproductive health services for workers.</li> </ul>	<ul style="list-style-type: none"> <li>• Independent organisation and capacity building of workers.</li> <li>• Strengthen workplace policies.</li> <li>• Independent monitoring of conditions.</li> <li>• Sharing learning on good practices.</li> <li>• Use of shop floor union committees to negotiate and monitor conditions.</li> <li>• Use of operational level grievance mechanisms.</li> </ul>
10	Childcare services and facilities	<ul style="list-style-type: none"> <li>• No child care social infrastructure.</li> <li>• Informal day cares in cramped rooms.</li> <li>• Spread of communicable diseases.</li> <li>• Limited time for women to care for children.</li> <li>• Men do not care for their children.</li> <li>• Cases of child abuse.</li> <li>• Malnutrition and death due to avoidable diseases.</li> </ul>	<ul style="list-style-type: none"> <li>• No government policy on childcare.</li> <li>• Low income and long hours of work</li> <li>• Culture of men abandoning their children and not participating in childcare.</li> <li>• High levels of rural to urban migration.</li> <li>• High incidences of single parenting.</li> </ul>	<ul style="list-style-type: none"> <li>• Initiate dialogue at local and national level on childcare policy.</li> <li>• Co-investment with government in childcare facilities.</li> <li>• Bring municipal authorities on board.</li> <li>• Promote access to reproductive health services.</li> </ul>
11.	Sexual harassment	<ul style="list-style-type: none"> <li>• Policies of sexual harassment have been developed.</li> <li>• Policies are not clearly communicated.</li> <li>• Majority of men are in leadership.</li> <li>• Some cases of sexual harassment reported.</li> <li>• Reducing confidence in women committees.</li> </ul>	<ul style="list-style-type: none"> <li>• Culture of not talking about sex even when one is abused.</li> <li>• High levels of unemployment make women susceptible.</li> <li>• Spread the model to other sectors like coffee where advocacy has been limited.</li> <li>• Lack of tools to investigate.</li> </ul>	<ul style="list-style-type: none"> <li>• Use of gender committees tied to the union committees.</li> <li>• Effective operational level grievance mechanisms.</li> <li>• Capacity building of workers.</li> <li>• Clear sanctions for offenders.</li> </ul>
12.	Termination and Dismissal	<ul style="list-style-type: none"> <li>• High handed cases of disciplinary action.</li> <li>• Powerless workplace committees to deal with disciplinary hearings.</li> <li>• No training for disciplinary committees.</li> <li>• Lack of clear disciplinary codes and job descriptions.</li> <li>• Use of disciplinary action to intimidate workers.</li> </ul>	<ul style="list-style-type: none"> <li>• High unemployment levels.</li> <li>• Ambiguity in law on offences that lead to dismissal.</li> <li>• Avoidance of obligations to pay notice and gratuity.</li> <li>• Untrained supervisors and technical management team take disciplinary action.</li> <li>• Workers are illiterate</li> </ul>	<ul style="list-style-type: none"> <li>• Use of clear disciplinary code.</li> <li>• Disciplinary hearing committees in the workplace.</li> <li>• Strengthen independent shop floor committees.</li> <li>• Capacity building of workers.</li> <li>• Include in CBA clarity on offences severity.</li> </ul>



			and cannot adequately express themselves in hearings.	
13.	Casual Labour and contracts	<ul style="list-style-type: none"> <li>Increased workers under contact.</li> <li>Casual workers are paid rest days and other benefits hence more tendency is to employ term workers.</li> <li>Rolling term and seasonal contacts.</li> </ul>	<ul style="list-style-type: none"> <li>Certification and new laws require have influenced positive trend in contracts.</li> <li>Avoidance of obligations by using short term contracts.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthen independent shop floor committees.</li> <li>Capacity building of workers.</li> <li>Continuous monitoring.</li> </ul>
14.	Health, safety and wellbeing.	<ul style="list-style-type: none"> <li>Not observing re-entry hours and spraying when workers are in greenhouses.</li> <li>Workers standing for long hours.</li> <li>Extreme temperatures in greenhouses when preparing for valentine.</li> <li>Workers not allowed work breaks.</li> <li>Poor housing close to greenhouses on farm.</li> </ul>	<ul style="list-style-type: none"> <li>Production pressure to meet tight deadlines.</li> <li>Avoidance of obligations to pay house allowance for workers.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthen independent shop floor committees.</li> <li>Capacity building of workers.</li> <li>Continuous monitoring.</li> <li>Enforcement of regulations by DOHSS and other government arms.</li> </ul>

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