

**Baseline Study & Readiness Assessment for Mainstreaming of Results Based Social Certification Systems in the Horticulture Sector in Kenya**

**Advancing Labour Rights through Results Based Social Certification System**

**Final Report**

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## **Abbreviations and Acronyms**

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AEA	Agricultural Employers Association
AWCFS	African Woman and Child Feature Service
BSCI	Business Social Compliance Initiative
BSR	Business Social Responsibility
CAJ	Commission on Administrative Justice
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COTU	Central Organization of Trade Unions
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disability
CSO	Civil Society Organisations
EU	European Union
FFFP	Fair Flowers Fair Plants
FLP	Flower Label Programme
FPEAK	Fresh Produce Exporters Association of Kenya
HEBI	Horticulture Ethical Business Initiative
ICC	International Code of Conduct
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisations
IUF	International Union of Food Workers
KEBS	Kenya Bureau of Standards
KEFHAWU	Kenya Export Floriculture, Horticulture and Allied Workers Union

KFC	Kenya Flower Council
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KPAWU	Kenya Plantations and Agricultural Workers Union
NGEC	National Gender and Equality Commission
NGO	Non Governmental Organisation
NOPE	National Organization of Peer Educators
OECD	Organization for Economic Co-operation and Development
RBSC	Results Based Social Certification
SAI	Social Accountability International
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
WIBA	Work Injury Benefits Act
WRW	Workers Rights Watch

## **Chapter 1 Introduction**

### **A. Background**

Horticulture industry is one of the leading foreign exchange earners in Kenya generating an estimated Kenya shillings 70 billion annually. The floriculture sub sector accounts for more than two thirds of Kenya's horticulture export earnings. United Kingdom and the European Union are the main export markets of Kenya's horticulture produce. 60% of Kenya's fresh produce is sold to the UK while in the EU Kenya's market share for rose cut flowers is estimated at 38%. Approximately 50% of exported flowers are sold through the Dutch Auctions while the rest are sold to retailers. Export horticulture is an important source of income for the poor in the peri-urban and rural areas either through smallholder out grower schemes or through employment on commercial farms.<sup>i</sup>

The sector employs about 6 million people directly and indirectly with thousands of labourers and small scale farmers depending on the sector for their livelihoods. The sector's workforce comprises mainly of small scale farmers, rural and urban labourers working in large farms and pack houses, and urban factory workers. The work force largely comprises of unskilled or semi-skilled labourers majority of who are women employed on casual or seasonal basis with a few on permanent terms. Horticultural main production areas include Naivasha and its environs, Mt. Kenya region, Nairobi, Thika, Kiambu, and Athi River.

The sector has grown rapidly over the last three decades but the growth has come at a cost to labour and environmental standards. Weak regulatory framework for enforcing labour and environmental standards in many developing countries spurred the adoption of voluntary certification standards to complement national law or fill in gaps where none existed.<sup>ii</sup> The introduction of voluntary social standards and certification schemes in Kenya over two decades ago has not adequately delivered improved working conditions for workers, environmental sustainability and enhanced benefits for communities. Extremely low wages, gender based discrimination, lack of freedom of association, lack of access to regular employment still prevail in many horticulture farms in Kenya.<sup>iii</sup>

The fundamental problem facing certification schemes lies in their design and focus. Firstly, the audit methodologies are inadequate as they do not clearly demonstrate the situation before and after the audit. Equally, they do not seek to establish root causes of workers' rights violation. Secondly, certification focuses on lower level results (inputs

and activities). They fail to define, monitor and evaluate performance against higher level results (outcomes and impacts). As such they encourage mechanical compliance based on ticking boxes rather than a continuous process of self-evaluation on impact by all stakeholders. The lack of baseline data and clear targets against which standards and certification are based has made it almost impossible to assess the impact of certification standards

Thirdly, existing standards lack accountability to ultimate beneficiaries that is workers and communities. The standards are only 'accountable' to consumer response in key export markets; they lack government backing or recognition and therefore lack effective regulatory and enforcement mechanisms. Local producers embrace the standards in their quest to secure a guaranteed export market rather than to promote and uphold human rights standards. Lastly, the ultimate beneficiaries of standards play a peripheral role in the design, monitoring and enforcement of standards. As such standards lack local ownership and champions to ensure participatory monitoring and evaluation. Their effectiveness is further undermined by the weak trade union movement in the sector, commercialization by certification organizations and multiple and overlapping standards and certification systems.

## **B. Objectives of the study**

The baseline study sought to assess the utility of the existing social certification systems in the horticulture sector and the actual results delivered to workers. It specifically sought to:

- i. Interrogate the **actual** impact of the current social certification schemes on workers, communities and certified companies
- ii. Explore the extent to which horticulture companies and certification bodies are prepared and willing to engage in the proposed Results Based Social Certification project and the feasibility of the uptake and adoption of RBSC systems by the sector.
- iii. Establish relevant areas of capacity strengthening for workers, trade union representatives (specifically shop stewards and branch officials), managers, independent evaluators and certification bodies towards effective implementation of results based social certification systems in the sector.

### **C. Research Questions**

1. What has been the impact of certification schemes to workers, communities and companies since their introduction in Kenya?
2. What are the key gaps in the implementation of current audit and certification of horticulture companies in Kenya?
3. Who are the potential stakeholders for implementation of results based certification scheme and what is their role?
4. What are the technical and operational capacity gaps of the potential stakeholders?

### **D. Assumptions**

The study is premised on the following assumptions:

1. Workers and communities have played a peripheral role in the audit and certification of horticulture farms. This is because they are not adequately informed about the aim and objectives of certification schemes, the audit methodologies involved and their role in the process.
2. While certification process may have secured a guaranteed access to markets for companies, workers and communities are yet to feel any meaningful and sustainable impact on their lives and livelihoods.
3. The potential stakeholders for implementation of the result based social certification scheme lack adequate skills in participatory monitoring and evaluation. These stakeholders include workers, trade union representatives, workers welfare committee members, standard owners, auditors, and employers' associations.

## Chapter 2 Literature review

### A. Impact of certification standards

Several studies have critiqued the audit and certification schemes of various social certification standards and questioned the impact of these standards on small holder farmers, workers and communities. Barriento and Smith argued that standards are weak in addressing specific issues such as workers right to organize and gender issues<sup>iv</sup> while Riisgard noted that certification standards in Kenya and other countries are limited to export industries leaving producers who supply for domestic consumption untouched.<sup>v</sup> In one of the earliest impact assessment study conducted in Kenya in the year 2004, Smith *et al* found that very few workers in their study had any knowledge of codes despite the fact that some companies had been implementing them for several years. This lack of understanding constrained deeper and more long lasting improvement in workers' rights.<sup>vi</sup> Two years later in 2006 Omosa, Kimani and Njiru undertook a study on social impacts of voluntary codes and found discernible differences between code adopting farms and non-code adopting farms in the flower sector.<sup>vii</sup> In code adopting farms, majority of workers were employed on permanent terms, and enjoyed better terms and conditions compared to workers in non-code adopting farms suggesting that voluntary codes led to some companies improving their operations and terms and conditions for workers. However in some areas such as unionization there were no discernible differences.

### B. Role of stakeholders in the certification process

Barrientos and Smith, and Dolan & Opondo (2005) have faulted auditing and certification process for not only adopting compliance based approaches but also failing to ensure adequate participation of workers and other stakeholders.<sup>viii</sup> They noted that auditors tend to rely heavily on information from management without considering information from the workers or the organizations that represent them. According to Riisgaard, many voluntary standards have been developed by standards owners who are based in the North, they lack local ownership by producers, workers and other stakeholders and are therefore ill equipped to address contextual domestic issues.<sup>ix</sup> This led to the development of local certification schemes such as the Kenya Flower Council (KFC) certification standards which was simply a move towards alignment with international standards and audit procedure rather than a process towards local empowerment and responding to contextual issues. The local standards are also



compliance based standards as opposed to providing a means for enhancing the process through which workers claim their rights. Additionally Riisgaard also notes that certification standards have not been fully embraced by all key stakeholders especially labour unions. This undermines their effectiveness since unions can be key partners in the audit and certification process by providing shadow reports and taking part in shadow visits during audits.

Further, actual implementation and monitoring of standards is problematic due to lack of transparency and impartiality of the monitoring body. Information about codes is generally not available to workers and consumers while some labour codes have often been introduced in companies without the prior knowledge or consent of the workers for whom they are intended to benefit.<sup>x</sup> Also since large auditing and consultancy firms usually carry out the monitoring of company codes with little transparency or public participation, whether the codes are actually being implemented or not remain a closely guarded secret. Besides, audit fatigue by companies undergoing multiple audits and audit fraud are major problems.<sup>xi</sup> Auditing firms may not reveal damaging information since they get paid by the company being audited. Lastly, beyond their technical qualifications, auditors may lack necessary social and human rights qualifications to conduct social audits.

Some authors have argued that mere involvement of other stakeholders such as non-governmental organisations (NGO), workers, unions and governments in standard setting or monitoring may enhance but does not guarantee credibility and authenticity of such standard due to power dynamics and ability of different stakeholder to shape the agenda and mode of engagement.<sup>xii</sup> Multi-stakeholder led standards such as Fairtrade and Ethical Trade Initiative have encouraged greater stakeholder involvement in standard setting and governance unlike private sector led initiative such as KFC code, MPS SQ, and Global Gap where other stakeholders do not play comparable roles in governance. This power dynamics leads to exclusion of workers and stakeholders at the grassroots, and a preference for international standards rather than domestic standards. In Kenya, local efforts to establish a multi-stakeholder initiative such as the Horticulture Ethical Business Initiative failed due to lack of support from unions and private sector who perceived it as undermining their respective roles, lack of capacity by NGOs and poor leadership.<sup>xiii</sup> Some standard setting bodies have began a shift towards impact monitoring and exploring other alternatives that favour worker empowerment and are more effective than auditing alone.<sup>xiv</sup>

### **C. Social certification standards in Kenya**

Certification standards were introduced in Kenya in the late 1990s and early 2000 following sustained campaigns by civil society organizations on environmental

degradation and poor working conditions in flowers. While other organisations spearheaded concerns around environmental degradation, Kenya Human Rights Commission (KHRC), Kenya Women Workers Organisation (KEWWO) and other CSOs highlighted plight of workers in the flower sectors including women workers. Industry stakeholders led by Kenya Flower Council began embracing voluntary certification codes as a form of self regulation and in 2005, the private sector, CSOs and other stakeholders launched the Horticulture Ethical Business Initiative (HEBI) a multi-stakeholder initiative to promote ethical trade as well as participatory social edits. Many of these standards that were adopted at the time were from the western markets where most of the produce was sold. Further, many of the horticulture farms were also owned by foreign investors from western countries. Recently, ownership structure of flower farms is increasingly becoming local.

Social certification standards address seven key social concerns at the workplace namely use of forced labour, child labour, freedom of association and effective recognition of the right to collective bargaining, discrimination, health and safety, fair remuneration, and working hours. According to their proponents, these standards are benchmarked against international labour and human rights standards including international labour organisation (ILO) conventions, United Nations Human Rights Standards and relevant national legislation. Some standards such as Fairtrade, Kenya Flower Council, Global GAP and MPS SQ are backed by an approved certification. Many of these standards were introduced in Kenya at a time when labour laws were weak but in the year 2007 new labour law reforms introduced stringent requirement that in many cases matched or went beyond the standards recommended by voluntary codes.

The following is a brief summary of some of the social certification standards in Kenya.

- i. **Milieu Project Sierteelt (MPS)/MPS Socially Qualified (SQ) Certification Scheme:** The MPS Socially Qualified (SQ) is one of the three standards under the MPS scheme. MPS-SQ includes requirements on health, safety and terms of employment, and is based on universal human rights, the codes of conduct of local representative organisations, and International Labour Organization (ILO) agreements. Representatives of unions or human rights organisations may be present as observers at the social certification audits on the production companies, to guarantee the legitimacy of the social standard to which their names are linked. The certification body in charge of audits and certification is MPS ECAS, an independent body affiliated to the scheme owner, MPS. At least three flower farms have MPS SQ certification including Van den Berg Kenya Ltd and Bigot Flowers Kenya Limited.<sup>xv</sup>

- ii. **Fairtrade Standards/Fair Trade International Hired Labour Standard.** In April 2001, the Swiss based Max Havelaar began to award its label to ICC-certified cut flowers from Ecuador, Kenya, Tanzania, Zambia and Zimbabwe. The certification role has since moved to the umbrella Fairtrade Organisation Fairtrade International since 2004. The international Fairtrade system includes Fairtrade International, nine Fairtrade Marketing organizations, and FLOCERT (the independent certification body of the global Fairtrade system). The Fair Trade International Hired Labour Standard addresses labour related concerns such as occupational health and safety, collective bargaining and conditions of employment. There are about 10 fairtrade certified farms in Naivasha including Panda Flowers Limited, Wildfire Ltd, Aquila Development Company Ltd, Bigot Flowers Kenya Ltd, Bilashaka Flowers Ltd, and Kongoni River Farm Ltd.<sup>xvi</sup>
- iii. **The Ethical Trading Initiatives (ETI) Base Code/SMETA:** ETI is a UK-based alliance of companies, trade unions organizations and NGOs that seek to identify and promote good practice in the implementation of codes of labour practice in workplaces supplying the UK market. Adoption of the ETI Base Code is increasing among Kenyan flower producers supplying the UK retail market. While the Base Code is not an auditable standard; the ETI has initiated a process of learning to identify good practice in multi-stakeholder approaches to monitoring and verification. Social issues covered by the ETI base code include child labour, reasonable working hours and payment of overtime, gender issues, health and safety at work, and payment of living wage.
- iv. **Kenya Flower Council Flowers and Ornamentals Sustainability Standards:** The Kenya Flower Council is a voluntary association of growers and exporters and was formed in 1996 by leading growers. The Kenya Flower Council Code of Practice was launched in 1997 as a response to international pressure to improve the working conditions in the sector and an attempt by the local producers to avoid the rigorous and costly process that comes with the European codes. KFC offers Silver and Gold standard codes compliance. Silver standard covers the workers terms and conditions, health and safety and environmental responsibilities and member's progress to gold standard which concentrates on achieving much higher standards of environmental performance. The KFC's Certification Committee oversees the certification of companies.
- v. **Fair Flowers Fair Plants (FFFP)** is a multi-stakeholder initiative to stimulate the production of sustainable cut flowers and potted plants, to minimize environmental impact of cut flower production on the natural environment and surrounding communities, and to establish good social conditions for workers on flower and plant farms. FFFP is a label attached to flowers and plants that originate from growers that meet the highest demands related to the

environment and personnel, when it comes to issues such as working conditions, hygiene and safety. The label was established in 2006 by representatives of wholesales, human rights and environmental organizations, growers and trade unions. The social and environmental standards are set out in the International Code of Conduct drawn up by civil society organisations.

- vi. **The Business Social Compliance Initiative (BSCI) Code of Conduct** is a leading business-driven initiative for companies committed to improving working conditions in factories and farms worldwide. The BSCI Code draws on important international labour standards protecting workers' rights such as International Labour Organization (ILO) conventions and declarations, the United Nations (UN) Guiding Principles on Business and Human Rights as well as guidelines for multinational enterprises of the Organization for Economic Co-operation and Development (OECD). It sets out 11 core labour rights, including fair remuneration, freedom of association and collective bargaining, occupation health and safety, which participating companies and their business partners commit to incorporating within their supply chain in a step-by-step development approach.
- vii. **Social Accountability International SA8000 Standard** – Social Accountability International is a global non-governmental organization founded in 1997. SAI is the owner of the multi-industry SA8000® Standard Companies can have their work places certified against the standard; this, however, is the responsibility of another organization, Social Accountability Accreditation Services (SAAS), which accredits certification firms, and which keeps records of SA8000 certified facilities. The core normative elements are derived from ILO labour standards, and include: child labour, forced labour, health and safety, freedom of association and the right to collective bargaining, discrimination, discipline, working hours, wages and having a management system in place to implement the standard. Delmonte Kenya Ltd is the only SAI certified company in Kenya. It has about 1519 workers. SGS and Bureau Veritas are approved certifying bodies.
- viii. **Kenya Bureau of Standards (KEBS) 'KS1758 Code of practice for the horticulture industry'**.
- ix. **Flower Label Programme (FLP):** This code was developed in 1996 as a business-to-business code between a German importer's association (BGI) and the Association of Flower Producers and Exporters of Ecuador (EXPOFLORES). Standards initially focused on the environmental conditions associated with flower production, but were later expanded to include social and labour conditions when the International Code of Conduct (ICC) standards were

incorporated into the FLP in 1999. FLP is an association composed of human rights organisations, trade unions, flower traders and producers.

- x. **The International Code of Conduct (ICC)** was proposed in August 1998 by the International Union of Food Workers (IUF), unions and NGOs in Germany and Holland. The Code emphasizes employers' respect for labour rights such as freedom of association, collective bargaining, equal treatment, living wages, reasonable working hours, compliance with health and safety standards, employment security, no child or forced labour, as well as environmental protection and limited pesticide and chemical use. The code has not been embraced by the industry despite efforts by KPAWU and unions to popularize it.

The industry has undergone transformation since then... key among them being changing ownership structure from foreign owned to increasingly local ownership.

#### **D. Frameworks for corporate accountability in the horticulture sector in Kenya**

Businesses operating in Kenya have a responsibility to respect human rights in all their operations in order to ensure among other things respect for workers' rights, and the sustainability of the communities and environment in which they operate. This responsibility to respect human rights is not a merely an ethical obligation as is the case in other countries but it is a legal obligation outlined in the constitution, international and regional treaties ratified by Kenya as well as other statutory and regulatory frameworks. There are various institutions that have been set up to oversee implementation of these obligations.

##### *International and regional human and labour rights standards*

International human rights standards provide the normative framework for interpreting and implementing human rights obligations outlined in domestic laws. Kenya has ratified several conventions at the international and regional level that protect labour rights many of which provide the normative framework against which social certification standards are benchmarked. The Constitution of Kenya provides that treaties and conventions ratified by Kenya are sources of law in Kenya.

- **International Labour Organisation Standards**

Kenya has been a member of the ILO since 1964 and has ratified 50 ILO conventions including 7 of the eight core conventions namely: Forced Labour Convention, 1930 (C029), Right to Organize and Collective Bargaining Convention (C098), Equal Remuneration Convention (C100), Abolition of Forced Labour Convention (C105), Minimum Age Convention (C138), Discrimination (Employment and Occupation) Convention (C 111) and Worst Forms of Child Labour Convention (C182).<sup>xvii</sup>

The Right to Organise and Collective Bargaining Convention protect workers right to join a trade union and to participate in the activities of trade union without any anti-union discrimination, coercion or intimidation by the employer. Equal Remuneration Convention secures for all workers the principle of equal remuneration for men and women workers for work of equal value. The Discrimination (Employment and Occupation) Convention outlaws any discrimination in employment that is not based on any inherent requirements of the job but on the prohibited grounds of discrimination as listed in the convention.

- **United Nations Human Rights Standards**

Kenya has ratified several United Nations human rights treaties and conventions that are also relevant in the protection of rights of workers and communities in flower growing areas. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disability (CRPD) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In addition to the treaties and convention, the Universal Declaration of Human Rights (UDHR) is the foundational standard laying rights and fundamental freedoms for all. Among the rights protected in the declarations, conventions and treaties include freedom of association and the right to organize that is enshrined in Articles 20(1), 20(2) and 23(4) of the UDHR, Article 8(1) of the ICESCR, and Article 22(1) of the ICCPR; freedom from forced labour (Article 8(3)(a) of the ICCPR, equality and freedom of discrimination in employment (Article 2 of the UDHR, Article 2(1) of the ICCPR, and Article 2(1) of the ICESCR), the right to just and favourable conditions of work (Article 7 of the ICESCR) and the right to protection of health and to safety in working conditions including safeguarding of the function of reproduction (Article 11(1)(f) and Article 11(2) of CEDAW).

*General Comment No 23: The Right to Just and Favourable Conditions of Work*

General Comment No 23 of the UN Committee on Economic, Social and Cultural Rights outlines the normative content of the right to just and favourable conditions of work as guaranteed under article 7 of ICESCR. It covers among other issues workers; remuneration, safe and healthy working conditions, promotion, rest and leisure, just and favourable conditions for women workers, and freedom from sexual harassment.

According to the Committee, one of the minimum criteria for remuneration is that remuneration should guarantee a decent living for workers and their families. The committee further calls for the adoption of a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment. It has also provided detailed guidance on limits on daily and weekly hours of work, daily and weekly rest periods, paid annual leave and public holidays, and flexible working arrangements that meet needs of workers and employers.

Regarding women workers, the committee highlighted three key issues of concerns namely 'glass ceiling', gender pay gap and sticky floors for women at the work place and called upon States to take into account the different requirement of men and women. Lastly, the committee called for a broad legal definition of sexual harassment and that the law should criminalize and punish sexual harassment while national workplace policy on sexual harassment should be applied in both public and private spheres.

- **UN Guiding Principles on Business and Human Rights**

The *United Nations Guidelines Principles for Business and Human Rights* are designed to provide a framework for ensuring that business entities do not violate human rights in the course of their operations and that effective remedies are available when rights are breached. They outline how states and businesses should implement the United Nations' "Protect, Respect and Remedy" Framework, in order to better manage business and human rights challenges. One of the key pillars of the framework is the *corporate responsibility to respect* human rights which requires business to a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and to (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

The guidelines have defined three key operational requirements that business should implement in order to in order to meet their responsibility to respect human rights, business enterprises. First business should adopt a human rights policy that outlines human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; is publicly available and communicated

internally and externally to all personnel, business partners and other relevant parties; and is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Secondly, business should also conduct ongoing human rights due diligence through a process that identifies actual and potential human rights impact, acts on the findings and communicates to the public how the impact are addressed.

Thirdly, business should establish internal process to provide remedies for any adverse human rights impacts they cause or to which they contribute. The guiding principles provide a good basis for establishing a result based certification system that incorporates these key principles above. The certification system should be support by a clear policy commitment to uphold human rights and outline human rights expectations of all actors involved including companies, auditors, and members of certification committees. The system should encourage companies to adopt their own due diligence mechanisms that regular assess potential and actual human rights impact of their operations in all key areas and communicates the findings and measures taken to address them. Finally it should also encourage companies to set up internal redress mechanisms to remedy human rights violations.

- **African Regional Human Rights Standards**

At the regional level, Kenya has ratified the African Charter on Human and Peoples' Rights (ACHPR), the Protocol to the African Charter on Human and Peoples Rights Relative to the Rights of Women in Africa (Maputo Protocol) and African Charter on the Rights and Welfare of the Child (ACRWC). Article 10 of the ACHPR provides for freedom of association, Article 15 of the ACRWC outlaws child labour, Articles 2 and 3 of the ACHPR promotes equality and non-discrimination in all spheres of life including in employment and Article 15 of the ACHPR provides for the right to work under equitable and satisfactory conditions.

### *National Legal framework*

- **Constitution of Kenya 2010**

The Bill of Rights of the Constitution of Kenya 2010 secures fundamental rights and freedoms of every person in Kenya and specifically entrenches labour rights. Some of the key rights protected include equality and freedom from discrimination (Article 27) and freedom of association (Article 36). Article 41 on labour relations secures for



workers the right to fair labour practices including the right to fair remuneration, to reasonable working conditions, to form, join or participate in activities and programmes of trade unions and to strike. According to Article 43 of the Constitution every person has the right to economic and social rights including the right to the highest attainable standard of health including reproductive health care, right to adequate and accessible housing and to reasonable standards of sanitation, and right to clean and safe water in adequate quantities. The State and every person including businesses operating in Kenya are bound by the provisions of bill of rights and must ensure that workers' rights are observed, protected, respected, fulfilled, and promoted.

- **Labour laws**

*Employment Act No, 11 of 2007:* Employment Act, No.11 of 2007 prohibits discrimination in respect of employment on various listed grounds of including race, ethnicity, sex, pregnancy, marital status or HIV status. It also outlaws sexual harassment and defines the basic minimum conditions of employment such as the hours of work, entitlement to annual leave, maternity leave, and sick leave, provision for housing or payment of housing allowance, and provision of water, food and medical attention for workers. Other issues regulated by the law include prohibition of child labour and dispute settlement procedure.

*Basic minimum conditions of employment under the Employment Act*

The employment Act provides the basic minimum conditions of employment but the employer and the worker are free to agree on more favourable terms for the worker in the contract of employment or in a collective bargaining agreement. The basic conditions of service are:

*Hours of work:* An employee is entitled to at least one rest day in every period of seven days.

*Annual leave:* An employee is entitled to an annual leave of not less than 21 working days with full pay.

*Maternity leave:* A female employee is entitled to 3 months maternity leave with full pay and without forfeiting her annual leave.

*Paternity leave:* A male employee is entitled to 2 weeks paternity leave with full pay.

*Sick leave:* An employee is entitled to sick leave of not less than 7 days with full pay and thereafter to sick leave of seven days with half pay.

*Housing:* In addition to salary or wages, an employee is entitled to be provided with reasonable housing accommodation near the workplace at the employers' expense. Alternatively, the employee may be paid a housing allowance.

*Water:* An employer shall also provide sufficient supply of wholesome water for the use of his employees at the workplace and within a reasonable distance of any housing accommodation provided for the employees by the employer.

*Food:* Where the employer has agreed to provide food, the employer shall ensure that the employee is properly fed and supplied with sufficient and proper cooking utensils and means of cooking at employer's expense.

*Medical attention:* Employers shall provide sufficient and proper medicine for his employees during illness and if possible, medical attendance during serious illness.

*Termination and dismissal:* in a regular employment relation, either party may give one month before terminating the contract of employment.

*The Labour Relations Act, No 14 of 2007* is the statutory framework operationalizing freedom of association among workers and the right to collective bargaining. It provides that an employee shall not be discriminated against, intimidated or threatened not to join a trade union. It also regulates the registration, management and democratization of trade unions and employers organisations and federations. Further it seeks to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining, and promotion of orderly and expeditious dispute settlement, conducive to social justice, economic development and other purposes.

*Labour Institutions Act, No 12 of 2007* provides for the establishment of various institutions that are responsible for administering and enforcing labour laws. These institutions include the National Labour Board, Commissioner of Labour, Director of Employment, and Wages Councils.

*Employment and Labour Relations Court Act, No 20 of 2011* establishes the Employment and Labour Relations Court. The court is mandated to deal with all employment and labour related disputes.

The *Work Injury Benefits Act, (WIBA), No 13 of 2007* (WIBA) provides for compensation to employees for work related injuries and diseases contracted in the course of their employment. Every employer is obliged to maintain an insurance policy to cover for any liability that the employer may incur to any of his employees. An employee who is injured, suffers disability or dies in the course of employment is entitled to compensation unless the injury, disability or death arose out of his or her own deliberate or willful conduct.

The *Occupational Health and Safety Act, No 15 of 2007* regulates the safety, health and welfare of workers and all persons lawfully present at workplaces. It obliges employers to ensure the safety, health and welfare of workers. It regulates chemical safety and welfare provisions such as supply of drinking water, washing facilities, accommodation for drinking, facilities for sitting and first aid.

***Companies Act 2015:*** The Companies Act regulates the operations and management of companies. Part IX division 3 of the Act provides for the duties of directors of a company. Among the duties stipulated under section 143 of the Act is to promote the success of the company for the benefit of its members as a whole. In so doing, the directors are required to have regard to the long term consequences of the decisions of the directors, interests of the employees of the company, the impact of the operations of the company on the community and the environment and the desirability of the company to maintain a reputation for high standards of business conduct. The foregoing provisions are in synchrony with components of the RBSC and are generally a call to corporate accountability.

Aside from keeping financial records and in keeping with monitoring of impact of businesses on employees, communities and the environment, the Act requires companies to include a business review reports in director's reports. Whereas the report is required to inform members of the company and assist them to assess the directors' performance, it also serves as a monitoring tool for corporate accountability when used for public consumption. Under section 655 of the Companies Act, the review report is supposed to incorporate environmental matters (including the impact of the business of the company on the environment), information about the employees of the company; and social and community issues, including information on any policies of the company in relation to those matters and the effectiveness of those policies. These provisions apply to companies that are listed on the Nairobi Securities Exchange. Unfortunately, most flower farms are not listed on NSE.

### ***National policy framework***

**Vision 2030:** Kenya's Vision 2030 is the national long term development plan that has been implemented since the year 2008 through rolling 5 year development plans. The social pillar seeks to create a just, cohesive and equitable social development in a clean and secure environment. The second medium term (Medium Term Plan II 2013 – 2017) that is currently being implemented identified labour and employment as a key foundation for national transformation and it seeks to provide every Kenyan with decent and gainful employment in line with the Constitutional provision on decent work. The government seeks to pursue a decent work agenda where freely chosen productive employment is promoted simultaneously with fundamental rights at work, adequate income from work, representation and social security.

**Sustainable development goals:** Sustainable Development Goal Number 8 pursues the decent work agenda for all and aims to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. One of the key targets that Governments have committed to achieve by the year 2030 is the full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value. They have also committed to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment. The SDGs present an opportunity for advocacy and concerted action by all stakeholders in the horticulture sector to work towards improving livelihoods and welfare of workers and communities that depend on the sector. Government of Kenya has committed itself to works towards achieving SDGs by the year 2030.

**National Policy and Action Plan on Human Rights:** Sessional Paper No 3 of 2014 on the National Policy and Action Plan is the overarching human rights policy framework. It gives effect to the Bill of Rights in Chapter Four of the Constitution of Kenya 2010 and defines the human rights goals and priorities for Kenya. It also provides guidance to key actors on what is needed to be implemented in order to ensure that human rights principles are integrated and mainstreamed in all aspect of the Government's developmental agenda. Labour rights were not included as stand-alone priority human rights issue but were identified as among key issues affecting specific vulnerable groups including women, children, persons with disabilities and the youth. For example one of the key challenges that face women and persons with disability include discrimination in economic life including employment. The country is currently developing a National Action Plan on Business and Human Rights that will complement the National Human Rights Policy and Action Plan.



## **Chapter 3: Methodology**

### **A. Scope of the Study**

. The study had three components

- 1) **An impact assessment:** The impact assessment interrogated the actual impact of the current social certification schemes on the socio-economic aspects of workers' lives as well as impact on certified companies and host communities. The impact assessment narrowed down on the following 6 key issues:
  1. Living wage
  2. Right to collective bargaining and freedom of association
  3. Sexual harassment
  4. Casualization of labour
  5. Gender equality.
  6. Maternal healthcare
- 2) **A readiness assessment:** The readiness assessment explored the extent to which horticulture companies and certification bodies are prepared and willing to engage in the RBSC project and the feasibility of the uptake and adoption of RBSC systems by the sector.
- 3) **A training needs assessment:** The training needs assessment sought to establish relevant areas of capacity strengthening for workers, trade union representatives (specifically shop stewards and branch officials), managers, independent evaluators and certification bodies towards effective implementation of results based social certification systems in the sector.

### **B. Research design**

The baseline survey with workers was conducted in two sites: onsite interviews with workers were conducted at a flower farm based in Limuru (Farm 19) while offsite interviews were conducted in Karagita village in Naivasha. A total of 82 workers were interviewed out of which 21 were interviewed onsite while 61 were interviewed offsite. Key informant interviews were also held with certification bodies, flower farms management, trade unions representatives, civil society organizations to get their perspective on impact of certification standards and map out potential stakeholders for the result based social certification system. The stakeholder mapping was also conducted through desk research. The study sample was limited in size as is therefore not representative of the entire sector.

*Onsite interviews*

20 flower farms in Naivasha and one flower in Limuru were approached to conduct onsite interviews with workers. Only one farm, Farm 19 based in Limuru agreed to participate in the survey. 21 workers were randomly selected for the interview representing about 6% of the total work force. Farm 19 was KFC certified and had previously been Fairtrade certified for over 20 years.

Farm Code	Workers	Workers Committee representative	Trade union representatives	Total	Total Number of workers	Social certificate available
Farm 19	15	5	1	21	308	Fairtrade (1993 – 2016) KFC Silver Standard ETI

*Workers interviews: Offsite*

Offsite interviews with flowers farm workers interviews were conducted in Karagita centre, one of the villages located in Naivasha and neighbouring several horticulture farms. A significant proportion flower farm workers reside in Karagita. Interviews with workers representatives from welfare committees and trade unions were held in Naivasha Town, due to accessibility. Workers were randomly selected with assistance of local administrators and workers representatives residing in Karagita Centre. Majority of the workers interviewed were drawn from farm 18, one of the major flower farms located in Karagita as it was closest to the interview site.

Purposive sampling was used to identify workers committee representatives while union leaders were mainly drawn from Kenya Plantations and Allied Workers Union (KPAWU) Naivasha Branch. A total of 61 workers and workers representatives' from 14 certified farms as indicated in the table below. It was not possible to establish the total number of workers in each of the farms or to conduct onsite interviews on the farms to

verify information obtained offsite since many farms declined the request to conduct interviews onsite.

Farm Code	Workers	Workers Committee representative	Trade union representatives	Total number of workers interviewed	To number of workers	Social certificate available
Farm 2			1	1	NA	KFC Fairtrade
Farm 3		1	2	3	NA	KFC Fairtrade MPS SQ
Farm 4	3	1		4	NA	KFC Fairtrade MPS SQ
Farm 6	1		1	2	NA	KFC
Farm 8			1	1	NA	KFC Fairtrade
Farm 9			1	1	NA	KFC
Farm 10			1	1	NA	Fairtrade MPS SQ
Farm 11		1		1	NA	KFC
Farm 12		1	2	3	NA	KFC Fairtrade MPS SQ
Farm 13	5	1		6	NA	KFC MPS SQ
Farm 14	1			1	NA	KFC Fairtrade
Farm 16			2	2	NA	KFC
Farm 17		1	1	2	NA	Fairtrade
Farm 18	15		2	17	NA	KFC Fairtrade MPS SQ
Non-certified farms		7	9	16		
<b>Total</b>	<b>25</b>	<b>13</b>	<b>23</b>	<b>61</b>		



Many of the certified farms had multiple certifications with 9 farms being KFC certified, 10 farms being fair-trade certified and 6 farms were MPS SQ certified. The three standards are the main certification standards in the sector. The latter two are the main standards for companies that supply the United Kingdom, the Netherlands and other major destinations in Europe while KFC standard is the premier local industry owned standard.

#### *Community interviews*

Additionally, interviews were conducted with community representatives comprising of local administrators, opinion leaders, traders and beneficiaries of community projects in Karagita funded by flowers farms. Purposive sampling was used to identify a total of 15 community representatives.

#### *Key informant interviews*

Interviews were conducted with 16 key informants from different organizations representing certification bodies, flower farms, employers association, civil society organizations with presence in flower farms, trade unions and auditors. The interviews were held in Naivasha, Nakuru, and Nairobi. The table below presents the list of key informants interviewed and their titles.

<b>Organisation</b>	<b>Title of person interview</b>
<i>Certification bodies and Auditors</i>	
Kenya Flower Council	Chief Auditor
Fairtrade East Africa	Flower Manager
	Head of Region, East and Central Africa
Auditor 1	MPS SQ auditor
Auditor 2	Fairtrade auditor
<i>Flower farms and growers association</i>	
Agricultural Employers Association	Chief Executive Officer
Farm No. 10	Compliance Officer
Farm No. 19	Operations Manager
	Production Manager
	Human Resource Manager
	Internal Auditor
<i>Civil Society Organisations</i>	

National Organisation for Peer Educators	ICT/Monitoring, Research and Learning Manager
Ufadhili Trust	Ag. Executive Director/Programmes Manager
Haki Mashinani	Project Officer
<i>Trade Unions</i>	
KEFHAWU	National Chairman
KPAWU	Naivasha Branch Secretary

*Data collection*

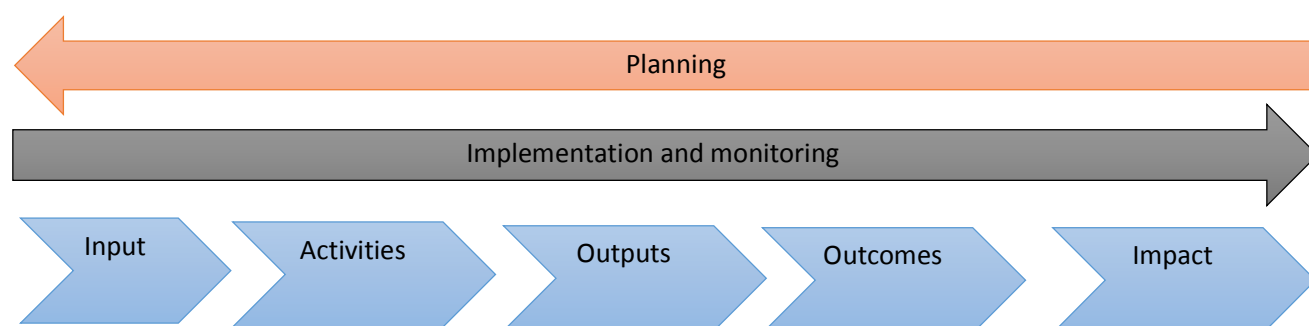
The main data collection tool was a semi-structure survey questionnaire that captured the three main components of the study. The survey questionnaire tested the respondents' personal assessment of the level of satisfaction with the change that may have been brought about by certification standards. Survey questionnaires were administered to workers and workers representatives, and community representatives. Key informant interviews were conducted using open ended questions based on the semi-structure survey questionnaire.

## Chapter 4: Setting up a results based social certification system

### A. What is results based social certification?

Social certification is a means by which stakeholders come together to define and shape the behaviour of companies in the horticultural sector with regard to how they treat their workers, communities and the environment. Results based social certification system seeks to ensure tangible results for workers and communities. As a relatively new concept, results based social certification system can be described as a system that infuses principles of results based management approaches into social certification scheme in order to enable standards owners, certification schemes, workers and other stakeholders to track progress and demonstrate human rights impact of social certification standards on workers, communities and companies.<sup>xviii</sup> It entails a shift from monitoring compliance to evaluating results of an intervention along a logical results chain starting from input and outputs to higher level outcome and impact against pre-determined goals.

At input level stakeholders track resources, activities and procedures put in place by companies to improve welfare of workers, communities and companies and the immediate results (output) arising from these interventions. However, an effective results oriented social certification scheme must go beyond audit or monitoring the input and outputs to tracking whether the desired change in behavior or conditions of workers, communities and companies, i.e. outcome has been achieved. This may not be achieved immediately after the intervention but over the short to medium term. It will require a clear theory of change which involves planning from impact to inputs followed by implementation and tracking results in the opposition direction following a clear results chain as shown in the figure below.



## **B. Key pillars of a results based social certification system**

A results based social certification system presents a paradigm shift in the way current social certification schemes work in order to ensure an all inclusive, participatory and accountable system. The system is anchored on five key pillars outlined below:

### **1) Value driven transformation process to certification anchored in human rights norms and principles**

Social certification schemes, business and other stakeholders that participate in a results based social certification systems should define operating philosophies and principles guiding social certification and the values they hold. The organisations would then define the actual targets that they aim to meet in clear and unambiguous language in order to promote rights of their workers. The process of communicating their values and setting targets would be inclusive of workers voices. Human rights norms and principles provide moral, ethical and legal foundations for defining values underpinning social certification and a framework for ensuring accountability by all stakeholders. It also rebalances the relations between certification bodies and corporations on the one hand and workers, trade unions and workers rights organisations on the other hand. Few certification standards define respect for human rights among their core values.

A value driven transformation process anchored on human rights norms and principles will therefore require that all stakeholders have a common understanding of what these norms are and what business entities are required to do in order to fulfil workers rights relating to fair remuneration, sexual harassment, equality and non-discrimination among others.

### **2) Transparency in implementation of standards by businesses**

In a result based system; it is the implementers (companies and workers) who bear primary responsibility of monitoring implementation. It is anticipated that implementation of business standards would use tools that capture activities and resources that are invested in the sustainability management process. Worker satisfaction surveys, gender disaggregated data on recruitment and promotions, gender disaggregated data on wages, contracts and the like which give a snapshot of what is happening at the company at any moment in time are examples of primary monitoring documents that would be maintained by companies and validated by workers. The workers through farm level and cluster networks would be involved in the process of validating reports put out by companies on how they have implemented standards.

Transparency in reporting is expected to accompany a validation process through facilitated results monitoring.

### **3) Participation of workers in the standardization and monitoring process**

The capacity and institutional structures needed for workers participation in the monitoring process require strengthening in order to enable workers to demand their rights and influence the organisations that impact their lives. Strong shop level workers organisations accompanied by cluster level worker networks will enable the participation of workers directly in the sustainability monitoring process as well as other spheres.

### **4) Use of outcome level human rights indicators to measure compliance**

Traditional social auditing techniques of management systems, compliance and verification fail the auditor in attempts at identifying underlying human rights issues and enabling judgment on results. It is not enough for the audit to document what a company is doing but they should also be able to explain whether the intervention is effective in protecting workers rights. For instance, a company that claims to be pro-union in policy but offers its workers pay that is higher than the sector's collective bargaining agreement in a bid to discourage them from unionizing may be undermining the same rights it is claiming to uphold. The higher pay for workers comes at a cost to various other advantages of unionization leaving workers exposed. Such a company should be able to encourage unionization while at the same time paying workers higher than the minimum rate agreed in a CBA. The results based monitoring systems should be able to track both implementation (inputs, activities, outputs) and results (outcomes and impacts) using well defined human rights indicators.

### **5) Capacity development of local labour rights organisations to participate in a result based monitoring system**

Local labour rights organisations have a critical role to play in supporting the capacity building and facilitating evaluations of labour rights. With enhanced structures that enable monitoring by companies and direct participation of workers through cluster to national level workers networks, it is important that the capacity of labour unions and other labour rights organisations to participate in the process of training and monitoring be improved in order to bring down the high costs of maintaining certification systems. Capacity in this sense involves increased participation of members and society in the activities of such organisations.

## **C. Key stakeholders for results based social certification**

### *i) State actors*

State actors play various roles that impact on labour standards in the horticulture sector in Kenya. These include policy making, law making, enforcing regulation and standards, and monitoring human rights standard in Kenya. The relevant state actors include:

#### **Ministry of East African Community, Labour and Social Protection**

The mission of the Ministry East African Community, Labour and Social Protection is to promote decent work and its key mandate is to provide policy guidance in the areas of labour regulation. The Ministry oversees relevant state agencies that are critical to the promotion of decent work agenda in the horticulture sector including the State Department for Labour, the Directorate of Occupational Safety and Health Services, and the Registrar of Trade Unions and wages councils. The Ministry can be engaged with a view to influencing it to adopt worker friendly policies. Various departments and units of the ministry can be invited to participate in policy dialogue within the RBSC platform. The challenge that faces the ministry and its department include lack of adequate finance and personnel to enforce relevant labour law and policies.

#### **National Labour Board**

The National Labour Board advises the cabinet secretary responsible for labour on all matters concerning employment and labour. It includes representation from government, workers and employers organization. This is also a platform that can be used to shape policy on workers welfare in the horticulture sector. However, the board effectiveness in advancing labour policy is unclear.

#### **Commissioner of Labour**

The Commissioner of Labour and labour officers working under him are responsible for monitoring and enforcing compliance with labour laws including laws relating to wages and welfare of workers. The commissioner of labour and officers under him can be engaged for purposes of enforcing compliance with the labour laws requirements

many of which are reflected in various certification standards. However, lack of adequate personnel and resource impact negatively on their work.

### **Director of Medical Services**

Director of Medical Services and medical officers working under him have power to enforcement measures to protect health of employees at the workplace in line with section 37 of the Labour Institutions Act and are therefore key in addressing health and safety at the workplace.

### **Agriculture Wages Councils and Floriculture Wages Council**

The Agricultural Wages Council and Floriculture Wages Council mandate include to investigate the remuneration and conditions of employment in their respective sector, and to make recommendations of the Cabinet Secretary responsible for labour matters on minimum wage and conditions of employment. These councils provide avenue for lobbying government to benchmark the minimum wage against an acceptable living wage benchmark.

### **National Council for Occupational Health and Safety**

The National Council for Occupational Health and Safety is an advisory organ mandated to advise the minister for labour on matters relating to occupational health and safety laws, policies and standards in Kenya. The RBSC platform may engage the council as part of advocacy efforts to shape adoption occupational health and safety standards in the horticulture sector including policies on chemical use.

### **Director of Occupational Health and Safety**

The Director of Occupational Health and Safety and all occupational health and safety officers working under him are responsible for setting regulatory standards and monitoring and enforcing laws and regulations on occupational health and safety. This is also an avenue to engage with the state to enforce occupational health and safety standards in the horticulture sector and to call for appropriate regulations to protect workers health and safety. As noted earlier lack of adequate resources and personnel may undermine effectiveness of the office of Director of Occupational Health and Safety.

### **Article 59 Commissions**

The Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC) and the Commission on Administrative Justice (CAJ) are key institutions in promoting realization of human rights. KNCHR is responsible for promoting and protecting human rights generally and has department responsible for monitoring and investigating human rights abuses, and conducting research and advocacy. It also issues advisories to relevant government departments and advocates for law and policy reforms to advance human rights agenda in Kenya. The overall mandate of NGEC is to promote gender equality and freedom from discrimination in Kenya. Its functions include receiving and investigating complaints relating to violation of principles of equality and non-discrimination, advisory and advocacy functions. The Commission on Administrative Justice investigates complaints relating to maladministration by public officers in national and county government. The RBSC may engage with the three commissions within the context of their mandate with KNCHR looking into situations of workers' rights in flower farms, NGEC working to promote gender equality while CAJ will ensure that public officers responsible for ensuring compliance with relevant laws in the sector are accountable. However, the three institutions have not been active in the flower sector.

### **National Parliament and County Assemblies in Flower Growing Areas**

Parliament and county assemblies play three key roles in representation, over-sight and law making. The RBSC platform may engage with the National Assembly Labour and Social Welfare Committee, the Senate Standing Committee on Labour and Social Welfare and the relevant county assemblies responsible for labour at county levels to provide parliamentary oversight over flower farms to ensure compliance with standards and laws and shape law and policy reforms. More specifically the platform may identify champions in the National Assembly, Senate, and County Assemblies who will be used to advance the RBSC agenda of improve welfare of workers in horticulture sector. In Karagita, workers reported that their local member of county assembly is a former flower farm worker and he is currently involved in championing their rights.

#### *ii) Certification bodies*



### **Kenya Flower Council**

Kenya Flower Council (KFC) is a voluntary association of independent growers and exporters of cut-flowers and ornamentals, established in 1996, with the aim of fostering responsible and safe production of cut flowers in Kenya with due consideration of workers welfare and protection of the environment. The council runs an audit and certification scheme for the industry and oversees the implementation of the Flower and Ornamentals Sustainability Standards (FOSS) the premier local certification standard that is implemented in many flower farms in Kenya.

The KFC has in the past worked with civil society organizations under the Horticulture Ethical Business Initiative (HEBI) to improve welfare of workers in the flower sector. It is also collaborating with organizations such as National Organization of Peer Educators (NOPE) to promote access to health education and critical health service to flower farm workers. It is therefore a critical partner to engage with KFC and influence it mainstream a result monitoring framework in its certification scheme and training auditors monitoring KFC standard. However, there is need to strategically engage with KFC to address the trust deficit between producers and civil society organizations from the human rights sector. KFC as an institution was primarily formed to advance interests of producer members and not workers interests.

### **Fairtrade Africa**

Fairtrade Africa represents the interests of Fairtrade certified producers in Africa. Its mission is to support producer members to strengthen their organisations in line with Fairtrade standards and ensure that they access Fairtrade markets. Like KFC, the primary constituency of Fairtrade is the Fairtrade certified producer and not workers. At the international level, the Fairtrade International Board comprises 11 members; four representing producer networks, four representing national fairtrade organisations, and three independent members while the Fairtrade Africa Board has representatives from producer organisations. There is no civil society or workers representation.

The wider Fairtrade movement is currently reviewing its framework for measuring results and impact of its interventions. This presents an opportunity for RBSC platform to influence Fairtrade agenda towards mainstreaming a result monitoring framework in the certification scheme and training auditors monitoring Fairtrade standards on RBSC. However, the producer network within the Fairtrade scheme may not be open to collaborate with civil society organizations due to the trust deficit between the two groups.

*iii) Private sector organizations*

**Agricultural Employers Association (AEA)**

The A.E.A represents the collective interests of employers in the agricultural industry in matters connected with employment of labour. Its membership includes General Agricultural Members, Flower Growers and Associate Members. In addition to advancing employers interests in collective bargaining with workers, AEA works closely with its members to building their capacity in various areas including training on labour laws. AEA role in the platform may there include working with stakeholders to build capacity of their members to comply with legal and human rights obligations. The chief executive officer of the institution expressed willingness to collaborate in the RBSC project in the area of capacity building for its members. While the secretariat may be open to collaborate, the general membership which comprises producers in flower sector may be reluctant to collaborate in the project.

**Tropiflora Ltd**

Tropiflora is a flower farm based in Limuru Kiambu with a total of 308 workers out of which 57 are seasonal workers. There are no casual workers. The farm is certified by Kenya Flower Council and was Fairtrade certified from 1993 to 2016. Tropiflora is the only flower company that showed willingness to participate in the RBSC project.

**Fresh Produce Consortium**

Fresh Produce Consortium of Kenya (FPC Kenya) represents the interests of member companies throughout the fresh produce supply chain. The association was founded in 2013 as then Kenya Association of Fruits and Vegetable Exporters (KEFE) to represent the produce industry.

**Kenya Horticulture Council**

The Kenya Horticultural Council is an umbrella body bringing together leading horticulture associations in Kenya namely the Kenya Flower Council (KFC), the Fresh Produce Exporters Association of Kenya (FPEAK) and the Fresh Produce Consortium of Kenya. The overarching objective of the Council is to provide high level lobbying, advocacy, and capacity building for sustained market access for Kenya Horticulture products.

*iv) Trade Unions (Workers unions)*

**Central Organisation of Trade Unions (COTU)**

Central Organization of Trade Unions (COTU) is an umbrella national trade union that brings together other trade unions in Kenya. Its membership includes KPAWU, the main trade union in the agriculture sector. COTU would be an ideal partner in monitoring and advocating for the rights of workers in partnership with partners in the RBSC platform but the union is usually reluctant to engage with CSOs. Further, some workers in the sector doubt the effectiveness of the union in fighting for their rights.

**Kenya Plantations and Agricultural Workers Union (KPAWU)**

KPAWU represents workers in the agriculture sector and has shop stewards in several flower farms in the sector. It is affiliated to COTU. The project could engage with the union to directly reach its membership through capacity building and advocacy initiatives. While it is possible to work with branch level union leadership, the national leadership is lukewarm in its relationship with CSOs.

**Kenya Export Floriculture, Horticulture and Allied Workers Union (KEFHAWU)**

KEFHAWU is a newly formed union that seeks to represent workers in the floriculture industry but has been embroiled in litigation with KPAWU that is opposing its registration. The union has not effectively started operations and does not yet appear to have operational structures on the ground while some flower farm workers doubt that it will effectively be able to recruit members. The union's national leadership is open to work with civil society organizations.

**Fresh Produce Exporters Association of Kenya:**

The Fresh Produce Exporters Association of Kenya (FPEAK) represents growers, exporters and service providers in the horticulture industry. It provides a focal and coordination point for the horticulture export industry.

*v) Civil society organizations*

There are several civil society organizations that work in the horticulture sector with various objectives including advocate for rights of workers, providing health services and health education to workers, and conducting training for workers. From interviews with various stakeholders, CSOs involved in human rights work have a difficult time accessing farms while those involved in other activities that are not related to human rights advocacy appear to face little pushback from farms. Some of the civil society organizations include:

### **Kenya Human Rights Commission**

The KHRC is a premier non-governmental organization established in 1992 and registered in Kenya in 1994. KHRC is among the civil society organization that pioneer human rights advocacy in the flower sector in the early 2000. Over the years, KHRC has been pivotal in advancing the human rights discourse in the horticulture sector in Kenya through sustained campaigns, research studies and capacity strengthening for workers.

### **Workers Rights Watch**

WRW is a non-governmental organization registered in 2000 and whose membership comprises shop stewards and key leaders in Kenya. The mandate of WRW is to foster collaborative dialogue between workers and actors who affect and those affected by their work. In promoting this dialogue, WRW believes that complimentary role exists between non-governmental organizations and other stakeholders. It takes cognizance of the restrictive nature of the current provision of the rights to organize and that workers representatives especially at the shop floor level are vulnerable to intimidation by both the management and top union leadership.

WRW's ultimate aim is to ensure that workers leaders at the shop floor level and neighbourhood communities have an opportunity to consult and promote corporate citizenship and good working conditions. Some of its core activities include campaign to tackle sexual harassment in flower farms. The campaign includes supporting farms to adopt and implement sexual harassment policies in flowers farms and conducting awareness on sexual harassment.

### **National Organization for Peer Educators (NOPE)**

The National Organization of Peer Educators (NOPE) is an NGO with operations in the East African region. It envisions' a world with healthy communities and sustained social development and is on a mission to build the capacity of communities and organizations for delivery of quality health and social services. Its three broad strategic pillars are Health Policy and Services, Livelihoods and Economic Empowerment and Growth and Development in 12 satellite offices across the Country.

NOPE has partnered with an international NGO, Business Social Responsibility (BSR) to pilot a factory based women's health programs at the Kenyan tea, fruit and vegetable, and flower farms that uses peer health education and training programs to improve female farm workers' awareness of reproductive health issues and access to health services. The goal of the project is to empower low-income women workers in developing countries to contribute to economic growth and gender equality through workplace programs promoting health, economic empowerment, professional development, and women's rights.

### **HAKI MASHINANI**

Haki Mashinani seeks to give legal and socio-economic empowerment to populations at Kenya's grassroots in order to improve their lives and wellbeing. Started in 2015, the organization sought to create solutions to local problems in order to impact the lives of as many Kenyans as possible. The organization is championing women's rights in Naivasha flower farm belt.

### **UFADHILI TRUST**

Ufadhili Trust exists to promote a culture of responsible practices among businesses, governments and citizens in East and Southern Africa. With the support from Hivos, Ufadhili Trust is implementing a project aimed at enhancing sustainability of the horticulture sector in Eastern & Southern Africa. The project aims to improve the livelihoods of workers in the horticulture sector through gender inclusive corporate social responsibility.

### **African Woman and Child Feature Service**

African Woman and Child Feature Service (AWCFS) is an organization that seeks to promote diversity, gender equity, social justice and development in Africa through media, training, research and content development. One of its critical interventions is

pushing for corporate accountability is through the use of media and other strategic communication platforms to enable the marginalised and the voiceless in the society to voice their views and demand for accountability, good governance, and respect of human rights. AWCFS can therefore provide platform for visibility of the RBSC project.

#### **D. Benchmarks for results based social certification**

Any social certification scheme should ensure that companies report better corporate human rights performance over time using benchmarks and indicators that are grounded in the UN guiding principles on business and human rights and international human rights standards. There are various initiatives that have been undertaken to develop indicators for measure human rights progress in business enterprise focusing on common themes including policy commitment on human rights, conduct of human rights due diligence, reporting human rights performance in thematic issues of concerns, and grievance handling and redress mechanisms. Drawing from the Corporate Human Rights Benchmark<sup>xix</sup>, the results based social certification proposes to monitoring results in six key areas covering governance and policy commitments on human rights, embedding respect and human rights due diligence, remedies and grievance mechanisms, human rights performance in relation to specific human rights themes, response to allegations of human rights violations and corporate transparency. These are outlined below and further details are provided in annex 1.

*Benchmark 1: Corporate governance and policy commitments on human rights:* This benchmark focuses on a company's human rights related policy commitments and how they are governed. Indicators on policy commitments assess the extent to which a company acknowledges its responsibility to respect human rights, and how it formally incorporates this into publicly available statements of policy. Board level accountability for human rights assesses the extent to which company's policy commitments are managed as part of the Board's role and responsibility.

*Benchmark 2: Human rights due diligence:* This benchmark assesses the extent to which a company's systems and processes are established to implement the company's policy commitments in practice. It assesses how the company's human rights policy commitments are embedded in company culture and across its management systems and day-to-day activities, including within the management systems covering their business relationships. It also focusses on the specific systems the company has in place to ensure that due diligence processes are implemented to assess the risks to human

rights that the company poses, to integrate and act on these findings so as to prevent and mitigate the impacts, and to track and communicate those actions.

*Benchmark 3: Remedies and grievance mechanisms:* This focuses on the extent to which a company provides remedy in addressing actual adverse impacts on human rights and assesses a company's approach to providing or cooperating in remedying human rights violations. It looks into company's grievance handling processes, and tests the company's willingness to participate in other remedy options and its approach to litigation concerning credible allegations of human rights impacts.

*Benchmark 4: Performance assessment on key human rights issues (e.g. living wage, unionization, collective bargaining, combating sexual harassment, reducing casual labour etc):* This benchmark assesses actual practices and specific human rights impacts relevant to the company or sector.

*Benchmark 5: Performance – Responses to serious allegations:* This focuses on responses to serious allegations of negative impacts a company may be alleged or reported to be responsible for by an external source. The response to serious allegations does not seek to assess the allegation itself.

*Benchmark number 6: Transparency:* This assesses the extent to which companies disclose relevant information on human rights.

## Chapter 5 Research Findings

### A. Impact assessment

The impact assessment was conducted on the basis of self-assessment by interviewees on three score. Excellent meant that the certification standards resulted to changes that met workers and community's expectations for decent work for workers and while satisfactory acknowledge that there were positive changes but there was still room for improvement. Lastly unsatisfactory meant that little or no change had occurred since the introduction of certification standards. The following section presents key findings of the study.

#### a) Improvement in wages

In Farm 19, 66% of workers interviewed acknowledged that there was improvement in wages which was pegged to the sector CBA terms but the increment was not sufficient to meet their needs.

*Onsite: Farm 19*

Improvement in wages	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
All workers	0	14 (66%)	7 (33%)	1 (1%)	21

Many of the workers interviewed offsite in Naivasha expressed disappointment with the impact of certification on remuneration. 44% of all workers rated the impact as unsatisfactory with satisfaction levels lowest among ordinary workers and community members.

*Offsite: Naivasha*

Improvement in wages	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	2 (8%)	4 (16%)	15 (60%)	4 (16%)	25
Workers committee members	1 (8%)	4 (31%)	5 (38%)	3 (23%)	13
Shop stewards	0 (0%)	4 (17%)	7 (31%)	12 (52%)	23
<b>Total</b>	<b>3 (5%)</b>	<b>12 (20%)</b>	<b>27 (44%)</b>	<b>19 (31%)</b>	<b>61</b>
Community members	1 (7%)	2 (13%)	10 (67%)	2 (13%)	15



<b>Total</b>	<b>4 (5%)</b>	<b>14 (18%)</b>	<b>37 (49%)</b>	<b>21 (28%)</b>	<b>76</b>
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However, stakeholders from the private sector and certification bodies were more positive in their outlook. According to key informants from AEA, KFC, Fairtrade East Africa and company representatives many certified farms were paying workers the minimum wages set out in the sector collective bargaining agreement signed between employers and workers representatives. All stakeholders concurred that illegal practices such as unlawful deductions that were common in the past are rare. Further according to the Chief Executive Officer of the Agricultural Employers Association, the number of companies implementing the sector CBA had increased from 18 firms 10 years ago to 64 farms partly due to certification standards which insist on unionization and payment of minimum wages in accordance with the national law or sector CBA.

There is a general consensus that the minimum wage does not meet what should be considered as a living wage. The CBA that was still effective in 2017 set the minimum wage for a general worker in Naivasha at Kenya shillings 5,050 per month exclusive of housing allowance of Kenya shillings 1500. At Farm 10, the compliance manager reported that the lowest paid general worker earned Kenya shillings 6,579. Although the CBA minimum wage is higher than statutory minimum wage for Naivasha, it is still less than 50% of the living wage benchmark proposed by including Hivos in the year 2015.

<b>Minimum wage (Flower Growers/KPAWU CBA)</b>	<b>Living wage recommendation (Hivos)</b>
Kenya shillings 5,050 per month	Kenya shillings 17,600 per month <sup>xx</sup>

Lastly, a significant proportion of respondents were not certain on whether standards had any impact at all. One welfare committee member from Farm 13, attributed pay increase in their farm to negotiations between KPAWU and employers even before the company was certified.

Key informants from Fairtrade East Africa acknowledge that wage levels in the sector are below the threshold that could be considered as living wage but noted that under the Fairtrade Premium scheme, workers are able to supplement their income through money advanced under the scheme. Workers in Fairtrade certified farms acknowledged that the premium has improved their livelihood as they are able to obtain funds to cater for daily needs as well as for investment purposes. However, civil society groups contend that premium is not widespread in the sector, is not applicable to Fairtrade certified farms and is not sustainable since it is pegged on market performance.

### b) Enjoyment of freedom of association and the right to collective bargaining

In both Naivasha and Farm 19, workers assessment of the impact of certification standard on freedom of association and the right to collective bargaining in flower farms was positive. 43% of the workers interviewed in farm 19 rated the impact as excellent while in Naivasha 28% of all categories of workers rated it as excellent and 34% rated it as satisfactory.

*Onsite: Farm 19*

Freedom of association	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	9 (43%)	5 (24%)	6 (28%)	1 (5%)	21

*Offsite: Naivasha*

Freedom of association	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	7 (28%)	4 (16%)	5 (20%)	9 (36%)	25
Workers committee members	6 (46%)	5 (38%)	0 (0%)	2 (15%)	13
Shop stewards	4 (17%)	12 (52%)	0 (0%)	7 (30%)	23
<b>Total</b>	<b>17 (28%)</b>	<b>21 (34%)</b>	<b>5 (8%)</b>	<b>18 (30%)</b>	<b>61</b>
Community members	4 (27%)	2 (13%)	5 (33%)	4 (27%)	15
<b>Total</b>	<b>21 (28%)</b>	<b>23 (30%)</b>	<b>10 (13%)</b>	<b>22 (29%)</b>	<b>76</b>

The positive feedback was also echoed by key informants from AEA, KFC, Fairtrade East Africa and the compliance officer from the only flower farm represented in the survey. The CEO of AEA noted that although, increased unionization of workers can be attributed to the standards, there is still room for improvement since only 60 out of a possible 150 flower farms in Kenya had agreed to sign the CBA between AEA and KPAWU. Another 5 farms had their own individual CBAs. Further KPAWU officials noted that there is still need to ensure all flower farms workers in Naivasha are unionized.

### c) Reduction of sexual harassment at the workplace

More than half of all workers interviewed onsite in Farm 19 and offsite in Naivasha felt that the standards had led to a significant reduction in sexual harassment at the workplace. 33% of workers interviewed in Farm 19 rated the impact as excellent while

62% rated it as satisfactory. Similarly in Naivasha, 39% of the workers interviewed rated it excellent while 21% rated it as satisfactory. However, a significant proportion of the workers in Naivasha, about 30%, could not attribute any impact of certification standards on sexual harassment. Responses by community members echoed feedback given by workers.

*Onsite: Farm 19*

Sexual harassment	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	7 (33%)	13 (62%)	1 (5%)	5%	21

*Offsite: Naivasha*

Sexual harassment	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Ordinary workers	11 (44%)	4 (16%)	3 (12%)	7 (28%)	25
Workers committee members	5 (38%)	3 (23%)	3 (23%)	2 (16%)	13
Shop stewards	8 (35%)	6 (26%)	0 (0%)	9 (39%)	23
<b>Sub total</b>	<b>24 (39%)</b>	<b>13 (21%)</b>	<b>6 (10%)</b>	<b>18 (30%)</b>	<b>61</b>
Community members	3 (20%)	3 (20%)	4 (27%)	5 (33%)	15
<b>Total</b>	<b>27 (36%)</b>	<b>16 (21%)</b>	<b>10 (13%)</b>	<b>23 (30%)</b>	<b>76</b>

A local administrator in Karagita reported that in the past, the administrator would receive more than 2 complaints every week about sexual harassment from flower farm workers but such complaints are rare. Union representatives from various certified farms reported that as a result of certification, management became firm when dealing with cases of sexual harassment leading to dismissal of managers found culpable. The introduction of gender committees has also provided avenues for workers to address cases of sexual harassment. According to a member of gender committee from Farm 17, before their farm became certified there was at least one case of sexual harassment reported daily but following certification, the complaints declined to two cases a week and currently only two cases may be reported in a month.

Undoubtedly, in line with the law and requirements of certification standards, certified companies have taken steps to address sexual harassment at the workplace by among other things adopting and implementing workplace policy on sexual harassment. However, one union leader from Farm 18 was cautious to view sexual harassment as no

longer an issue. According to him, one of the challenges at the workplace is that proving allegations of sexual harassment is difficult even in the few reported cases. Other workers speculated that one area of concern is at the recruitment level where some potential employees may be sexually violated in return for a job opportunity but they are afraid to speak out.

Civil society organizations noted that while there has been a decline in cases of sexual harassment, many workers do not appreciate the legal definition of sexual harassment leading to many cases of sexual harassment going unreported. In Farm 19, the management called for continuous training on sexual harassment policy for all cadres of staff.

#### d) Reduction in use of casual labour

Assessment by workers on the impact of certification standards on casual employment presented mixed results. In Farm 19, 86% rated the impact of the standards to be satisfactory. The human resource manager at farm 19 confirmed that out of the 308 workers in the farm, 57 were seasonal workers and none was a casual employee. The seasonal workers were employed on 6 months contract on a need basis. According to one worker at Farm 19, some seasonal workers are retained on seasonal contract for more than 6 months.

In Naivasha, although more than half of all workers, felt that the impact was either excellent or satisfactory, about a quarter of all workers interviewed were dissatisfied with the impact of the standards while another 21% were not sure whether the standards had any impact.

*Onsite: Farm 19*

Casual labour	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	3 (14%)	18 (86%)			21

*Offsite: Naivasha*

Casual labour	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	7 (28%)	7 (28%)	7 (28%)	4 (16%)	25
Workers committee members	5 (38%)	0 (0%)	5 (38%)	3 (24%)	13
Shop stewards	9 (39%)	5 (22%)	3 (13%)	6 (26%)	23

<b>Sub total</b>	<b>21 (34%)</b>	<b>12 (20%)</b>	<b>15 (25%)</b>	<b>13 (21%)</b>	<b>61</b>
Community members	2 (13%)	2 (13%)	6 (40%)	5 (34%)	15
<b>Total</b>	<b>23 (30%)</b>	<b>14 (18%)</b>	<b>21 (28%)</b>	<b>18 (24%)</b>	<b>76</b>

Various stakeholders noted that workers employed as casual labourers are subsequently retained on permanent terms and many workers have written contracts. Farm 10 reported that all of its 478 workers are employed on permanent contracts.

However, it emerged that in some farms, casual employees worked for longer than the statutory 3 months period before being given a contract of service on permanent terms. The compliance officer from Farm 10 explained that in some cases, some companies may retain a worker on casual terms beyond the statutory 3 months period following appraisal of the worker in order to give him or a second chance before deciding whether to retain them on permanent terms or to release them.

One key informant from Fairtrade East Africa noted that since the law recognized seasonal contracts, many companies have resorted to the use of seasonal contracts instead of employing casual labourers and this may explain why there are few casual workers in some of the farms. A seasonal worker is employed on six months renewable contract with terms almost similar to that of a permanent employee but with fewer benefits. An employer is not under any legal obligation to convert the contract into a permanent employment contract. While employment of seasonal workers may be necessary in response to the seasonal nature of some of the work in the farms, there is potential risk of abuse where an employee may be perpetually placed as a seasonal worker to do work that is not seasonal in nature to avoid paying benefits related to permanent employees.

It also emerged that some farms such as Farm 10 outsource some farm work to outside labour contractors during peak seasons. The certified flower farms are not responsible for labour conditions of such workers. This issue will require further research to determine the extent of the problem.

#### **e) Enhanced maternity protection**

There was general consensus among the workers interviewed that certification standards have had greatest impact in providing maternity protection for women workers. 57% of the respondents in Farm 19 and 40% of the respondents in Naivasha rated the impact as excellent.

*Onsite: Farm 19*

Maternity protection	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	12 (57%)	9 (43%)	0	0	21

*Offsite: Naivasha*

Maternity protection	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	11 (44%)	5 (20%)	3 (12%)	6 (24%)	25
Workers committee members	7 (54%)	3 (23%)	0	3 (23%)	13
Shop stewards	6 (26%)	8 (35%)	1 (4%)	8 (35%)	23
<b>Total</b>	<b>24 (39%)</b>	<b>16 (26%)</b>	<b>4 (7%)</b>	<b>17 (28%)</b>	<b>61</b>
Community members	3 (20%)	4 (27%)	3 (20%)	5 (33%)	15
<b>Total</b>	<b>27 (36%)</b>	<b>20 (26%)</b>	<b>7 (9%)</b>	<b>22 (29%)</b>	<b>76</b>

Among the changes that have been witnessed in the farms include implementation of maternity leave and annual leave with full pay and reasonable accommodation for pregnant workers. According to one auditor, Kenya Flower Council, Fairtrade and MPS social introduced many of the positive requirements for pregnant women even before the 2007 law reform that enhance protection for women workers.

#### **f) Improvement in workers' health and safety at the workplace**

The survey revealed that majority of the workers interview agree that there have been some improvement in workers' health and safety since the introduction of certification standards but noted that there are a few problem areas that need to be addressed. In Farm 19 where 76% of those interviewed felt that the impact of the standards had been satisfactory, 3 workers out of 21 interviewed raised concerns regarding delays in replacing worn out protective gear, poor sanitation and lack of water in some toilets, and lack of disposal bin for sanitary towel.

In Naivasha, 28% stated that the impact was excellent while 30% stated that it was satisfactory. Among the workers who assessed the impact as unsatisfactory or not sure, one concern related to situation of workers in the spraying department some of who were forced to re-enter green houses before the permitted re-entry time. Some workers complained that in their company, personal protective gear would not be availed to them until a few days before audits were conducted. Another worker stated that in some cases, workers whose protective gear had not been replaced would be given days

off prior to audits to ensure that they do not participate in the audits while workers who have spare clothing would be advised to share with their colleagues.

*Onsite: Farm 19*

Health and safety	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	5 (24%)	16 (76%)	0	0	21

*Offsite: Naivasha*

Health and safety	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	6 (24%)	8 (32%)	6 (24%)	5 (20%)	25
Workers committee members	5 (38%)	2 (15%)	4 (31%)	2 (15%)	13
Shop stewards	6 (26%)	8 (35%)	1 (4%)	8 (35%)	23
<b>Total</b>	<b>17 (28%)</b>	<b>18 (30%)</b>	<b>11 (18%)</b>	<b>15 (25%)</b>	<b>61</b>
Community members	3 (20%)	4 (27%)	4 (27%)	4 (27%)	15
<b>Total</b>	<b>20 (26%)</b>	<b>22 (29%)</b>	<b>15 (20%)</b>	<b>19 (25%)</b>	<b>76</b>

### g) Promotion of gender equality at the workplace

In both Farm 19 and in Naivasha workers concurred that certification standards led to improvements in gender equality at the workplace with 48% of workers in both cases rating the impact as excellent.

*Onsite: Farm 19*

Gender equality	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	10 (48%)	11 (52%)	0	0	21

*Offsite: Naivasha*

Gender equality	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	13 (52%)	3 (12%)	1 (4%)	8 (32%)	25
Workers committee members	6 (46%)	3 (23%)	2 (15%)	2 (15%)	13
Shop stewards	10 (43%)	1 (4%)	1 (4%)	11 (49%)	23
<b>Sub total</b>	<b>29 (48%)</b>	<b>7 (11%)</b>	<b>4 (7%)</b>	<b>21 (34%)</b>	<b>61</b>

Community members	2 (13%)	2 (13%)	4 (27%)	7 (47%)	15
<b>Total</b>	<b>31 (41%)</b>	<b>9 (12%)</b>	<b>8 (11%)</b>	<b>28 (37%)</b>	<b>76</b>

According to one stakeholder, while measures have been put in place to promote gender equality, the stringent labour laws in Kenya is forcing some companies to rethink or avoid hiring female workers in order to avoid costs associated with such workers such as providing for maternity protection.

#### h) Overall impact in rights and welfare of workers

In their overall assessment 81% of interviewees in Farm 19 and 62% of all workers interviewed in Naivasha acknowledged that certification standard had a satisfactory impact on the rights and welfare of workers.

*Onsite: Farm 19*

Overall impact	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	4 (19%)	17 (81%)	0	0	21

*Offsite: Naivasha*

Overall impact	Excellent	Satisfactory	Unsatisfactory	NA/Not sure	Total
Workers	4 (16%)	11 (44%)	5 (20%)	5 (20%)	25
Workers committee members	6 (46%)	4 (31%)	1 (8%)	2 (15%)	13
Shop stewards	0	23 (100%)	0	0	23
<b>Total</b>	<b>10 (16%)</b>	<b>38 (62%)</b>	<b>6 (10%)</b>	<b>7 (11%)</b>	<b>61</b>
Community members	4 (27%)	3 (20%)	3 (20%)	5 (33%)	15
<b>Total</b>	<b>14 (18%)</b>	<b>41 (54%)</b>	<b>9 (12%)</b>	<b>12 (16%)</b>	<b>76</b>

For many workers, the promise of living wages remains an unfulfilled promise that the RBSC system will need to address. Other stakeholders including some certification bodies acknowledge the problem and recommend that the challenge needs to be addressed within the context of economic realities and competitive nature of the flower industry in the country and the region.

In many other areas, workers appreciated the change that has happened but they have identified gaps that the RBSC project will have to address. These areas include promoting health and safety of workers in the farm through provision of adequate



protecting gear, encouraging effective unionization of workers, combating both covert and overt sexual harassment in farms and monitoring use of seasonal workers for its potential of abuse.

## B. Readiness assessment

The reading assessment sought to understand the existing technical and operational gaps among companies, workers and other key stakeholders and their incentive and motivation to build and adopt results based certification system. It also assessed the extent to which the current certification is participatory and the role that each stakeholder may play in the results based social certification system. The following section presents the findings of the readiness assessment.

### I. Knowledge and understanding of audit and certification process by workers and communities

There is a general lack of knowledge and understanding among workers and community members of what certification standards are and the audit and certification process. More than 70% of workers and community members do not understand certification standards and their role in certification process. In Naivasha, 75% of the workers interviewed did not understand the standards and were generally unaware about the specific standards in their farms.

<i>Do you understand what certification standards are?</i>	<b>Yes</b>	<b>No</b>	<b>Total</b>
Workers	1 (4%)	24 (96%)	25
Workers committee members	7 (54%)	6 (46%)	13
Shop stewards	7 (30%)	16 (70%)	23
<b>Total</b>	<b>15 (25%)</b>	<b>46 (75%)</b>	<b>61</b>
Community members	7 (47%)	8 (53%)	15
<b>Total</b>	<b>22 (29%)</b>	<b>54 (71%)</b>	<b>76</b>

#### **Workers and community members understanding of certification schemes (Sample answers)**

- Worker No 16 – Farm 18 – “They are standards that a company must comply with in order to be certified so that they can access different markets. Non-compliance results in withdrawal of certification”

- Worker No. 18 – Farm 14 – “Fairtrade workers project committee to implement premium”
- Gender Committee Member No. 10 – Farm 17 – “Standards that are set out for companies to meet in areas such as workers' right before being issued with a certificate of compliance.”
- Welfare Committee Member No 2, Farm 2 – “Registration of a company into fairtrade”
- Community interview No 7 – “Fairtrade association of workers who implement community project”
- Trade Union Representative, Farm 3 – Standards employers have to meet in order to be granted certification. Non-compliance result in withdrawal of certificate.

Workers are also generally not aware of the different certification schemes that exist in their companies and the standards demanded by these schemes. The Fair trade scheme was more popular among workers and community members because of the Fairtrade premium scheme that many workers benefitted from and not because of its compliance requirements.

Workers knowledge about schemes such as KFC and MPS SQ was poor although some of them worked in KFC certified companies. Some workers from Farm 5, Farm 6, Farm 13, and Farm 18 were not sure whether their companies were certified.

<b>Examples of certification schemes that workers and communities know about</b>	<b>KFC silver standard</b>	<b>Fairtrade International Labour Standard</b>	<b>MPS SQ</b>	<b>Others</b>
Workers	2	9	0	0
Workers committee members	3	9	1	3
Shop stewards	9	7	3	0
Community members	1	7	0	0

As ultimate beneficiaries of certification standards, the poor knowledge about certification standards reflects the marginalization of workers in the certification process and undermines their effective participation social certification schemes. Feedback from workers and communities indicates that many certification schemes

have not invested in comprehensive training and sensitization programmes for workers and communities.

## II. Participation in audit and certification process by workers and communities

Participation of workers and communities in audit and certification process is low partly due to the fact that certification schemes place the worker at the periphery of audit and certification process. During audit a few workers in a farm are sampled to provide information to the auditor. Workers lack other avenues for meaningful participation in the certification process beyond these onsite audit sessions.

Less than 40% of all workers interviewed had participated in social audit in their companies but the level of participation was higher among members of workers committees relative to other categories of workers. Many of the respondents also claimed that they had not received any feedback on the outcome of the audits.

<i>Have you ever participated in the social audit process?</i>	<b>Yes</b>	<b>No/NR</b>	<b>Total</b>
Workers	8 (32%)	17 (68%)	25
Workers committee members	8 (62%)	5 (38%)	13
Shop stewards	7 (30%)	16 (70%)	23
<b>Total</b>	<b>23 (38%)</b>	<b>38 (62%)</b>	<b>61</b>
Community members	4 (27%)	11 (73%)	15
<b>Total</b>	<b>27 (36%)</b>	<b>49 (64%)</b>	<b>76</b>

Many audit schemes have standard operating procedures to guide conduct of audit. The common features for standard operating procedures for Fairtrade, KFC and MPS SQ audits include opening meeting between audits and managements, document reviews, farm visits and closing meeting.<sup>xxi</sup> The documents clarify who may be interviewed during farm visit and the sampling methodology. In most cases, they provide that workers representatives may attend opening and closing meetings.

Beyond the audits local workers or their representatives have no role in the final decision taken by certification committees of the relevant certification bodies. Their role is limited to conduit and receipt of information during audits and even in this role the feedback from workers about the process is mixed. For example, in some cases workers and their representatives complained that workers representatives are not involved in closing meetings contrary to the requirement of audit procedures. In some companies management rarely communicates the final outcome of the report especially where it is negative.

Overall, 85% of all workers did not feel that they have been adequately involved in the audit and certification process. Some shop stewards from Farm 3, Farm 12 and Farm 18 reported that workers in their farm were adequately involved in audit process but some workers from these farms held contrary opinion.

<i>Do you feel that workers/community members' participation in the audit process is adequate?</i>	<b>Yes</b>	<b>No</b>	<b>Total</b>
Workers	2 (8%)	23 (92%)	25
Workers committee members	4 (31%)	9 (69%)	13
Shop stewards	3 (15%)	20 (85%)	23
<b>Sub total</b>	<b>9 (15%)</b>	<b>52 (85%)</b>	<b>61</b>
Community members	0 (0%)	15 (100%)	15
<b>Total</b>	<b>9 (12%)</b>	<b>67 (88%)</b>	<b>76</b>

According to union representatives from two different farms under the same corporate group, workers from Farm 8 and Farm 9 are usually influenced or blackmailed to give positive feedback to auditors. Another worker from Farm 4 reported that workers and workers representatives who are selected to participate in audits are perceived to be pro-management. They are usually advised “not to kill the company” by giving feedback that may result to certificates being withdrawn since this may deny the company market access leading to job losses in the farm.

Lastly, the SOPs provide for limited or no role for the community and civil society in the audit and certification process. Although some standards allow for civil society members to participate as observers, one auditor noted that for a long time civil society groups have not been involved in their audits following complaints by auditors and flower companies that human rights groups were not objective in their audit assessment or were interfering in the audit process. However, it emerged during the interviews that the misunderstanding may results from lack of clarity in the human rights normative framework guiding the audits leading conflict interpretation of a possible violation by the auditor and the observer from civil society. Many of the main certification schemes are producer led initiatives.

### **III. Performance assessment by auditing and certification schemes**

The areas for audits, frequency of audits, and certification cycles are defined in the different standard operating procedures and audit checklists issued by the various certification schemes. <sup>xxii</sup> Auditing is usually conducted by auditors approved by the certification bodies some of who may be employees of the certification schemes or a

third party auditing body contracted by the certification scheme such as AFRICERT, Bureau Veritas and SGS.

Audit checklist is the main data collection tool employed by the various schemes. The checklist is used to measure compliance against the requirements of the various standards rather than to evaluate achievement of defined outcomes and impacts of the schemes. The frequency of audits is defined in the standard operating procedures. For example, the KFC scheme conducts annual certification audits following the initial audit but some farms may be sampled for unannounced audits.

Civil society groups, workers organization and some auditors noted that the time allocated for audits and the scope of the audit is not adequate for comprehensive assessment of all issues of concern at a farm. According to human rights groups, the audit may gloss over serious human rights issues that may not be captured even in subsequent unannounced visits. Union representatives from Farm 8 reported that their company has 'internal auditors' who conduct their own audits prior to the main certification audits without a view to identify and 'sweep under the carpet' issues that may emerge during the main audit.

The audit industry has also recognized that the process does not focus on results and impacts and therefore in recognition of inadequacies of the auditing techniques, some schemes such as Fairtrade are developing a Monitoring, Evaluation and Learning system that will measure results and demonstrates impact. It is therefore important that such scheme adequately capture human rights impact of their interventions. In this regard, one auditor recommended that human rights groups should propose the measuring indicators that schemes can consider in order to improve on their tools. He cited that the intervention by Workers Rights Watch and Women Workers Worldwide as an example for constructive civil society engagement in the audit process where CSOs were able to identify gaps in addressing sexual harassment in the flower sector and worked with KFC to address this gap. Similar intervention should be extended to address other key human rights concerns such as remuneration and health and safety.

#### **IV. Incentives and motivations for adoption of a results based social certification system**

The Agricultural Employers Association, Farm 10, Farm 19 and Fairtrade East Africa are the only private sector actors who expressed willingness to support the RBSC initiative. Kenya Flower Council was non-committal and many flower farms that were approached declined to participate in the project. Among the proponents, their motivation for supporting the initiative varies. According to the compliance officer at

Farm 10, the system would complement the company's policy objectives of empowering workers in order to improve operations at the company. Trade union representatives, representatives of workers committees as well as workers see in RBSC the potential for workers and other stakeholders to effectively participate in audit process in order to improve wages and working conditions for workers at the flower farms. Meanwhile, according to the Agricultural Employers' Association, the RBSC will help companies address compliance challenges and enable standards owners to work towards harmonization of standards. Therefore the RBSC will have to be designed to meet the different interests and level of expectations of the various categories of stakeholders.

The challenges that may undermine implementation of the proposed system include cost implications on companies and lack of political will by stakeholders. Companies, standards owners, and auditors are unlikely to perceive any benefits if the system will result in more burdensome and costly operations. Standards owners and auditors may also be unwilling to embrace an idea that is yet to be tested. Lack of knowledge and skill among the stakeholder may also undermine the effective implementation of the RBSC system. These challenges need also to be viewed in the context of prior experience with HEBI the multi-stakeholder initiative that was set up to address challenges in the flower sector but subsequently failed due to lack of support from private sector and unions who were opposed to CSOs involvement. During interviews with stakeholders it emerged that the hostile climate against human rights organisation still prevails in flower farms and some certification bodies. Annex 1 summarizes the findings of assessment on incentives and motivations for adopting a RBSC.

### **C. Training needs assessment**

The training needs assessment revealed varying levels of skills among different stakeholders. Workers have lower levels of knowledge and skills on certification standards generally and results based monitoring and evaluation. This may be attributed to the low literacy levels among many flower farm workers and lack of effective communication strategies to reach such workers. Compliance officers or management staff responsible for certification matters may be familiar with the standards and data collection methods but they will require training on all key areas of results based monitoring and evaluation. Many of the civil society organizations that are currently active in flower sector have not engaged with certification schemes and will require general training on certification process. It also emerged that while auditors have the relevant technical skills for auditing, some auditors may lack human rights trainings to enable them pick out the latent human rights issues during audits.

The key areas of training for all stakeholders are results based planning, data collection and analysis, developing indicators and participatory monitoring and evaluation. Other specific skills that were prioritized by interviewees include interviewing skills, research, reporting skills. The section below summarizes findings of the training needs assessment.

1. Knowledge of certification standards:

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10	X		
Farm 19	X		
Shop stewards/KPAWU Naivasha Branch		X	
Workers committees (Various companies)			X
Agricultural Employers Association	X		

2. Knowledge of different types of social certification standards

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10	X		
Farm 19	X		
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)			X
Agricultural Employers Association		X	

3. Knowledge of the entire cycle of social certification

Stakeholder	Excellent	Satisfactory	Unsatisfactory
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Farm 10	X		
Farm 19		X	
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)			X
Agricultural Employers Association		X	

4. Knowledge of auditing parameters

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10		X	
Farm 19	X		
Shop stewards/KPAWU Naivasha Branch		X	
Workers committees (Various companies)		X	
Agricultural Employers Association		X	

5. Appreciation of the aims and objectives of a result based social certification scheme

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10		X	
Farm 19		X	
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)			X
Agricultural Employers Association		X	

6. Appreciation of data collection methods



Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10	X		
Farm 19		X	
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)			X
Agricultural Employers Association		X	

7. Knowledge of feedback mechanisms from workers and community to auditors

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10		X	
Farm 19		X	
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)		X	
Agricultural Employers Association		X	

8. Knowledge of feedback from auditors to workers and community

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10		X	
Farm 19	X		
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)			X
Agricultural Employers Association		X	

9. Knowledge and skills on participatory monitoring, learning and evaluation.

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10	X		
Farm 19		X	
Shop stewards/KPAWU Naivasha Branch			X
Workers committees (Various companies)			X
Agricultural Employers Association		X	

10. Understanding of the potential role that the respondents could play in a result based social certification scheme.

Stakeholder	Excellent	Satisfactory	Unsatisfactory
Farm 10		X	
Farm 19		X	
Shop stewards/KPAWU Naivasha Branch	X		
Workers committees (Various companies)			X
Agricultural Employers Association		X	

11. The keys skills for improvement

Stakeholder	Areas of improvement
Farm 10	<ul style="list-style-type: none"> <li>• Research</li> <li>• Data collection</li> <li>• Reporting systems</li> </ul>
Farm 19	<ul style="list-style-type: none"> <li>• Training on Sexual harassment</li> <li>• Risk assessment</li> <li>• General awareness</li> </ul>

Shop stewards/KPAWU Naivasha Branch	<ul style="list-style-type: none"> <li>• Leadership</li> <li>• Communication</li> <li>• Reporting (verbal and written)</li> <li>• Negotiation</li> <li>• Interpersonal</li> <li>• Legal</li> </ul>
Workers committees (Various companies)	<ul style="list-style-type: none"> <li>• Monitoring and evaluation</li> <li>• Research</li> <li>• Data collection</li> <li>• Interviewing</li> <li>• Audit cycle</li> </ul>
Agricultural Employers Association	<ul style="list-style-type: none"> <li>• Audit cycle</li> <li>• Data collection</li> <li>• Monitoring and evaluation</li> </ul>

## Chapter 6: Conclusion and Key Lessons

The survey has revealed several key lessons and challenges that continue to impact of the current certification schemes that may have a bearing on the success of the RBSC. Firstly, current certification schemes continue to pursue a compliance based criteria rather than an evaluation based framework although some scheme are currently reviewing their criteria with a view to improving their frameworks for measuring results and impact. Secondly, the schemes have not invested in empowering workers to play a central role in certification. Thirdly, lack of common understanding of the normative human rights framework guiding certification among all key actors' including certification bodies, auditors, producers, workers and CSOs creates confusion around the relevant benchmarks for assessing a company's compliance with its human

rights obligations and the human rights impact of certification schemes. Fourthly, mutual mistrust between certification schemes and producers on the one hand and CSO in particular human rights organizations undermine effectiveness and legitimacy of these schemes. The mistrust stems partly from a lack of a common value system or normative standard among the various stakeholders. Finally, although certification standards have contributed to improving welfare of workers and communities in Kenya, there are still there remain key areas of concern relating to remuneration of workers, health and safety, promoting unionization, reducing casualization of labour through use of seasonal employment and combating patent and latent cases of sexual harassment.

### **Key lessons**

The following are the key lessons that should guide the establishment of results based social certification system.

1. Building consensus on normative framework for social certification around human rights norms and principles. This may require investing in human rights training for key actors including auditors, members of certification committees in various certification bodies, senior management in companies and workers and their representatives. It is anticipated that this will build consensus and clarity on the key indicators of a company's compliance with its human rights obligations relating to right to fair remuneration, combating sexual harassment, and promoting freedom of association and right to collective bargaining.
2. Empowering workers and their representatives to play a central social certification as the primary beneficiaries the process. Workers need to have a seat at the certification table during the entire cycle. Certification schemes and stakeholder need to investment in comprehensive programme for sensitizing workers on certification schemes generally and their human rights. Further, stakeholder will need to identify and build capacity of 'workers champions' whether in unions or outside unions in order to enable them to constructively engage in the certification process beyond the audit stage. Such local champions should be able to represent local workers interests in certification committees that make the final determination on certification.
3. Engaging in constructive dialogue to address mistrust among stakeholders. Stakeholders should pursue constructive dialogue to address mistrust that continue to characterize relationship between certification schemes and

horticulture companies on the one hand, and civil society organizations/human rights organization on the other hand.

4. Establishing coalition of the willing and leveraging on strategic external partnership without undermining local ownership. Opportunities exist for establishing a coalition of the willing for the results based social certification system. Some auditors welcome human rights training to enhance their skills in audit human rights issues at the workplace. Fairtrade has indicated that it is open to work civil society to improve its approach towards monitoring impact and results. AEA may also be open to work on training and mentoring their membership in order to enhance compliance with the law. Working with union presents unique challenge due to the perceive hostility of main unions in Kenya to work with CSOs although lower level union leaders are open to collaborate with CSOs. These present possible avenues for creating a coalition of the willing. Strategic alliances with retailers in export markets and local embassy of buyer countries may also be explored to entice private sector participation without undermining their ownership of the process. RBSC should be keen not to repeat the experience of HEBI.
5. Addressing need for confidentiality by business without muzzling advocacy role of CSOs.
6. Strengthening certification schemes to addressing other structural challenges: such as time allocated for audits and audit fraud.

Annex 3 below presents recommendations of various stakeholders on ways of strengthening certification process.

## **Annex 1: Benchmarks for results based social certification**

### **Proposed Benchmarks for Results Based Social Certification<sup>xxiii</sup>**

#### *Benchmark 1: Governance and policy commitments on human rights*

##### **A. Policy Commitments**

###### **1. Commitment to respect human rights**

- The Company has a publicly available statement of policy committing it to respect the Bill of Rights of the Constitution of Kenya, and other regional and international human rights standards
- The Company's publicly available statement of policy also commits it to the UN Guiding Principles on Business and Human Rights

###### **2. Commitment to respect human rights of workers**

- The Company has a publicly available statement of policy committing it to respect the labour rights outlined in Article 41 of the Constitution and the human rights that the ILO has declared to be fundamental rights at work
- The Company's publicly available statement of policy also commits it to respecting the health and safety of workers.

###### **3. Commitment to respect rights of women workers**

- The Company also makes a commitment to respecting women's rights or refers to the Convention on the Elimination of Discrimination Against Women or the Women's Empowerment Principles

###### **4. Commitment to engage with stakeholders**

- The Company has a publicly available statement of policy committing it to engage with its potentially and actually affected stakeholders, including in local communities, civil society organizations and trade unions.
- The Company's publicly available statement of policy also commits it to engaging with affected stakeholders and their legitimate representatives in the development or monitoring of its human rights approach.

###### **5. Commitment to remedy**

- The Company has a publicly available statement of policy committing it to remedy the adverse impacts on individuals, workers and communities that it has caused or contributed to.
  - The commitment also recognizes this should not obstruct access to other remedies or includes collaborating in initiatives that provide access to remedy and includes working with business relationships to remedy adverse impacts that are directly linked to the Company's operations, products or services through the business relationship's own mechanisms or through collaborating on the development of third party non-judicial remedies.
- 6. Commitment to respect the rights of human rights defenders**
- The Company has a publicly available statement of policy committing it to zero tolerance of threats, intimidation and attacks (both physical and legal) against human rights defenders.

***B. Board Level Accountability***

**7. Commitment from the board**

- The Company's human rights policy commitments are approved by the Board or the CEO by name and a **Board member** or **Board committee** is tasked with specific governance oversight of one or more areas of respect for human rights.
- Board members and/or the CEO make speeches, presentations or other communications setting out the Company's approach to human rights or discussing its business importance.

**8. Board discussions**

- The Company describes the process it has in place to discuss and address human rights issues at Board level and / or the how the Board or a Board committee regularly reviews the Company's salient human rights issues or it provides examples of specific human rights issues discussed and/or examples of trends in types of human rights issues discussed at Board level or a Board committee during the Company's last reporting period.

**9. Incentives and performance management**

- The Company indicates that at least one Board member has an incentive or performance management scheme linked to an aspect of the Company's human rights policy commitment(s). If the Company has linked its incentive scheme to

only one aspect of its human rights policy commitment(s), this aspect is one of the Company's key industry risks.

- The criteria linking Board remuneration to human rights performance is also made public.

### *Benchmark 2: Human Rights Due Diligence*

#### **10. Resources and responsibility for day to day human rights function**

- The Company indicates the senior manager role(s) responsible for relevant human rights issues within the Company (i.e. responsibility for human rights is assigned to a senior manager(s)) and this includes the ILO core labour standards at a minimum.
- The Company also describes how day-to-day responsibility, resources and decision-making process are allocated across the range of relevant functions of the Company.

#### **11. Incentives and performance management**

- The Company indicates that it has an incentive or performance management scheme linked to aspects of its human rights policy commitment(s) for at least one senior manager.
- The criteria linking the senior manager(s)' remuneration to the Company's human rights performance is also made public.

#### **12. Integration with enterprise risk management**

- The Company describes how attention to human rights risks are integrated as part of its broader enterprise risk management systems.
- The Company also describes how the Board Audit Committee or an independent assessment was carried out of the adequacy of the enterprise risk management systems in managing human rights during the Company's last reporting year.

#### **13. Communication and dissemination of policy commitments**

- The Company describes how it communicates its policy commitment(s) to all workers, which languages the commitment(s) have been translated into.
- The Company also describes how it communicates its policy commitments to stakeholders, including local communities and potentially affected stakeholders and the Company provides an example of how it ensures the form and frequency of the information communicated is accessible to its intended audience.
- The Company describes the steps it takes to communicate its human rights policy commitment(s) to its business relationships.



- The Company describes how its human rights policy commitments are reflected within contractual or other binding arrangements with its business relationships.

#### **14. Training on human rights**

- The Company describes how it trains all relevant managers and workers on the Company's human rights policy commitment(s) or indicates that all its workers are trained on its human rights policy commitment(s).

#### **15. Monitoring and corrective actions**

- The Company describes how it monitors its implementation of its human rights policy commitment(s), which include the ILO core labour standards at a minimum, and covers the Company and relevant business relationships.
- The Company also describes its corrective action process(es) and numbers of incidences and provides an example of its corrective action process(es) in practice.

#### **16. Engaging business relations**

- The Company describes how human rights performance is taken into account in the identification and selection of potential business relationships or describes how human rights performance of business relationships interacts with decisions to renew, expand or terminate business relationships.

#### **17. Framework for engagement with potentially affected stakeholders**

- The Company describes its systems and/or processes to identify affected and potentially affected stakeholders or it describes the frequency and triggers for engagement on human rights issues by type or by stakeholder group.

#### **18. Human rights due diligence**

- The Company describes the process(es) to identify its human rights risks and impacts in specific locations or activities, covering its own operations (i.e. impacts to which it may cause or contribute) as well as through relevant business relationships.
- **Processes and triggers:** The Company also describes the systems in place to identify its human rights risks and impacts on a regular basis across its activities, in consultation with affected or potentially affected stakeholders and internal or independent external human rights experts. This includes how the systems are triggered by new operations, new business relationships or changes in the human rights context in particular locations.

- **Assessing risks:** The Company describes its process(es) for assessing its human rights risks and what it considers to be its salient human rights issues. This description includes how relevant factors are taken into account, such as geographical, economic, social and other factors or publicly discloses the results of the assessments, which may be aggregated across its operations and locations.
- **Integrating and acting:** The Company describes the processes to integrate and act on the findings of its assessments of human rights risks and impacts or provides an example of the specific conclusions reached and actions taken or to be taken on at least one of its salient human rights issues as a result of assessment processes in at least one of its activities/operations.
- **Monitoring and evaluation:** The Company describes the system(s) for tracking the actions taken in response to human rights risks and impacts assessed and for evaluating whether the actions have been effective or have missed key issues or not produced the desired results or also provides an example of the lesson learned while tracking the effectiveness of its actions on at least one of its salient human rights issues as a result of the due diligence process.

**19. Communicating: Accounting for how human rights impacts are addressed**

- The Company describes the general criteria it uses for deciding what to communicate to whom, when, how or the Company describes how it ensures on an ongoing basis that potentially affected stakeholders or their legitimate representatives are able to access and use the information communicated, such as how it overcomes any language barriers, literacy barriers, cultural barriers or physical barriers to effectively communicating with them.

*Benchmark 3: Remedies and grievance mechanisms*

**20. Grievance mechanisms to receive complaints from workers**

- The Company indicates that it has one or more channels/mechanisms, or participates in a shared mechanism, accessible to all workers to raise complaints/concerns, related to the Company or the Company describes how it ensures the channel(s)/mechanism(s) is/are accessible to all workers, including in local languages.
- The Company also discloses data about the practical operation of the channel(s)/mechanism(s), such as the number of grievances about human rights issues filed, addressed or resolved and an evaluation of the effectiveness of the channel(s)/ mechanism(s).

**21. Grievance channels/mechanisms to receive complaints or concerns from external individuals and communities**

- The Company has one or more channel(s)/mechanism(s) (its own, third party or shared) through which individuals and communities who may be adversely impacted by the Company can raise complaints/concerns, including in relation to human rights issues.

**22. Users are involved in the design and performance of the channel(s)/mechanism(s)**

- The Company indicates that it engages with potential and/or actual users on the design, implementation or performance of the channel(s)/mechanism(s) and describes how it does this.
- The Company also provides an example that in one or more instances potential and/or actual users participate in jointly creating or co-appointing the channel(s)/mechanism(s).

**23. Procedures related to the mechanism(s)/channel(s) are publicly available and explained**

- The Company describes how complaints and concerns for workers and external individuals and communities are received, processed and addressed, including timescales for responses at each stage, who is handling the complaint, as well as how those making complaints are informed, in local languages.
- The Company describes how complaints or concerns for workers and all external individuals and communities may be escalated to more senior levels or independent parties

**24. Commitment to non-retaliation over concerns/complaints made**

- The Company indicates that it prohibits retaliation against workers and other stakeholders (including those that represent them) for raising human rights related concerns and describes how it ensures there is no retaliation.
- The Company indicates that it has never brought a retaliatory suit against persons who have brought or tried to bring a case against it involving credible allegation of adverse human rights impacts or against the lawyers representing them (retaliatory civil litigation, including for defamation, filing criminal complaints, or any similar actions against claimants or their lawyers), or fired any workers who have brought or tried to bring a case against it involving an allegation of human rights abuse, or engaged in violent acts or threats or treats against livelihoods, careers or reputation against claimants or their lawyers.

**25. Company involvement with State-based judicial and non-judicial grievance mechanisms**

- The Company publicly commits to not impeding access to state-based judicial or non-judicial mechanisms or other available mechanisms for persons who make allegations of adverse human rights impacts and indicates that it has not required affected individuals or communities participating in grievance/mediation process permanently to waive their legal rights to bring a claim through a judicial process as a condition of participating in the grievance/mediation process.
- The Company also sets out the process by which it will co-operate with state-based non-judicial grievance mechanism complaints brought against it and provides an example of issues resolved (if applicable).

**26. Remediating adverse impacts and incorporating lessons learned**

- The Company describes the approach it has taken to provide or enable a timely remedy for any salient adverse human rights impacts which it has identified (by category or by example) and which it has caused or contributed to or if it has not identified any, the approach it would take if adverse impacts related to the key industry risks were to be identified.
- The Company also describes changes to systems and procedures or new processes and practices adopted which are designed to prevent similar adverse impacts in the future or if it has not yet identified any adverse human rights impacts, the approach it would take to incorporate lessons learned from such adverse impacts related to the key industry risks should they arise in the future.

*Benchmark 4: Performance – Company human rights practices*

**27. Living wage**

- The Company indicates its target timeframe(s) for paying all workers a living wage and the Company describes how it determines a living wage for the regions where it operates, which includes involvement of relevant trade unions.
- The Company also indicates that it either has met the targets or provides an explanation of why these were not met and its progress toward meeting the targets and the targets are regularly reviewed and negotiated with relevant trade unions or the Company demonstrates progress towards achieving a living wage for the regions where it operates, which includes involvement of relevant trade unions.

**28. Freedom of association and collective bargaining**

- The Company commits to not interfering with the right of workers to form or join trade unions and to bargain collectively and puts in place measures to prohibit any form of intimidation or retaliation against workers seeking to exercise these rights, to overtly or covertly discourage workers from joining trade unions and discloses the percentage of its workforce whose terms and conditions of work are covered by collective bargaining agreements.

**29. Health and safety**

- The Company discloses quantitative information on health and safety for its employees related to injury rates or lost days (or near miss frequency rate) and fatalities.
- The Company also provides an explanation of the figures provided or describes the resulting corrective actions or action plans or sets targets related to rates of injury, lost days and fatalities and, if the Company had already set targets related to the reporting period, it either has met the targets or provides an explanation of why these were not met.

**30. Women rights**

- The Company describes its processes to prohibit harassment, intimidation and violence against women or it describes how it takes into account differential impacts on women and men of working conditions, including to reproductive health or it describes how it provides equality of opportunity for women in the workforce that are monitored and maintained throughout all levels of employment.

*Benchmark 5: Performance – Responses to serious allegations*

**31. The company has responded publicly to the allegation**

- The Company has responded publicly to the allegation.
- The Company has responded publicly and in detail to the each aspect of the allegation.

**32. The Company has appropriate policies in place**

- The Company has a publicly available statement of policy committing it to respecting the general human rights principle in question relevant to the impacts covered by the allegation and the commitment is applicable to business relationships which may have contributed to or been linked to the alleged impact.

- The Company takes appropriate action to address the alleged impact including through providing remedy(ies) to the affected people or by having in place related management systems to prevent such impacts depending on its 'level of involvement' and engages in a dialogue with the stakeholders reportedly affected in the allegation (or, if the Company is alleged to be directly linked, it encourages its business relationship to do so). If the Company denies the allegation, it engages in a dialogue with the stakeholders reportedly affected in the allegation (or, if the Company is alleged to be directly linked, it encourages its business relationship to do so).
- The Company also provides evidence that it provides remedy(ies) that are satisfactory to the victims and provides evidence of having improved its management systems to prevent such impacts from occurring in future and engages in dialogue.
- If the Company denies the allegation, it also provides evidence of having improved its management systems to prevent such impacts from occurring in future (the measures depending upon the potential level of involvement, whether causing, contributing or directly linked).

*Benchmark number 6: Transparency*

33. Company willingness to publish information relating to human right impact in its business operations
34. Companies report against existing nationally and internationally recognised good-practice reporting frameworks
35. Company disclosures are high quality, concrete and specific based on what stakeholders need to know.



## Annex 2: Readiness assessment

Stakeholder	Motivation	Potential Role	Potential Champions	Potential Beneficiaries	Possible challenges to implementing RBSC
Farm 10	It is the company's policy to empower workers since empowered workers help to improve operations	NA	<p><i>Within the company</i></p> <ul style="list-style-type: none"> <li>• Compliance officer</li> </ul> <p>Motivation: To empower workers and improve compliance with law and standards</p>	The company	<ul style="list-style-type: none"> <li>• Lack of adequate funding to implement the system</li> </ul>
Farm 19		<ul style="list-style-type: none"> <li>• Staff training</li> <li>• Monitoring project implementation</li> <li>• Financing (subject to availability of funds)</li> </ul>	<p><i>Within the company</i></p> <ul style="list-style-type: none"> <li>• Company management</li> </ul> <p><i>Outside the company</i></p> <ul style="list-style-type: none"> <li>• Fairtrade</li> <li>• KPAWU</li> </ul>	<ul style="list-style-type: none"> <li>• Horticulture companies</li> </ul>	<ul style="list-style-type: none"> <li>• Funding</li> </ul>
Shop stewards/KP AWU-Naivasha Branch	<ul style="list-style-type: none"> <li>• RBSC will sensitize workers</li> <li>• It will improve workers working environment</li> <li>• It will help in</li> </ul>	<p>To sensitize workers</p> <p>To provide relevant and accurate</p>	<p><i>Within the company</i></p> <ul style="list-style-type: none"> <li>• Shop stewards</li> </ul> <p>Motivation: opportunities for</p>	<p><u>Main beneficiaries</u></p> <ul style="list-style-type: none"> <li>• Workers</li> <li>• Communities</li> </ul>	<ul style="list-style-type: none"> <li>• Threats and victimization by management</li> <li>• Payment of fees to participate in the</li> </ul>



	building capacity of workers	information to auditors	training, empowerment and capacity building.  <i>Outside the company</i> <ul style="list-style-type: none"> <li>Nyumba kumi elders</li> <li>Youth</li> <li>Churches and other religious institutions</li> <li>Local Administration</li> <li>Community workers</li> <li>Women groups</li> </ul>	<ul style="list-style-type: none"> <li>Companies</li> </ul> <p><u>Those who will not benefit</u></p> <ul style="list-style-type: none"> <li>Auditors</li> </ul>	<p>RBSC</p> <ul style="list-style-type: none"> <li>Unfulfilled promises</li> <li>Introduction of regulations and practices that will have adverse effects to workers e.g. reduction to work force.</li> </ul>
Workers welfare committees (Various companies - Beautyline Flowers, Bigot Flowers, Duro Farm, Flamingo Kingfisher, Gorge Farm, Livewire Flowers, Maridadi Flowers, Nini Farm, Ol	<ul style="list-style-type: none"> <li>RBSC will improve workers welfare</li> <li>It will unearth violations that remain concealed under the current system</li> <li>It will ensure participation by all stakeholders</li> <li>It will enable workers to participate freely in audits</li> </ul>	<p>Mobilizing and sensitizing workers to participate in the system</p> <p>Sharing information concerning workers welfare</p>	<p><u>Within the company</u></p> <ul style="list-style-type: none"> <li>Trained committee members.</li> <li>Trained workers</li> <li>Management</li> <li>Union officials.</li> <li>Supervisors</li> <li>Human resource manager</li> </ul> <p><u>Motivation:</u></p> <ul style="list-style-type: none"> <li>Workers are ultimate beneficiaries of the project success</li> </ul>	<p><u>Main beneficiaries</u></p> <ul style="list-style-type: none"> <li>Community</li> <li>Workers</li> </ul> <p><u>Who will not benefit from RBSC</u></p> <ul style="list-style-type: none"> <li>Management staff in companies</li> <li>Standard owners and auditors</li> <li>Horticultur</li> </ul>	<ul style="list-style-type: none"> <li>Lack of capacity and understanding by workers</li> <li>Inadequate support by management</li> <li>Lack of knowledge and skills on building RBSC system</li> <li>Threat of loss of employment and victimization by management</li> <li>Lack of goodwill from</li> </ul>

<p>Njorowa Farm, Plantation Flowers, Tulaga Flowers and Van de Berg)</p>	<ul style="list-style-type: none"> <li>It will establish clear target to be achieved that everyone understands</li> </ul>		<ul style="list-style-type: none"> <li>Training opportunities</li> </ul> <p><u>Outside the company</u></p> <ul style="list-style-type: none"> <li>Civil society organisations</li> <li>Community based organisations</li> <li>Local administration authorities e.g. chiefs, community elders, Nyumba Kumi committees and County Commissioner</li> <li>Religious leaders.</li> <li>County Commissioners</li> <li>Area Members of County Assemblies</li> <li>County government.</li> <li>Community</li> <li>Local businesses</li> </ul> <p><u>Motivation</u></p> <ul style="list-style-type: none"> <li>The community understand the challenges facing flower farm workers e.g. low</li> </ul>	<p>e companies</p> <ul style="list-style-type: none"> <li>Unions</li> </ul> <p><u>Explanation</u></p> <ul style="list-style-type: none"> <li>Companies workload will increase</li> <li>Companies may face loses</li> </ul>	<p>the company</p> <ul style="list-style-type: none"> <li>Opposition by union</li> <li>Opposition by management</li> </ul>
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			<p>wages</p> <ul style="list-style-type: none"> <li>• Economic improvement of workers who form the majority population will trickle over to community.</li> <li>• Majority of the electorate in Naivasha are flower farmers hence MCA will be interested to address their concerns</li> <li>• The community interest is to see company prosper since they also benefit from company</li> </ul>		
Workers (from various companies)	<ul style="list-style-type: none"> <li>• RBSC system will empower workers, enhance their participation in audits and provide feedback to workers</li> </ul>	<p>Training and sensitization of workers</p> <p>Advocate for the implementation</p>	<p><u>Within the company</u></p> <ul style="list-style-type: none"> <li>• Workers</li> <li>• Workers in the spray department</li> <li>• Union representatives</li> <li>• Supervisors</li> <li>• Welfare committee</li> </ul>	<p><u>Main beneficiaries</u></p> <ul style="list-style-type: none"> <li>• Community</li> <li>• Workers</li> <li>• Horticulture companies</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of financial resource to implement the system</li> <li>• Fear of job loss</li> <li>• If the system does not benefit workers</li> </ul>

	<ul style="list-style-type: none"> <li>• RBSC is worker centered</li> <li>•</li> </ul>	<p>n of the system at the workplace</p> <p>Monitoring and reporting on workers welfare</p> <p>Mobilizing support from workers</p>	<ul style="list-style-type: none"> <li>• Management</li> <li>• Youth</li> <li>• Peter Otieno, Former Union Leader</li> </ul> <p><u>Motivation:</u> Prospect of improved wages and working conditions for workers</p> <p><u>Outside the company</u></p> <ul style="list-style-type: none"> <li>• MCA Karagita Ward</li> <li>• MCA Hellsgate</li> <li>• Local administrators including village elders,</li> <li>• Auditors</li> <li>• Religious organisations</li> <li>• Trade union</li> <li>• Women</li> <li>• Community</li> <li>• Local business people</li> <li>• Community based organisations</li> <li>• Civil society organisations</li> <li>• Human rights organisations</li> </ul>	<ul style="list-style-type: none"> <li>• Standard owners</li> <li>• Auditors</li> </ul> <p><u>Who may not benefit</u></p> <ul style="list-style-type: none"> <li>• Community</li> <li>• Horticulture companies</li> <li>• Standard owners and auditors</li> </ul>	<p>adequately, it may not receive full support</p> <ul style="list-style-type: none"> <li>• Lack of good will from the company</li> <li>• Lack of knowledge and skills on building RBSC systems</li> <li>• Interference, threats and intimidation by management</li> </ul>
Agricultural Employers	<ul style="list-style-type: none"> <li>• RBSC may help the institutions</li> </ul>	Harmonization of social	<p><u>Within AEA</u></p> <ul style="list-style-type: none"> <li>• AEA board</li> </ul>	<p><u>Main beneficiaries</u></p>	<ul style="list-style-type: none"> <li>• If the system does not make business sense,</li> </ul>

Association	address compliance issues and harmonisation of standards	certification standards	<ul style="list-style-type: none"> <li>• AEA member companies</li> </ul> <u>Outside AEA</u> <ul style="list-style-type: none"> <li>• Certification bodies</li> <li>• Unions</li> <li>• Standard owners</li> </ul>	<ul style="list-style-type: none"> <li>• Horticulture companies</li> </ul>	i.e. it is likely to increase cost. Companies need solutions that simplify auditing
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### **Annex 3: Stakeholder recommendation for strengthening certification process**

In order to enhance impact of certification standard respondent made the following recommendations to key stakeholders:

#### ***To Standard owners.***

1. Standard owners should ensure that the process of developing certification standards is participatory.
2. Standards owner should establish accessible mechanisms such as offices within the company premises where workers can give feedback and report issues that arise in the workplace even after audits.
3. Standard owners should ensure that audit recommendations are fully implemented.
4. Standard owners should provide feedback to communities
5. Fairtrade should extend fairtrade premium to provide accessible loans to community
6. Standards should propose a living wage for workers in horticulture sector and ensure that workers are paid a living wage
7. Standard owners should conduct fact finding visits to the farms certified under their schemes.
8. Fairtrade should assess whether the premiums indeed reach the workers
9. Standards owners should harmonize and develop local standards that apply to all companies

#### ***To certification bodies and auditors***

1. Auditors should conduct more unannounced audits
2. Auditors should randomly select workers to be interviewed without influence from management
3. Auditor should protect confidentiality of workers who provide adverse information about their company in order to avoid victimization of the worker. Sources of information should only be disclosed in exceptional circumstances.
4. Auditors should ensure that workers representatives are involved in the audits.
5. Audits should be undertaken in strict conformity with the standards
6. Auditors should uphold fairness and integrity in their audits
7. Auditors should ensure that audit report accurately reflect workers views
8. Auditors should include all stakeholders including civil society organisations and community in audits.
9. Certification schemes may consider encouraging civil society organisations, trade unions, and community based organisations to conduct 'shadow audits' and provide shadow audit reports to the schemes for review before making a determination on whether to issue or renew a certificate.

10. Certification bodies should establish accessible mechanisms such as offices within the company premises where workers can give regularly provide feedback and report issues that arise at the workplace post audits.
11. Audits should extend to monitoring the quality of products purchased through fairtrade premiums to ensure that no sub standards goods/products are procured.
12. Frequency of audits should be increase to at least quarterly or biannually
13. Auditors should not interview workers in the presence of managers or supervisors. Auditors should conduct interviews with workers off-site in order to enable them to speak freely.
14. Auditors should look out for stage managed processes in companies
15. Auditors should ensure that the community receives feedback on the audit process
16. Audit report should be made public
17. Where possible the workers are supposed to be given simplified copies of the standards that they are audited against.

#### ***To Companies***

1. Companies should promptly respond to areas of non compliance and fully implement audit recommendations.
2. Companies should ensure that there is compliance with relevant standard even in the absence of audits. They should also comply with the law and improve workers welfare in particular wages and salaries.
3. Companies should stop culture of victimization, blackmail and intimidation of workers during audits. Instead they should encourage workers to freely share their views with auditors
4. Companies should stop the culture of corruption in audits. They should also ensure that corrupt managers are dismissed.
5. Companies should ensure that all the stakeholders are part of the audit process.
6. Companies should not stage manage audits
7. Companies should enhance proper management of fairtrade premium. They should empower Fairtrade Premium Committees to ensure that the project they select are beneficial to workers and communities
8. Companies should involve the community in decisions that affect them
9. Financial support and sponsorship by Fairtrade Premium Committee should be based on merit and not on who you know
10. Companies should allow workers who are beneficiary of Fairtrade scholarship schemes time off to attend studies.
11. Companies should share with workers findings and recommendations of the audits

#### ***To other stakeholders***

1. Union officials should involve general workers in the audit process. They should adequately represent the interest of general workers in the audits.
2. Civil society organisations should champion workers' rights and undertake follow up with companies to ensure implementation of audit recommendations.
3. Parliament should enact more laws that protects the rights of workers
4. County government to visit all the flower farms and not limit their visits to big flower farms that are fully compliant.
5. County government should ensure that the salary paid is equivalent to work done
6. County government to inspect farms and interview workers and come up with laws to protect them



## Annex 4: Survey questionnaire

### BASELINE STUDY & READINESS ASSESSMENT FOR MAINSTREAMING OF RESULTS BASED SOCIAL CERTIFICATION SYSTEMS IN THE HORTICULTURE SECTOR IN KENYA

#### SURVEY QUESTIONNAIRE FOR WORKERS

Questionnaire Number: \_\_\_\_\_

#### **Introduction**

The Kenya Human Rights Commission (KHRC) and Workers Rights Watch (WRW) are currently implementing a four year project dubbed “Results Based Social Certification System: Certify Satisfy” (RBSC Project). A results based social certification system may be described as a continuous process of auditing, collecting and analyzing information on key indicators and comparing actual results with planned results. The project seeks to influence certification bodies and other relevant stakeholders in the horticulture sector to shift from the current compliance based auditing mechanisms that monitor processes and activities and to adopt auditing techniques that monitor actual results to workers and communities. As part of this project KHRC and WRW are conducting a baseline survey which includes 1) **Impact assessment** to assess the impact of current social certification in the horticulture sector in Kenya on workers, communities and companies. The study also includes a; 2) **Readiness assessment** to explore the extent to which horticulture companies and certification bodies are prepared and willing to engage in the RBSC project and the feasibility of the uptake and adoption of RBSC systems by the sector; and 3) **Training needs assessment** which will establish relevant areas of capacity strengthening for workers, trade union representatives (specifically shop stewards and branch officials), managers, independent evaluators and certification bodies towards effective implementation of results based social certification systems in the sector. The study is focused on horticulture farming in Naivasha, Kenya.

You have been randomly selected to participate in the study. The information you provide us is confidential. Your name or the name of your organization will not appear anywhere in the report without your written consent. This interview may take about one hour. Alternatively you may complete the questionnaire in your free time and send it back to the address the will be provided to you.

**Part I: Respondent's Details**

Name of Interviewee			
Name of company/farm			
Position/Job title			
Worker Category	<input type="checkbox"/> Casual	<input type="checkbox"/> worker	Pe
Gender	<input type="checkbox"/> Male	<input type="checkbox"/>	Fe
Union/worker committee leader	<input type="checkbox"/> Yes	<input type="checkbox"/>	No
	If yes specify leadership position		
Number of years working with the farm/company			
Contact details	Phone: _____		
	Email: _____		
Date of interview			
Interview location	<input type="checkbox"/> Onsite	<input type="checkbox"/>	Of
	(Company/farm premises) Name the location:		



**II. Workers knowledge and experience of audit and certification process**

1) Do you understand what certification standards are?			
a. If yes, please explain what they are.			
b. Cite examples of some of the common certification standards			
2) Is the company that you work for certified	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
3) If yes, what is/are the certification standard(s) in place?			
4) Have you ever been involved in a social audit process?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
5) Do you get feedback on the results of the audit process?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
6) If yes please describe how the feedback is communicated to you			
7) Do you feel that workers participation in the audit process is adequate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

### III. Impact Assessment

1. How would you rate the impact of social certification schemes on workers in the following areas:			
a. Improvement in wages:	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		
b. Enjoyment of freedom of association and the right to collective bargaining	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		
c. Reduction of sexual harassment at the work place	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		
d. Reduction in use of casual labour/increased formalization of labour	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		

e. Enhanced maternity protection	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		
f. Improvement in workers' health and safety at the workplace	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		
g. Promotion of gender equality at the workplace	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		
h. Other terms and conditions of employment	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<i>Please give reasons for your answer citing examples where possible.</i>		

<p>2. How would you rate the <b>overall impact</b> of social certification schemes on workers?</p>	<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
	<p><i>Please give reasons for your answer citing examples where possible.</i></p>		
<p>3. What are the key benefits to the <b>local community</b> in Naivasha arising from social certification of horticulture farms? <i>(Please list and explain not more than five key benefits)</i></p>			
<p>4. What are the key benefits to <b>horticulture farms</b> in Naivasha resulting from social certification? <i>(Please list and explain not more than five key benefits)</i></p>			
<p>5. What specific challenges/weaknesses facing the implementation of certification standards in your company? <i>(Please list and explain not more than five key challenges)</i></p>			
<p>6. What changes, if any, would you recommend to strengthen social certification schemes in</p>			

order to achieve desired impact on workers, community and companies?

a) To standard owners

b) To certification/auditing bodies

c) To companies/management

d) Any other stakeholders



**IV. Readiness Assessment**

1. What is your role as a worker in reviewing performance of horticulture companies against social certification standards in relation to workers and community impact?			
2. How frequent is the performance review in your company? _____			
3. Who conducts the performance review?	<input type="checkbox"/> Internal reviewers	<input type="checkbox"/> External reviewers	
4. Briefly explain the following:  a. The key performance measures under review   b. The process of performance review /certification/ audit.			
5. How would you generally you're your company's performance based on these reviews?	<input type="checkbox"/> Excellent <i>(performance is consistently above acceptable performance levels)</i>	<input type="checkbox"/> Satisfactory <i>(performance consistently meets most of the acceptable performance levels)</i>	<input type="checkbox"/> Unsatisfactory <i>(performance is consistently below acceptable performance levels)</i>
6. What are the major areas of compliance and non-compliance by companies?	a. Area of compliance		b. Areas of non-compliance

<p>7. Is a result based social certification system important to you as a worker?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
<p><i>Please give reasons for your answer.</i></p>			
<p>8. Are you ready and willing to work collaboratively with key stakeholders to build and roll out a sound, effective and efficient results based social certification system?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
<p><i>Please give reasons for your answer.</i></p>			
<p>9. What potential role would you as a worker play in the system?</p>			
<p>10. Who are the potential champions for building and using a results based social certification</p> <p>a. Within your company?</p>   <p>b. What would motivate these champions within your organization to support the system?</p>			
<p>11. Who are the potential champions for building and using a results based social certification</p> <p>a. Outside your company?</p>			

b. What would motivate these champions outside your organization to support the system?

12. Who will benefit from result based social certification system?	<input type="checkbox"/> Standard owners and auditors	<input type="checkbox"/> Horticulture companies	<input type="checkbox"/> Workers
	<input type="checkbox"/> Community	13. Others: _____	
	<i>Please give reasons for your answer.</i>		
14. Who will not benefit from result based social certification system?	<input type="checkbox"/> Standard owners and auditors	<input type="checkbox"/> Horticulture companies	<input type="checkbox"/> Workers
	<input type="checkbox"/> Community	15. Others: _____	
	<i>Please give reasons for your answer.</i>		
16. What would prevent workers from supporting the adoption and implementation of a result based social certification system?			
<input type="checkbox"/> Lack of financial resource to implement the system <input type="checkbox"/> Lack of goodwill <input type="checkbox"/> Lack of a champion for the system <input type="checkbox"/> Lack of knowledge and skills on building an RBSC system <input type="checkbox"/> Any other reason: _____			



## V. Training Needs Assessment

### BASELINE STUDY & READINESS ASSESSMENT FOR MAINSTREAMING OF RESULTS BASED SOCIAL CERTIFICATION SYSTEMS IN THE HORTICULTURE SECTOR IN KENYA

#### TRAINING NEEDS ASSESSMENTS

##### A. Please rate yourself on the following questions =

1. I know what social certification standards are

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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2. I know the different types of social certification standards

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
------------------------------------	---------------------------------------	---

3. I know the entire cycle of social certification cycle, from the initiation stage to the reporting and feedback mechanism

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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4. I know the different parameters used by certifying bodies to assess companies compliance with social certification standards

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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5. I understand the aims and objectives of a results based social certification scheme

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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6. I know the forms of data collection used to gather information during social certification process

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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7. I know the mechanisms that workers and the community can use to give feedback to auditors and certifying bodies

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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8. I know the mechanisms that auditors and certifying bodies use to give feedback to workers and communities following an audit process

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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9. I have adequate knowledge and skills on participatory monitoring, learning and evaluation

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
------------------------------------	---------------------------------------	---

10. I understand the potential role that I could play in a results based social certification scheme

<input type="checkbox"/> Excellent	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
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**B. Please list three key skills that you need to improve on in order to undertake a results based social certification?**

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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- <sup>ii</sup> Carlos Oya et al (2017), *Effects of certification schemes for agricultural production on socio-economic outcomes in low- and middle-income countries: A systematic review*, International Initiative for Impact Evaluation.
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- <sup>iv</sup> Barrientos & Smith (2007), 'Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems', *Third World Quarterly* 28(4): 713-729.
- <sup>v</sup> Riisgaard (2008), *Localizing Private Social Standards: Standard Initiatives in Kenyan Cut Flowers*, DIIS Working Paper no 2008/20, [http://pure.diiis.dk/ws/files/102923/WP2008\\_20\\_Localizing\\_Private\\_Social\\_Standards\\_Kenya\\_3\\_.pdf](http://pure.diiis.dk/ws/files/102923/WP2008_20_Localizing_Private_Social_Standards_Kenya_3_.pdf). Accessed 14/08/2017; see also Ellis & Keane, *A review of ethical standards and labels: Is there a gap in the market for a new 'Good for Development' label?*, ODI, November 2008;
- <sup>vi</sup> Smith et al (2004), *Ethical trade in African horticulture: gender, rights and participation*, IDS Working Paper 223 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.905.1287&rep=rep1&type=pdf> Accessed 14/08/2017.
- <sup>vii</sup> Omosa, Kimani & Njiru (2006), *The Social Impact of Codes of Practice in the Cut Flower Industry in Kenya*, Natural Resources Institute.
- <sup>viii</sup> Barrientos & Smith, (2007), 'Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems', *Third World Quarterly* 28(4): 713-729; Dolan & Opondo (2005), *Seeking Common Ground: Multi-stakeholder Processes in Kenya's Cut Flower Industry* *The Journal of Corporate Citizenship*:87-99
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- <sup>x</sup> Kormives & Jackson (2014), *Introduction to Voluntary Sustainability Standards System*, in Hoffman et al (Eds) *Voluntary Standards Systems: A Contribution to Sustainable Development*, Springer.
- <sup>xi</sup> See <https://www.ethicaltrade.org/issues/auditing-working-conditions>
- <sup>xii</sup> Nelson & Tallontire (2014), *Battle of Ideas: Changing Narratives and Power Dynamics in Private Standards Global Agriculture Value Chains*, White Rose Research Online. <http://eprints.whiterose.ac.uk/80006>
- <sup>xiii</sup> Nelson et al (2014), *Pathways of Transformation of Transgression? Power Relations, Ethical Space and Labour Rights in Kenyan Agri-Food Value Chains* in n Goodman, M.K. and Sage, C. (eds.) (2014) *Food transgressions: making sense of contemporary food politics*. London: Routledge, pp. 15 - 38
- <sup>xiv</sup> See <http://www.fairtradeafrica.net/our-impact/measuring-impact/>; [https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL\\_Impacts\\_Code\\_v2\\_Dec\\_2014.pdf](https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Impacts_Code_v2_Dec_2014.pdf); <https://www.ethicaltrade.org/blog/certification-blunt-tool-implementing-workers-rights>
- <sup>xv</sup> Source: <https://www.my-mps.com/en/certificates-producer/certified-companies> .
- <sup>xvi</sup> Source: <https://www.flocert.net/about-flocert/customer-search>
- <sup>xvii</sup> See [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103315](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103315) - Accessed 15 Dec 2017
- <sup>xviii</sup> Kusek & Rist (2004), *The Ten Steps to a Results Based Monitoring and Evaluation System*, World Bank.
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<sup>xx</sup> Hivos (2015), True Price: Creating shared value in the rose supply chain – Exploring the business case for a living wage rose.

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<sup>xxii</sup> FLOCERT (2016), Audit Standard Operating Procedure, [https://www.flocert.net/wp-content/uploads/2017/09/Audit\\_SOP\\_en.pdf](https://www.flocert.net/wp-content/uploads/2017/09/Audit_SOP_en.pdf); FLOCERT (2017), Certification Standard Operating Procedure, [https://www.flocert.net/wp-content/uploads/2017/09/Certification\\_SOP\\_en-4.pdf](https://www.flocert.net/wp-content/uploads/2017/09/Certification_SOP_en-4.pdf) ; KFC, Kenya Flower Council Certification Scheme Quality Systems Regulation: Auditing and Certification Procedure for Individual Producer, [http://kenyaflowercouncil.org/pdf/B1\\_0\\_INDIVIDUAL\\_PRODUCER\\_AUDITING\\_MAY\\_2014\\_LM\\_final.pdf](http://kenyaflowercouncil.org/pdf/B1_0_INDIVIDUAL_PRODUCER_AUDITING_MAY_2014_LM_final.pdf); MPS ECAS (2017), MPS ECAS Certification Regulation, [https://www.ecas.nl/images/documenten/downloads/MPS-ECAS\\_Certificatiereglement\\_EN\\_v6.0.pdf](https://www.ecas.nl/images/documenten/downloads/MPS-ECAS_Certificatiereglement_EN_v6.0.pdf); See also [https://www.my-mps.com/images/documenten-EN/certificaten-EN/EN\\_Certificationscheme\\_MPS-SQ\\_v9.1\\_010414.pdf](https://www.my-mps.com/images/documenten-EN/certificaten-EN/EN_Certificationscheme_MPS-SQ_v9.1_010414.pdf) (Accessed 15 January 2018)

<sup>xxiii</sup> Adapted from Corporate Human Rights Framework Pilot Methodology 2016