



FINAL REPORT

BASELINE SURVEY ON VIOLATION OF WOMEN LABOUR RIGHTS IN THE HORTICULTURE SECTOR IN KENYA

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FEDERATION OF WOMEN LAWYERS KENYA

Acknowledgement

Women working in the agricultural sector in Kenya remain a marginalized population despite their large numbers. This has been attributed to poor implementation of existing laws and policies coupled with low legal awareness of labour rights among women. This situation has led to gross gender based inequities and inequalities against women labourers. The biases include; women receiving less pay than men for equal work done, discriminative hiring practices that result to women being concentrated in the lower job groups, lack of job security for women workers, lack of paid maternity leave, and pregnant women being expected to perform the same labour intensive work as their male counterparts.

In response to the highlighted challenges, FIDA Kenya, with funding from Hivos, is currently implementing a project dubbed *Advocacy for State Accountability for Corporate Violations in the Horticulture Sector in Kenya*. The project seeks to lobby duty bearers and stakeholders (both at the county and national level) for better implementation of the existing labour laws and policies in Kenya.

This will also build the duty bearers' capacity to monitor the implementation of the law and policies. As a foundation to the project, FIDA Kenya in partnership with Hivos conducted this baseline survey to investigate

compliance with women labour rights in the horticulture sector. The findings of the survey confirmed that various horticulture employers continue to violate women labour rights. For instance, several women lose employment upon getting pregnant and still exposed to unequal pay. The findings of this survey will guide and provide a reference point for assessing the progress made.

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Lastly, we applaud FIDA Kenya staff who continue to work tirelessly to achieve the objectives of the organization. We remain hopeful that more Kenyans will appreciate and protect the rights of women in the horticulture industry, and by extension the agricultural sector, in the country.

Sincerely,

Teresa Omondi- Adeitan
Executive Director

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List of Abbreviation

AIDS	-	Acquired Immune Deficiency Syndrome
CBA	-	Collective Bargaining Agreement
CEDAW	-	Convention on Elimination of Discrimination against Women
COTU	-	Central Organization of Trade Union
CSPF	-	Consolidated Social Protection Fund
EA	-	Enumeration Area
EAC	-	East Africa Community
EU	-	European Union
FIDA-K	-	Federation of Women Lawyers Kenya
FKE	-	Federation of Kenya Employers
FPEAK	-	Fresh Produce Exporters Association of Kenya
GDP	-	Gross Domestic Product
HCD	-	Horticultural Crop Directorate
HIV	-	Human Immuno Virus
ILS	-	International Labor Standards
KES	-	Kenya Economic Survey
KFC	-	Kenya Flower Council
KHS	-	Kenya Horticultural Council
KII	-	Key Informant Interview
KPAWU	-	Kenya Plantation and Agriculture Workers Union
OSHA	-	Occupational Health and Safety Act
PPS	-	Population Proportionate to Size
VPI	-	Voluntary Private Initiatives
WEF	-	World Economic Forum
WIBA	-	Work Injury Benefits Act
WWW	-	Women Working Worldwide

Executive Summary

FIDA- Kenya has been funded by HIVOS to implement a 2-year project on *Advocacy for State Accountability for Corporate Violations in the Horticulture Sector in Kenya*.

The project seeks to advocate for effective implementation of labour rights that will enhance protection of women labour rights in the horticultural sector and build the capacities of stakeholders to effectively address cases of women's labour rights violations. There have been reported concerns on the violation of labour rights of the employees in the industry, especially the women workers who form the biggest proportion of the labour force.

In order for the current project to effectively address the gaps in the horticulture sector in terms of accountability by state actors on violation of women labour rights, there is need for relevant and up to date data. The project aims to advocate for effective implementation of labour rights that will enhance protection of women labour rights in the horticultural sector, develop the capacities of judges and magistrates to effectively address cases of women's labour rights violations and finally to study, review and document challenges and successes in regard to women's labour rights in the horticulture industry and subsequently share them with stakeholders.

The baseline survey adopted a mixed methods approach utilising both qualitative and quantitative approach. The qualitative phase included literature review and key informant interviews, while the quantitative phase involved household interviews with a representative sample representation of the women workers in the horticulture sector.

The following were the key findings per each of the project thematic area:

a. Existing laws and policies that protect women labour rights

Kenya has made great progress in developing and passing a number of laws that address gender issues at the work place. Besides international laws, Kenya has enacted a number of critical labour laws that include the Employment Act, 2007; the Labour Relations Act, 2007; the Labour Institutions Act, 2007; the Work Injury Benefits Act (WIBA), 2007; and the Occupational Health and Safety Act (OSHA, 2007) with the latest being the Kenya Constitution of 2010. The existence of these laws has helped towards streamlining the farms employment policies and this has contributed massively in protecting the labour rights of the women workers in the flower farms.

b. Extent to which those laws and policies have been implemented in selected horticulture farms in Kenya

The study majorly focused on labour institutions (employers/flower farms, unions and state departments), employment policies and their implementation, to scale levels of compliance with the labour laws and human rights plus freedoms as provided for in the constitution.

The study observed on legal and organizational policy provisions for women's rights as workers that companies have adopted internal policies to deal with workers' rights and obligations. These policies are to a large extent informed by law and codes of practice applicable to different workplaces. Most women workers reported that they receive house and medical allowance. A bigger proportion also indicated they had gone on maternity leave with full pay. However, the study revealed that women were still facing discrimination and were also victims of sexual harassment. Salary delays and summary dismissal in the flower farms was still rampant.

c. *Challenges and successes in regard to women's labour rights in the horticulture industry*

Weak policy, legal and institutional frameworks for employment interventions and uncoordinated implementation of employment programs and limited coverage of the Consolidated Social Protection Fund (CSPF), mainly due to limited resources and capacities were the major impediments towards realizing women labour rights. Understaffing of employees at the ministry and the workers union made it difficult to continuously monitor the activities, enforce the laws and policies and ultimately hold the duty bearers in the horticulture industry accountable. Low levels of education of the women employees contribute to career stagnation rendering them helpless and unable claim their rights or champion for the rights of their fellow women workers.

Consequently, women workers' desperate need for jobs to respond to their family needs such as education and health care for the children pushed them to settle for even poor jobs more than men do. The study established that most workers did not believe in reporting violation as they feared they may lose their job. Similarly poor working condition was also a challenge to the female workers as they were exposed to frequent spraying of pesticides.

In spite of the challenges and difficulties the women workers in flower farms faced, they have registered success as far as their labour rights are concerned. The enactment of the Constitution of Kenya 2010 was a big win to women including women workers in the horticulture sector. The 2010 Constitution and the Employment Acts have protected the women against discrimination by their employers and have consequently contributed towards the improvement of working conditions. Most important, the work opportunity enjoyed by the female employees has greatly inspired and empowered the women employees (of whom a third were single, divorced or widowed) to be source of livelihood to their families. During the conduct of this study it was also observed that majority of women were the bread winners in their family where the spouses were unemployed. The adoption of day care for children by selected flower farms has reduced the burden from the employees and therefore created an ample environment for women to increase their productivity and reduce absenteeism which as a result has contributed to the success of the horticulture industry.

1 INTRODUCTION

1.1 Background

Kenya's economy largely relies on the agriculture sector. Horticulture sub-sector is one of the top foreign exchange earners for the country generating approximately US \$ 1 billion annually. In 2015, the sub-sector contributed 1.45% to the national GDP while flower exports contributed 1.01% was from the flower industry. It has grown in significance to a vibrant flower industry worldwide.

The economy has recorded growth in volume and value of cut flowers exported in the past 5 years. The industry exported 367,885 tonnes in 2012, 394,387 tonnes in 2013, 434,950 in 2014, 443,950 in 2015 and 501,573 in 2016. According to Economic survey 2017 report a publication by Kenya National Bureau of Statistics (KNBS), fresh horticulture exports increased by 12.3 per cent from KSh 90.4 billion in 2015 to KSh 101.5 billion in 2016.

Kenya is the lead exporter of rose cut flowers to the European Union (EU) with a market share of 38%. Approximately 50% of exported flowers are sold through the Dutch Auctions, although direct sales are growing. Given that horticulture plays a greater role in growing our economy, it is important to address the plight of the human resource personnel especially the women workers who are behind the success.

Women working in the horticulture sector

in Kenya remain a marginalized portion despite their numerical strength, a situation, which is reinforced by existing laws and policies, as well as social-cultural factors. This state of affairs has led to a situation of gross gender based inequity and inequalities. They often receive unequal pay relative to men even in cases where women undertake similar tasks to those of men. A recent report by the World Economic Forum shows that a Kenyan woman is paid Ksh62 for every Ksh100 paid to a man for doing a similar job.

Through the years, discriminative hiring practices by businesses has resulted in women concentrated in the lower, often temporary, level of employment where they are not afforded the same employment benefits as permanent workers. Furthermore, lack of job security for women workers is still commonplace. This means that they find it extremely difficult to fulfil their reproductive role. Workers are often not permitted to take any maternity leave, to care for their babies and whilst pregnant they are expected to perform the same labour intensive work as their colleagues.

Further, sexual harassment is still rampant especially in flower farms. In self-sexual harassment at the workplace is a violation of fundamental labour rights, a problem of discrimination, an unacceptable working condition, an issue of safety and health and a form of violence primarily against women. In a 2013 report by Women Working Worldwide, all 35 workers interviewed indicated that they had direct experience, or knew someone who had been asked for sex in return for favours in the workplace.

The Constitution of Kenya, 2010 guarantees equality before the law and equal protection and benefit of the law. There is a specific guarantee of gender equality: “Women as much as men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.” Both the State and private actors are prohibited from direct and indirect discrimination on the basis of sex, pregnancy and marital status.

The Kenyan Constitution also enshrines the right of workers. Every worker has the right to fair remuneration, reasonable working conditions and fair labour practices. At statutory level, the Employment Act of 2007 prohibits discrimination in employment on grounds of, among other things, pregnancy.’

The Act further prohibits sexual harassment at the workplace.

1.2 Baseline Survey Objectives

The objectives of the baseline survey were;

- a. Examine the existing laws and policies that protect women labour rights;
- b. Investigate the extent to which those laws and policies have been implemented in selected horticulture farms in Kenya;
- c. Explore, review and document challenges and successes in regard to women’s labour rights in the horticulture industry and,
- d. Establish the baseline values of the selected indicators.

2 SURVEY METHODOLOGY

2.1 Survey Approach

The baseline survey adopted a mixed methods approach, utilizing both qualitative and quantitative methods. The quantitative phase involved household interviews with a sample representation of the women working in the horticulture sector while qualitatively a review of existing literature and key informant interviews with various stakeholders were conducted. This allowed for triangulation of findings.

In terms of literature review, several relevant law and policy documents, reports and publications related to violations of labour rights in the horticulture sector in Kenya were consulted (annex A). Qualitatively, 13 key informants including representatives

from the judiciary, FPEAK, FKE, KFC, managers and supervisors from selected horticulture farms participated in the survey. Quantitatively, 374 face-to-face interviews were conducted with the women workers in the horticultural farms in Naivasha (250) and Thika (124) regions.

During sample selection, a mixture of both purposive sampling and random household interviews was conducted in each target region. The household interviews were randomly picked from the sampled enumeration areas with sample selection being guided by the left hand rule. This was necessitated by the fact that individuals working in the flower farms are concentrated in specific estates.

2.2 Study challenges

In the process of undertaking this baseline survey, several challenges and constraints were faced:

- i. Some stakeholders were difficult to reach due to bureaucratic nature of the organizations. Persistent follow-up calls and visits were able to secure interviews with them in the long run.
- ii. Non receptiveness by some flower farms due to the perception that they were being spied.
- iii. Some respondents not willing to divulge organizational information for fear of victimization. The research team was able to assure the respondents of anonymity and confidentiality, and therefore they were able to open up and share their experiences and opinions; therefore, some of the findings herein could not explicitly refer to farm/company names.

1. Including the Central Organization of Trade Union Representative, Government Labour Officials, Labour Court

3 RESEARCH FINDINGS

In this chapter, the findings are presented per objective and the verification of indicators done at the end using an indicator dashboard.

3.1 Existing laws and policies that protect women labour rights

Kenya has made great progress in developing and passing a number of laws and policies that address gender issues at the work place. Besides international laws, Kenya has enacted a number of critical labour laws that include the Employment Act, 2007; the Labour Relations Act, 2007; the Labour Institutions Act, 2007; the Work Injury Benefits Act (WIBA), 2007; and the Occupational Health and Safety Act (OSHA), 2007) with the latest being the Kenya Constitution of 2010. The existing laws that protect the women labour rights include:

3.1.1 The Constitution of Kenya (2010)

The Kenya Constitution strongly commits itself to the principles of equality and non-discrimination. Starting from its preamble, the Constitution lists equality as one of the six essential values upon which governance should be based.

Article 27 of the Kenyan constitution prohibits any discrimination on the basis of race, sex, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, birth and any social spheres. Article 28 of the Constitution further provides that each person has inherent dignity and that dignity should be respected and protected. Article 41 targets the work place and provides that every person has the right to fair labour practices including the right to fair remuneration and reasonable working conditions.

The Constitution with its strong focus on equality and the enactment of the Employment Act of 2007 with robust equality provisions is an indicator that legal protection from discrimination has been taken a notch higher. The Constitution puts upon the state and every state organ a fundamental duty to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. In addition, women as much as men have the right to equal treatment and both the state and private persons are restrained from discriminating against any person on any ground. It further recognizes the right to fair remuneration to every worker.

Benefits offered	Yes	No	Total
Housing accommodation or house allowance	86.0%	14.0%	100.0%
Medical allowance	70.7%	29.3%	100.0%
Water	68.9%	31.1%	100.0%
Food	37.7%	62.3%	100.0%
Is your family covered in the medical cover	82.5%	17.5%	100.0%



These provisions put all workers in the labour world on an equal platform and greatly contribute to the achievement of the obligations set forth in the Convention since the Constitution, the supreme law of the Republic, binds all persons, state organs and employers.

3.1.2 International Labour Standards

To achieve its goals of promoting social justice and driving the decent work agenda, the ILO has set forth International Labour Standards (ILS) comprising of conventions, recommendations, and protocols that must be observed by all member states.

Approved in 1998, the ILO Declaration on Fundamental Principles and Rights at Work guarantee as fundamental rights the abolition of forced labour, the end of discrimination at work and the freedom of association and collective bargaining.

It is important to also note that the ILO Declaration is a non-binding instrument which does not create an international obligation on states and only emphasizes the obligation to respect and promote the fundamental principles and rights imposed on member states by the ILO Constitution.

However suffice it note that the International Labour Standards, as prescribed by the 1998 Declaration, are imported into the Laws of Kenya under Article 2 (5) and (6) of the Constitution which makes international law and any treaty or convention ratified by Kenya to be part of the laws of Kenya.

The Kenyan Employment and Labour Court has taken into account provisions of the International Labour Organization convention No.100convention concerning equal remuneration for men and women workers for work of equal value (1951) which at Article 1(6) provides for equal remuneration for workers without discrimination based on sex.

Article 1of the Convention concerning discrimination in respect of employment and occupation (1958) defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Further, the HIV and AIDS recommendation, 2010 (No. 200) talks against discrimination against or stigmatization of workers on the grounds of real or perceived HIV status and

it further provides that no workers should be required to undertake a HIV test or disclose their HIV status.

3.1.3 The Employment Act (2007)

The Court of law has before referred to Section 5 (3) (9) of the Employment Act which expressly provides; “No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee on grounds of sex, pregnancy or HIV status”.

The Ministry of East Africa Community (EAC), Labour and Social Protection representative interviewed intimated that the existing laws can adequately address the welfare of women workers with some adjustments here and there to conform to the specific needs of the horticulture sector.

“...The ministry deals with a lot of issues including and not limited to; complaints of the workers, employers, trade unions, industry regulations, strikes and policy matters. The ministry also provide advices to workers, and the government, workers union, civil societies and other stakeholders on workers right, and wages negotiations...”
Principal Labour Officer, Ministry of Labour

She confirmed that with the current laws the ministry is able to advocate for workers’ rights, and more specifically those of women. This, she said, has resulted in the improvement of the women workers condition. A close look undertaken by this baseline at the enterprises showed that some of the laws have been implemented for instance majority of the workers reported to have house and medical allowances as envisioned in the employment act.

Table 1: Benefits enjoyed by women workers

However, not all laws are being enforced and enterprises are finding ways to evade the same.

For instance, there were still cases of discrimination by tribe (8.6%), sexual harassment (28.6%) and delayed salaries (62.9%) as reported by the surveyed women respondents.

Notably, in case of tribal discrimination, it was established that victims would miss out on salary increments and job promotions. Lack of satisfactory performance is usually used as a justification. In cases of delayed payments, the study revealed that the managers would, sometimes, not give explanation for delayed pay which would make the workers get into debt. Further, sexual harassment was reported by women workers having been perpetrated largely by their male counterparts and sometimes by the supervisors. However, most of the well-established flower farms have set up infrastructure and relevant policies to protect the workers including female workers. For instance, the Oserian, Finlay, Elpis, Bilashaka (subsidiary of Zuurbier & Co.), Enkasiti, Everflora, Lauren International and Wildfire are some of the big major flower farms that have working human resource policies that address issues of child care, sexual harassment, dismissal, remuneration, leave and professional development.

3.2 Implementation of laws and policies in horticulture sector in Kenya

The study sought to investigate the extent to which the labour laws have been implemented in selected horticulture farms. The study majorly focused on labour institutions (employers, unions and state departments), employment policies and their implementation, to scale levels of compliance with the labour laws and human rights plus freedoms as provided for in the constitution.

The study examined legal and organizational policy provisions for women’s rights as workers, that companies have adopted

internal policies to deal with workers' rights and obligations. These policies are to a large extent aligned to the existing laws and codes of practice applicable to different workplaces.

The study observed that 9 out of 10 women labourers indicated to be working at most 8 hours a day, besides two-thirds of all the interviewed women reporting that they were compensated for over time worked. The visited farms had documented policies. Even though the study found high compliance with regard to documentation of policies, 55.4% of workers reported not to be consulted when policies are developed nor were they involved in any decision making. The key policies studied are described below.

i. Child care

Provision of day-care services for children has been provided for in the Convention on Elimination of Discrimination against Women (CEDAW), which Kenya has ratified and now is part of the laws of Kenya under the 2010 Constitution. The study findings indicate that 85.5% of the interviewed women indicated to have an average of 3 children (see annex table 4 and 5). The cut-flower workers are the most vulnerable category as they lack proper childcare facilities and services.

Day care centres are run in small crowded rooms with tens of children being left in tiny 10 by 10 inches' rooms that lack basic facilities like beds, playgrounds, lack hygienic standards and access to healthcare. Mothers leave food for their children but these day cares have no facilities to warm the food or preserve the same. The end result is malnutrition, spread of contaminable diseases, child abuse and neglect. Lack of proper care for the workers children has a direct impact on workers morale, productivity and output.

ii. Maternity leave:

From the study, 62.8% of interviewed women indicated to have attended maternity leave, 98.3% of them reported to have received full pay during the period of the leave. In line with the OSHA Act, some companies allowed the breastfeeding mothers an allowance of an hour a day to feed their young ones, in addition to pregnant women being assigned light duties with no overtime work requirement. On the other hand, other companies employed illegal practices such as use of short term contracts which amount to discrimination on grounds of pregnancy. For example, there is use of short term contracting to deny employment benefits.

Further, the high number of children per mother was found to be of concern. 48.8% of women had at least 3 children, 38.5% were single, divorced or widowed. The survey further reveals that 76.3% were under the age of 35 years and raises concern for reproductive health care (including family planning) to enable them make informed choices.

That is, while the Ministry of Public Health runs facilities that are outside the workplace, hours of work for women are incompatible with access to the facilities.

iii. Sexual harassment

Sexual harassment was the second most mentioned violation by the women labourers at 28.6% after delayed salaries at 62.9%. Naivasha flower farms were found to have the highest number of complaints due to the geographical set ups. Working late hours was also found to endanger women and exposing them to sexual predators. The redress mechanism to address sexual harassment was found to be wanting; 41.2% of respondents who had been violated opted to do nothing citing fear to lose their job or no action would be

2. Response on working hours

3. Forms of labour rights violations experience by women workers

taken against the perpetrator. The redress mechanism against sexual harassment was not inspiring confidence. From the study, out of 8 people who reported to have been violated sexually, 2 were charged in court, 2 were dismissed from work while the rest 3 were warned against repeating the vice.

iv. Summary dismissal

The study findings indicate this as one of the most abused provisions, with the Employment Act provisions ground for dismissal being interpreted too liberally by companies. 62.9% of workplaces reported high cases of unfair dismissal (see annex figure 2). The unfair dismissals were used by the employers to deny the women workers their employment benefits. Grievance and appeals procedures were reported to be ineffective in most of the workplaces.

v. Equal pay for equal work

Whereas companies have adopted equal pay for equal work principle, it remained a hollow dream for the women workers. The biggest proportion of the women labourers concentrated on the lower supervisory jobs as their male counterparts fill the managerial positions, this contributed greatly to the salary disparity between the genders. 93.8% of the respondents indicated that they earn a monthly salary more of at least Kshs 5000, this was far much less compared to the negotiated 2016 Collective Bargaining Agreement (CBA) negotiated by KPAWU and AEA set at a low of Kshs. 8750 per worker per month. 61.2% of the survey respondents reported that they were compensated by working overtime, however, the practice of paying overtime hours 'served in kind', through equal time off during low production seasons, was identified to diminish earnings for workers. Overtime hours worked means extra pay by the worker on childcare among other reproductive roles.

vi. Organizational practices

The practices that were found to have improved in the last few years especially in the period after the promulgation of the new constitution but some bad practices were still found to persist in some workplaces. Families sharing houses, spraying of chemicals when workers are in greenhouses, denying workers work breaks, long working hours and unpaid overtime are part of the bad practices recorded in isolated farms.

3.3 Challenges and successes in regard to women's labour rights in the horticulture industry

The horticulture sector falls under the agricultural industry, with applicable laws being the Employment Act, Labour Relations Act, Labour Institutions Act, Work Injury Benefits Act and the Occupational Health and Safety Act (OSHA). The legal provisions on non-discrimination, equal pay for equal work, prohibition of sexual harassment, provision of maternity and paternity leave, prohibition of unfair termination of employment, protection of employee health were found to lay a solid ground for protection of workers.

In spite of this, challenges remain with regard to compliance with labour laws and policies. There are additional international instruments like the United Nations Guiding Principles for Business and Human Rights which outline the UN "Protect, Respect and Remedy" framework. Some challenges cut across the stakeholders of the sector while others vary from one stakeholder to another.

3.3.1 Challenges at the Ministry of labour

According to the Ministry of Labour Strategic Plan 2013 – 2017 indicates that weak policy, legal and institutional frameworks for employment interventions and uncoordinated implementation of employment programs and limited coverage of the Consolidated Social Protection Fund (CSPF), mainly due to limited resources and capacities, impact negatively on programs in the Ministry.

During the survey, understaffing of the ministry was noted, as the current workforce comprises of a third of the expected. As a result, there is little monitoring done at the grassroots level. The labour officials and staff from industrial courts expected to undertake monitoring 2 to 3 times a week are overwhelmed by work. Monitoring establishments, supposed to be undertaken twice a year, barely takes place as they lack the numbers too, and hence time to undertake the exercise. The officials, unfortunately, have to wait to deal with the complaints.

Lack of pro-activeness in interactions with employers due to reduced operational capacity. While appreciating that monitoring would nip workers' concerns prior getting out of hand, the Ministry lacks resources to do this, both human and financial. The need for recruitment of additional staff has largely gone unaddressed despite request made by the Ministry to the responsible recruiting government commission. Notably, the Ministry appreciates that it is ineffective to play a proactive monitoring role than dealing with resulting complaints. The costs, in this case relate to the number of workers affected, implications on their lives, their families and the host communities; and the general tax payers in general.

Producers, mainly profit-oriented, have been found to take advantage of government's lack of pro-active monitoring and enforcement of existing laws and

policies and get away with the bare minimal provisions.

The study did not record an inter-ministerial working relationship with the ministry of Agriculture, thus a lost opportunity for collaboration and enhanced utilisation of limited resources, considering that the Ministry of Agriculture have extension personnel.

3.3.2 Challenges of Women workers in the flower farms

The women employees faced a myriad of challenges in their execution of their normal responsibilities at work. The major challenge is the low education levels of the labourers. From the study, 48.5% had primary education, 48.8% had attained secondary education with only 2.6% having attained college education. This greatly contributed to the stagnation in career progression of women beyond supervisory levels as some of these positions require proper communication skills in English. The other challenge that women faced was the dual nature of their responsibility in handling the private home affairs and the work demands. Working extra time at work and rushing home afterwards to attend to their young ones proved a difficult task to the female workers.

Consequently, women workers' desperate need for jobs to respond to their family needs such as education and health care of the children. They hence take even poor-paying jobs with harsh working conditions – as long as 'it's a job she can do, not the one she want'. Additionally, their poor negotiation skills for pay jobs and the easy accessibility of labour works locked workers from negotiating better terms.

This is exacerbated by the employers' poor attitude that *if you can't take what's being offered, someone else is more than willing.*

The redress mechanisms in the flower farms were found to be ineffective, this is indicated by a sizable proportion of women

opted to do nothing when their rights were violated. The study established that most workers did not believe in reporting violation as they feared losing their job. Similarly poor working condition was also a challenge to the female workers as they were exposed to frequent spraying of pesticides.

Casual women labourers usually are not considered during the national wage raises and are only considered for pay rise when they down their tools. Lack of job security was also mentioned to affect the women workers, with no guarantee one will get a day's work and securing the day's job depends on the manager's choice and how much work and workers are needed provided an open bias and to some extent discrimination against women.

3.3.3 National but Private Standardization Bodies and Workers Union

Besides FKE and AEA, which are employer organizations registered under the Labour Relations Act, there exists other stakeholders' organizations which drive labour standards in the sector. Key among them are the Kenya Flower Council (KFC) and the Fresh Produce Exporters Association of Kenya (FPEAK). KFC has gained recognition by the Kenya government and globally as a sector mouth-piece.

Similarly unions like Central Organization of Trade Union (COTU), Kenya Plantation and Agriculture Workers Union (KPAWU) have been on the forefront in advocating

for workers' labour rights. The key challenges facing these organizations are: a) lack of women in the management of the organization making it very difficult for the representative to articulate properly the issues affecting the women in the organization; b) limited resources and capacities for advocacy, monitoring and enforcement of the working standards and guidelines.

3.3.4 Successes in regard to women's labour rights in the horticulture industry

In spite of the challenges and difficulties the women workers in flower farms faced, they have registered success as far as their labour rights are concerned. The enactment of the 2010 constitution was a big win to women including women workers in the horticulture sector. The constitution and the employment acts have protected the women against discrimination by their employers and have consequently contributed towards the improvement of working conditions. In fact, most of the flower farms/companies have aligned their human resources policies to the Employment Act. In addition, adoption of day care for children by selected flower farms has reduced the burden from the employees and therefore created an ample environment for women to increase their productivity and reduce absenteeism which has contributed to the success of the horticulture industry.

4. Table 2: Level of education of the female employees

4 CONCLUSION

The study has established that women working in the horticulture sector continue experiencing labor violations such as delayed payment, sexual harassment, discrimination among others because of the failure by state departments especially the Ministry of EAC, labor and social protection in monitoring and enforcing labor right compliance. Consequently, poor governance and abdication of representation responsibilities by the workers union and lack of commitment

by the employers to enforce and align work policies with the Constitution of Kenya 2010 and the Employment Act 2007, have created weak environment for compliance. The management of the farm are encouraged to regularly consult with workers in developing policies that govern the employees. The following are recommendations to help improve the advocacy for state accountability for corporate violation against women in the horticulture sector in Kenya.

5 RECOMMENDATION

Based on the findings, this baseline survey recommends the following:

1. Stakeholders to lobby in the budget-making process to ensure the Ministry of EAC, Labor and social protection is properly resourced in order to hire adequate staff, training and capacity building of labour officers as well as provision of logistics.
2. Provide a Wages Order for flower farms, which is compliant to the terms and conditions of the sector where the minimum wage is based on net profits of the companies among other factors.
3. Working with the KPAWU, COTU and any other stakeholder to build accountability mechanisms and establish an independent union for cut-flowers as well as building a mutual and beneficial working relationship between the stakeholders
4. Participation of workers in labour monitoring through VPIs and where companies sign social contracts on improvements that needs to be realized.
5. Implementation of national and international standardization measures and they be driven through multi-stakeholder initiatives that include workers and civil society organisations.
6. Training and capacity building of employers and employees on workplace policies including labour laws, international labour standards and international human rights instruments like the UN guiding principles on Business and Human Rights.
7. Further research should be done to ascertain other possible ways to help boost productivity and competitiveness on the industry.

5. KHRC (2010) *Wilting bloom*

6 ANNEX

Annex A: Indicator Dashboard

Indicator	Indicator type
1.1.1 Proportion of stakeholders who integrate women labour rights standards and principles in their work	Numeric Baseline Value: 75%
1.1.2: Number of methods used by the stakeholders to integrate women labour rights standards and principles in their work	Numeric Baseline Value: 6 (Refer to section 3.2)
2.1.1: Number of judges and magistrates who have been trained to effectively address cases of women's labour rights violations	Numeric Baseline Value: 0
2.1.2: Percentage of the trained judges and magistrates who are utilizing the acquired skills in solving cases of women's labour rights violations	Numeric Baseline Value: 0
3.1.1: Number and type of challenges, successes and lessons learnt identified and documented	Numeric /Alphanumeric Baseline Value: 4 challenges; 1 success - Monitoring compliance - Power dynamics due to low education levels among women workers -Limited resources and capacities -Low representation of women in stakeholder organizations -95% of the farms have aligned their internal policies to key legal and policy documents in Kenya
3.1.2: Number of forums organized to share challenges, successes and lessons learnt in regard to women's labour rights in the horticulture industry	Numeric Baseline Value: 0

Annex B: List of documents reviewed

- The bill of rights of the constitution of Kenya (2010)
- The Employment Act Amendment bill (2015)
- The Employment act cap. 226 (No 1 of 2007)
- The Employment act Cap. 226; Revised edition (2012)
- Kenya Final baseline report (June 2016)
- FIDA Kenya Monitoring and Evaluation plan
- Horticultural company labour policy and guidelines
- Labour laws and policies

Annex C: Tables and Figures

Table 2: Age distribution of female employees

How old are you?		
Age	Frequency	Percent
18 - 20	10	2.6
21 - 25	69	18.2
26 - 30	121	31.9
31 - 35	89	23.5
36 - 40	45	11.9
41 - 45	29	7.7
46 - 50	13	3.4
51 and above	3	0.8
Total	379	100.0

Table 3: Level of education of the female employees

What is your level of education?		
Level of education	Frequency	Percent
Primary	184	48.5
Secondary	185	48.8
College	10	2.6
Total	379	100.0

Table 4: Marital status of the female employees

What is your marital status		
Marital status	Frequency	Percent
Single	118	31.1
Married	233	61.5
Divorced/Separated	16	4.2
Widow	12	3.2
Total	379	100.0

Table 5: Proportions of respondents with children

Do you have children		
Children	Frequency	Percent
Yes	324	85.5
No	55	14.5
Total	379	100.0

Table 6: The average number of children of the respondents

	N	Range	Sum	Mean	Std. Deviation	Variance
NUMDE R OF KIDS	324	9	902	2.78	1.535	2.356

Table 7: Response on working experience

How long have you been working on the farm?		
Period	Frequency	Percent
Less than 6 months	26	6.9
6-12 months	53	14.0
1-2 years	57	15.0
2-3 years	61	16.1
3-4 years	31	8.2
4-5 years	41	10.8
Over 5 years	110	29.0
Total	379	100.0

Table 8: Response on working hours

How many hours a day do you work on the farm?		
Period	Frequency	Percent
Less than	1	0.3
1-3 hours	8	2.1
3-5 hours	4	1.1
5-8 hours	221	58.3
8-10 hours	119	31.4
Over	26	6.9
Total	379	100.0

Table 9: Response on working hours and days

Working period	Yes	No	Total
Do you get compensated for working overtime?	61.2%	38.8%	100.0%
Are you entitled to a day's rest after a week of working?	96.3%	3.7%	100.0%

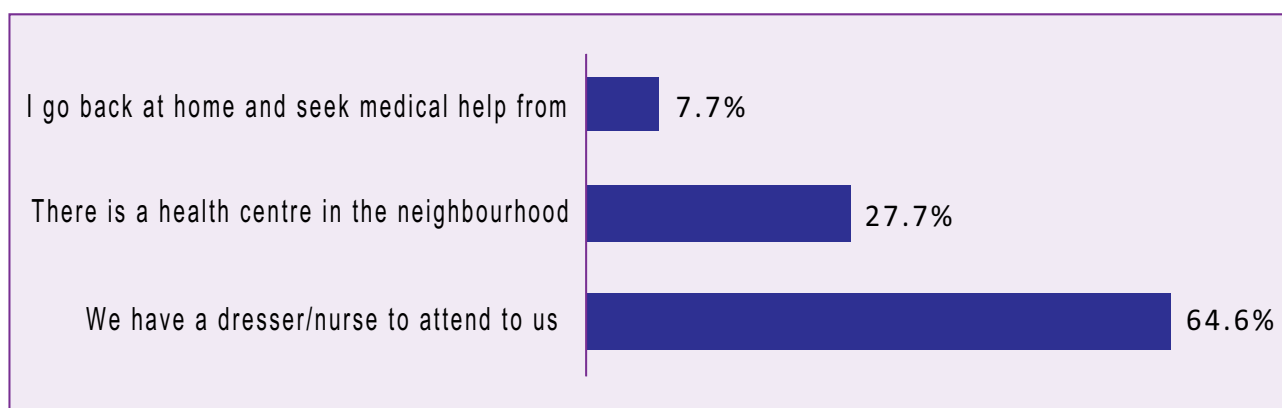


Figure 1: If you fall sick or injured while on duty, where do you seek medical help?

Work Safety	Yes	No	Total
Do you feel secure in your work place?	85.0 %	15.0 %	100.0 %
Have you encountered any form of violation of your labour rights at your work place?	18.5 %	81.5 %	100.0 %

Table 10: Response on safety at work

Work Safety	Yes	No	Total
Do you feel secure in your work place?	85.0 %	15.0 %	100.0 %
Have you encountered any form of violation of your labour rights at your work place?	18.5 %	81.5 %	100.0 %

Figure 2: Actions taken by employees when their rights were violated

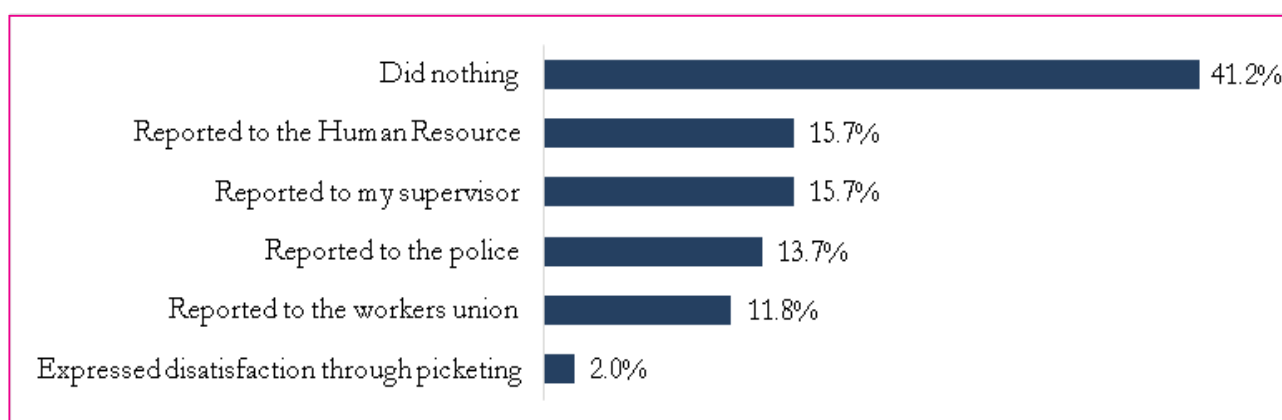


Figure 3: Dealing with violation of labour rights

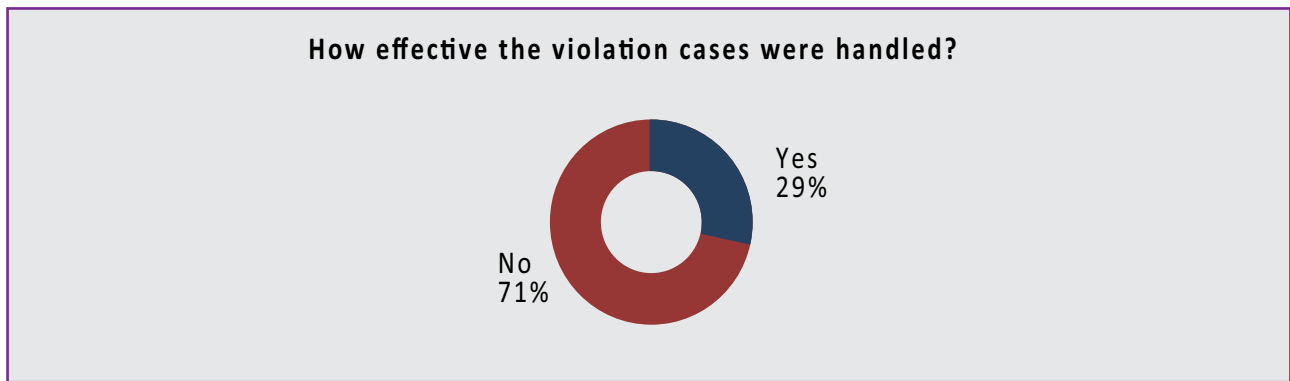


Figure 4: In your opinion, was the case effectively handled to your satisfaction?

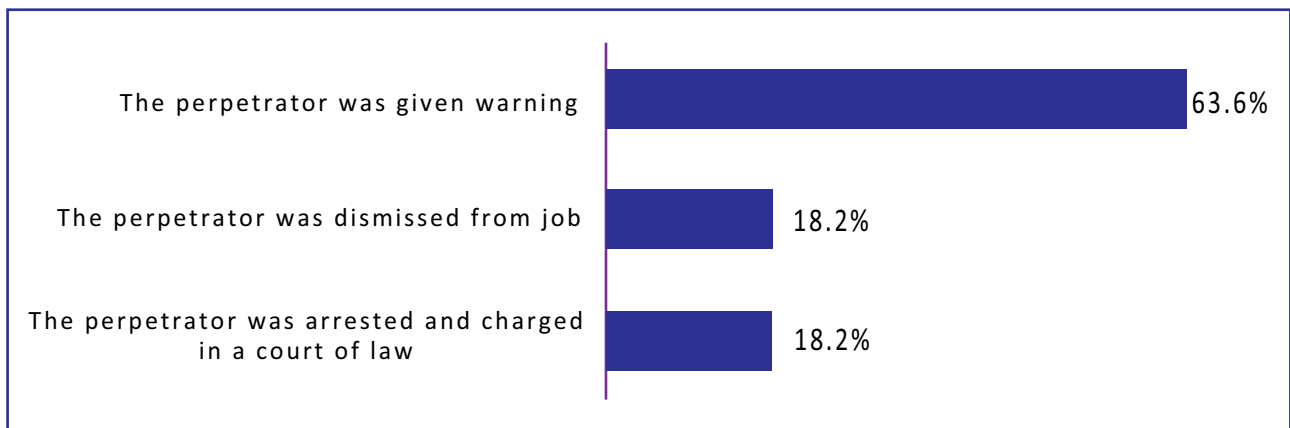


Figure 5: Action taken against perpetrator

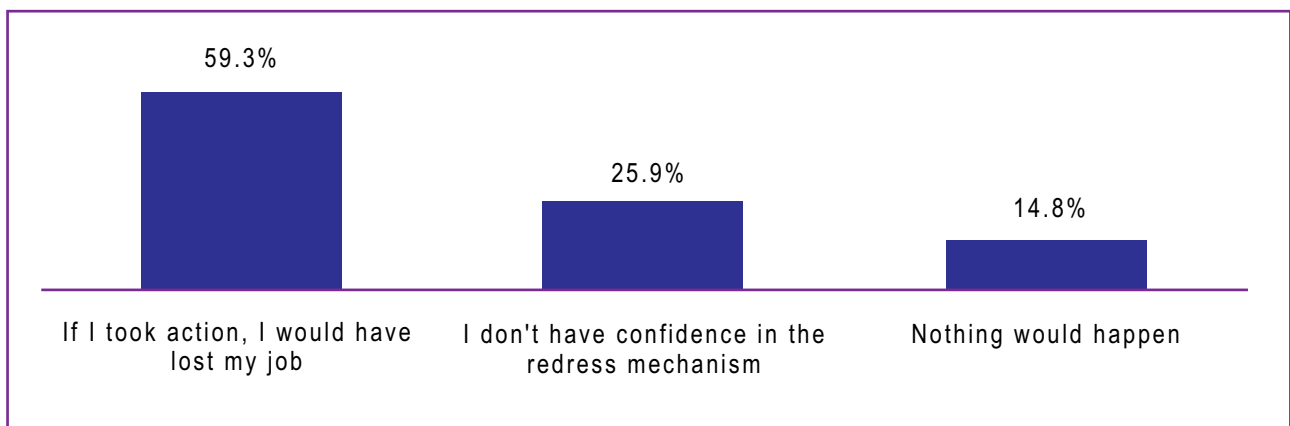


Figure 6: Response on why women workers don't take action against the case

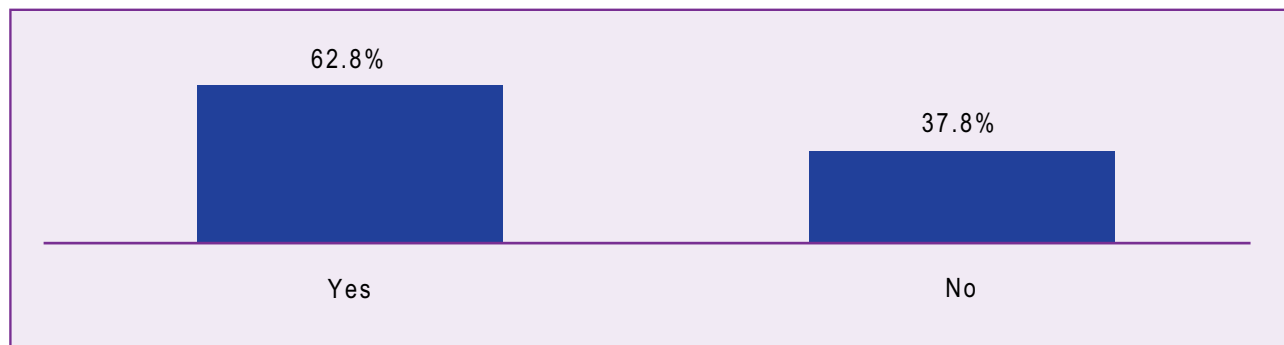


Figure 7: Response on Maternity leave

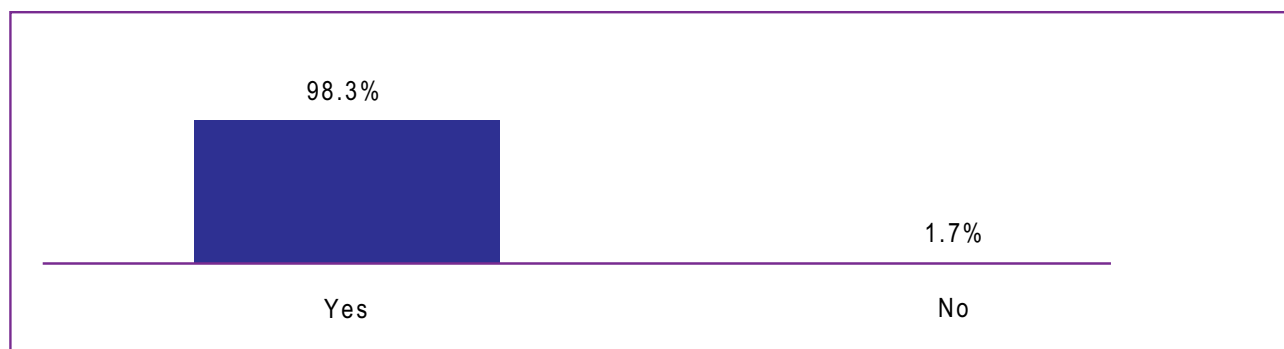


Figure 8: Response on Full payment during maternity leave

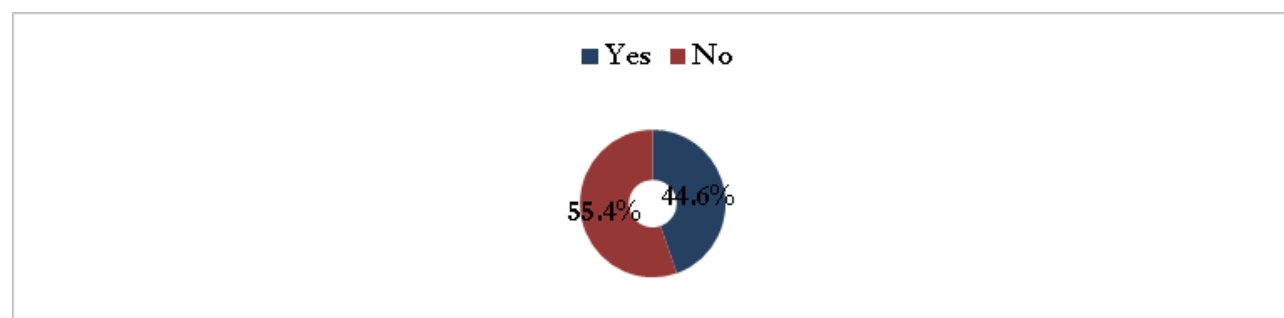


Figure 9: Participation in decision making

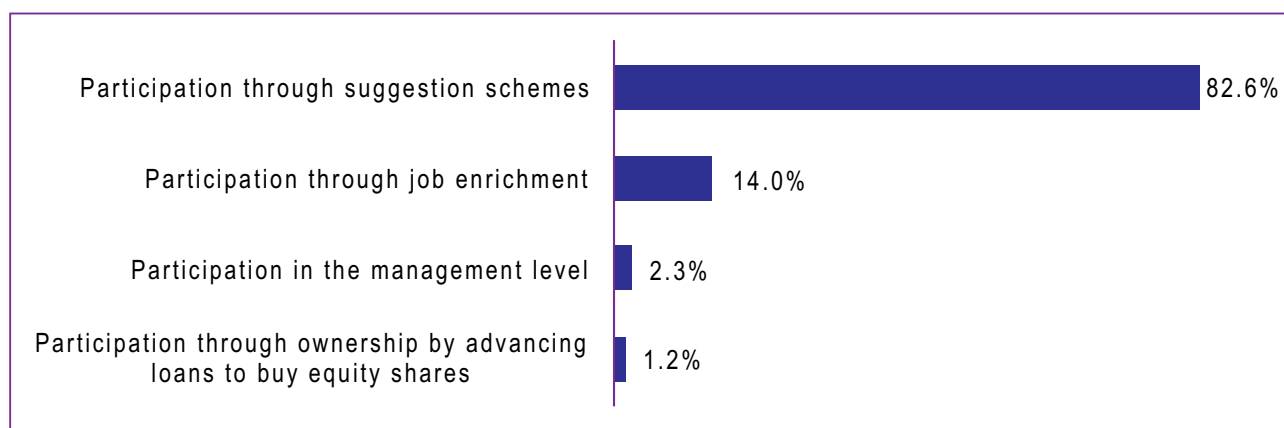


Figure 10: Ways of participation in decision making

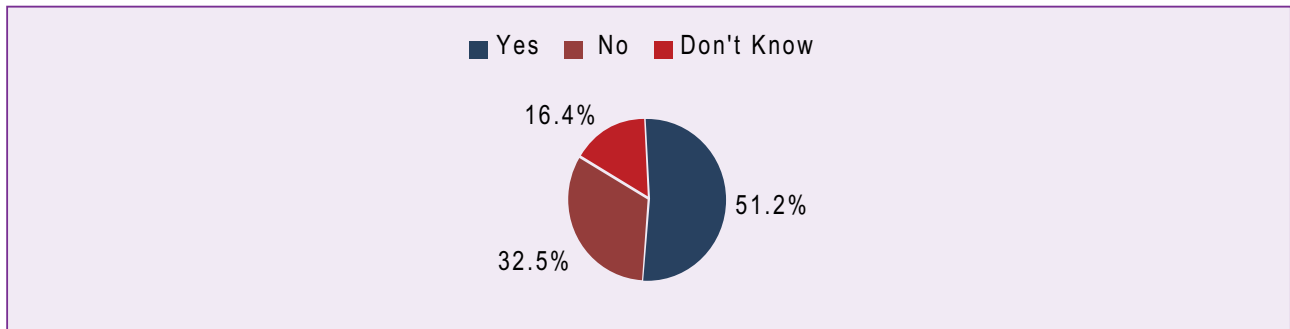


Figure 11: Are you aware of any policies that protect your welfare at the work place?

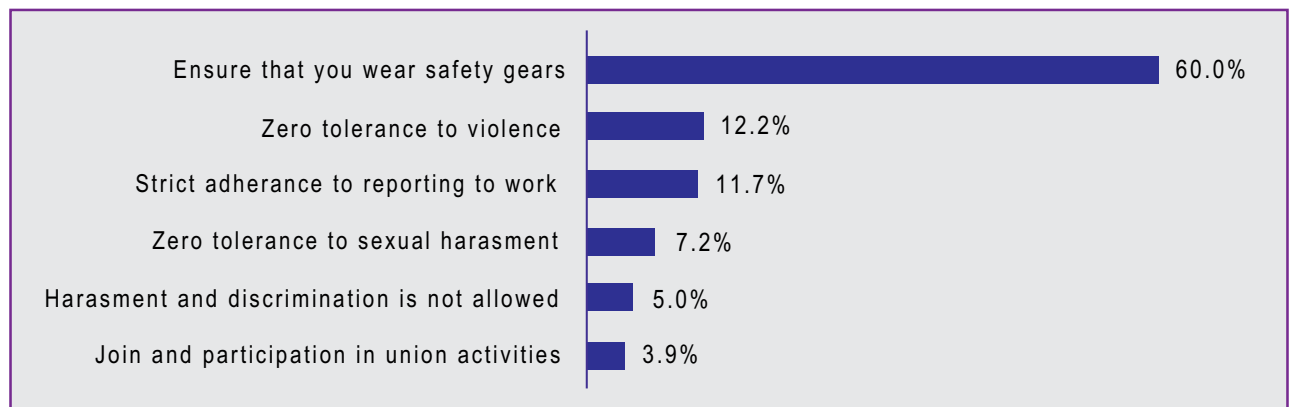


Figure 12: Some of the policies enforced in the flower farms

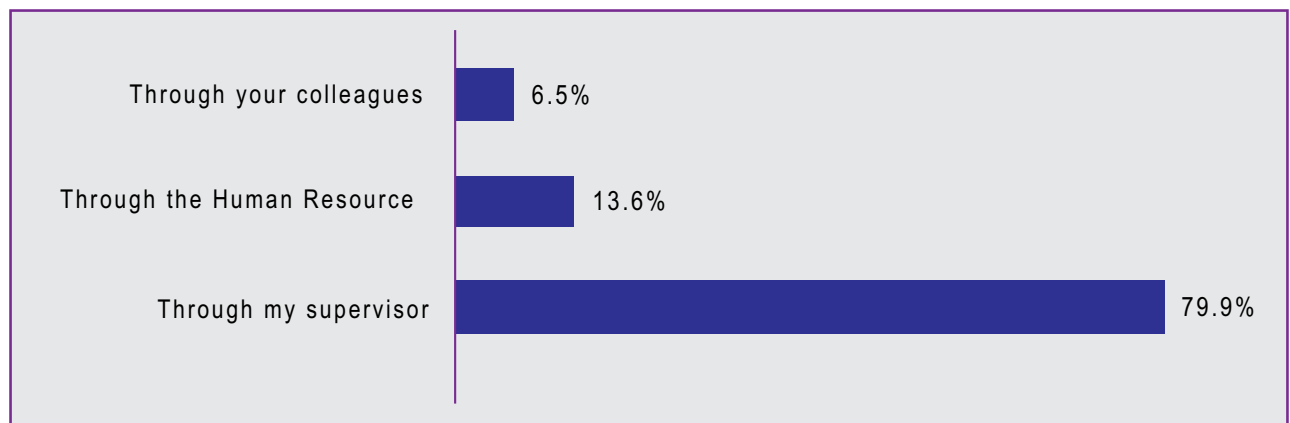


Figure 13: When you have personal problems at work, how do you communicate the same to your boss?

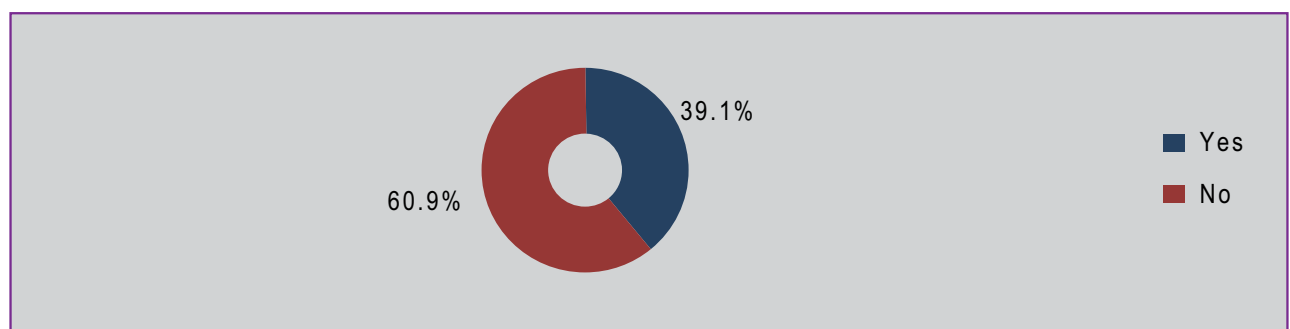


Figure 14: Are you a member of any labour union?

**Table 11: Remuneration rates of female employees**

In which income category does your total income fall in.		
Salary range	Frequency	Percent
Less than Kshs 5,000	23	6.2
Kshs 5,004 Kshs 10,000	294	79.0
Kshs 10,004 Kshs 15,000	53	14.2
Kshs 15,004 Kshs 20,000	1	.3
Above Kshs 25,000	1	.3
Total	372	100.0