

LATE BLOSSOMS!
**TIME TO MOVE BEYOND POLICY
STATEMENTS TO A SAFEGUARDING
CULTURE**

**A BASEELINE STUDY ON THE IMPLEMENTATION OF THE
MODEL SEXUAL HARASSMENT POLICY IN THE CUT FLOWER
SECTOR OF KENYA – EXPERIENCES, LESSONS AND THE
BUSINESS CASE**

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Final Version

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ABBREVIATIONS	
AIDS	Acquired immunodeficiency syndrome
AI	Artificial Intelligence
AOC	Ambassadors of Change
CBA	Collective Bargaining Agreement
BSCI	Business Social Compliance Initiative
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	The Committee on Economic, Social and Cultural Rights
CSE	Comprehensive Sexuality Education
CSI	Corporate Social Investment
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
EIGE	European Institute for Gender Equality
ESG	Environment Social and Governance
ETI	Ethical Trading Initiative
EWS	Early Warning System
FFP	Fair Flowers Fair Plants
FGD	The Committee on Economic, Social and Cultural Rights
FSI	Floriculture Sustainability Initiative
FTA	Fairtrade Africa
GAPs	Good Agricultural Practices
GBV	Gender Based Violence
GRI	Global Reporting Initiative
GVRC	Gender Violence Recovery Centre
HIV	Human Immunodeficiency Virus
ICCPR	United Nations International Covenant on Civil and Political Rights
ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
KCPE	Kenya Certificate of Primary Education
KCSE	Kenya Certificate of Secondary Education
KEBS	Kenya Bureau of Standards
KES	KES – Kenya Shillings
KIIs	Key Informant Interviews
KLRC	Kenya Law Reform Commission
KPAWU	Kenya Plantation and Agricultural Workers Union
KPIs	Key Performance Indicators
MNE	Multinational Enterprise
MPS-SQ	Milieu Project Sierteelt Socially Qualified
MPS	Milieu Project Sierteelt
NAP	National Action Plan (on the implementation of the UNGPBHR)
NGO	Non-Governmental Organization

NOPE	National Organization of Peer Educators
NSC	National Steering Committee (on the development of the National Action Plan on the UNGPBHR)
OECD	Organisation for Economic Co-operation and Development
PPR	Protection Prohibition and Redress
PWDs	Persons With Disabilities
RBSC	Results Based Social Certification
SDG	Sustainable Development Goals
SGBV	Sexual and Gender Based Violence
STEM	Science Technology Engineering and Mathematics
TORs	Terms of Reference
UDHR	Universal Declaration of Human Rights
UT	Ufadhili Trust
UNGPBHR	United Nations Guiding Principles on Business and Human Rights
VAW	Violence Against Women
WEF	World Economic Forum
WRW	Workers' Rights Watch
WWW	Women Working Worldwide

EXECUTIVE SUMMARY

The Kenyan flower sector has registered clear progress in the protection of workers from sexual harassment, over the last 6 years. A positive trend in the cut flower sector is the wide adoption by flower farms of sexual harassment policies as a basis for protecting workers against harassment. The experiences of the different farms in implementing the policy shows different levels of success in ensuring compliance as well as different levels of company commitment to comprehensive safeguarding against sexual harassment.

Flower farms which have adopted the Model Sexual Harassment Policy, co-developed by Hivos, Workers Rights Watch (WRW), Kenya Flower Council (KFC), Fairtrade Africa (FTA) and Haki Mashinani, demonstrate more responsive and effective anti-sexual harassment environment at the farm level, compared to farms which have not adopted the Model Policy. Women are the most vulnerable demographic to sexual harassment at the work-place. In a survey of workers from 3 flower farms in Naivasha, 67.9% of the respondents said that they knew of a female colleague who had undergone harassment at the work-place. Comparatively, 11% of these workers knew of a man who had undergone harassment at the farm. A nuanced typology of vulnerable groups in the flower farm catchment communities includes: Persons with Disabilities (PWDs); Persons Living with HIV and AIDS (PLWHA); members of ethnic minorities; immigrants; casual or seasonal labourers; elderly workers; and, workers in the lowest cadres. Immigrant workers and members of ethnic minorities often bear the brunt of socio-political and ethnic-based impulses mobilized against them by tribal hegemons. Farm management are particularly vulnerable to violation by their superiors or peers, since they are not unionizable, thus closing off a crucial avenue for safely canvassing complaints

Sexual harassment at the work-place is the product of a number of factors, both internal and external, to the work-place setting: work-place policies, systems and practices; social and economic conditioning and community culture; and, legal and non-legal regulatory frameworks. In addition, the evolving dynamics relating to the future of work – mostly driven by the advent of Artificial Intelligence (AI) and the “gig economy” - portend challenges in the protection of workers from violations. Sexual harassment in the flower farms is most rampant at the point of negotiating improved status at the work-place, manifesting as consensual or non-consensual transactional relationships, in a manner that amounts to abuse of position of authority. These situations include: promotion; allocation of tasks; performance appraisal; gaining permission for absence from work; and in the disciplinary process. Harassment also occurs amongst colleagues, through a “hostile work environment,” including: unrequited sexual conversations, innuendo and insults, even uninvited touching. Socio-economic factors also play a role in compromising the social standing and economic resilience of persons – mostly women - in the community, thereby opening them up to destitution and susceptibility to abuse.

Cultural positions, coloured by patriarchal norms, contribute to sexual and gender based discrimination against women and girls, often normalizing harassment. These social norms as observed by the host community diffuse into the work-place, thereby influencing workplace practices and beliefs on harassment. Structural and historic discrimination, have had the effect of disempowering these persons by denying them equal access to education and opportunities at social and economic participation and adequate protection within their communities.

An audit of 4 of the 10 farms which are presently participating in the pilot project found that the farms had adopted most of the provisions of the Model Policy into their own sexual harassment policies. The experience of these 4 farms in safeguarding against work-place harassment was compared against 3 non-pilot project farms – farms which had not adopted the Model Policy. The 4 pilot project farms demonstrated significantly more commitment towards eradicating sexual harassment, better understanding of sexual harassment among employees and a higher rate of credibility of the sexual harassment safeguarding systems, as compared with the experience of the 3 non-pilot farms. A common thread across both pilot and non-pilot project farms is the low rate of reporting of incidents of sexual harassment at the work-place, an indictment on the overall credibility of the work-place safeguarding structures. Safeguarding systems at the work-place have been faulted for lacking sufficient mechanisms for protecting victims and survivors, whistle-blowers, and witnesses. In a few of the sampled farms, workers decry the lack of confidentiality or the assurance of due process.

While there is marked improvement by farms in addressing harassment at the work-place, the translation of policy statements into sustainable systems and cultures that protect workers from harassment remains, largely, elusive. Additionally, the flower sector has invested scantily in improving their social performance. The effect is that there is little knowledge or knowhow on developing effective safeguarding frameworks. Lastly, the global flower value chain has not effectively persuaded flower growers and flower businesses that a bankable business case for improving their social performance.

Flower farms should develop and implement holistic safeguarding frameworks to promote a culture of protection for workers from harassment. An effective safeguarding framework should be anchored upon a comprehensive sexual harassment policy, based on unambiguous company commitment to protecting workers. The elements of the safeguarding system should include: a gender committee, duly elected by workers and adequately empowered and provided with space and time to address sexual harassment; preventive action; an open and clear complaints procedure; protection for vulnerable workers and parties to a complaint; periodic due diligence on sexual harassment; a community-based and work-place based sexual harassment early warning system; integrated management and participatory monitoring of sexual harassment; and, annual reporting by the company on its gender impacts. Additionally,

flower farms should ensure that work-place policies and practices advance the socio-economic resilience of workers. All workers should have access to fair remuneration, including access to security and national hospital insurance, and a long-term contract. They should also have access to a trade union

There are encouraging pointers that the flower sector is increasingly conscious of the need and benefits of safeguarding workers from sexual harassment in the work-place as demonstrated by initiatives such as the Floriculture Sustainability Initiative (FSI), certification or standard-setting bodies and a host of downstream flower retailers and consumers. However, both the legal framework and sustainability certification systems have emphasized output-level compliance with laws, policies or certification standards, rather than insisting on achieving tangible safeguarding outcomes that go beyond the promulgation of a work-place sexual harassment policy. What is clear, though, is that a sustainable safeguarding system requires a value chain and government commitment.

The sexual harassment policy has proved integral in guiding flower farms along this path, though, there is considerable ground to be covered before workers can be truly secure at the work-place. To achieve effective protection for workers, it is necessary for flower farms to build upon the foundation provided by the work-place policy statements and develop deliberate, holistic and supported safeguarding frameworks against sexual harassment which address structural and social enablers of sexual harassment.

1.0 INTRODUCTION

1.1 Background

Haki Mashinani, working alongside Hivos International, Kenya Flower Council (KFC) and Fairtrade Africa (FTA) and Workers' Rights Watch (WRW), has co-created a model workplace sexual harassment policy for the floriculture sector. This policy has been developed to provide a practical implementation framework and guidance on preventing and addressing sexual harassment in the work-place, through best-in-class practices borne out of aggregated sector experiences and expert insights. The model policy has undergone pilot phases of implementation in 10 flower farms in Kenya, over a period of more than 3 years. It is expected that the experience and learning from this initiative will inform the ultimate adoption and implementation of the model policy across the cut flower sector in Kenya.

This study report, commissioned by Haki Mashinani, provides analytical insights into sexual harassment in the cut flower sector of Kenya, thereby laying the foundation for the project. It relays the state of sexual harassment in Kenyan flower farms, with focus on workplace practices and community culture. It also appraises the effectiveness of work-place protection and safeguarding systems for protecting workers and addressing incidents of sexual harassment in the workplace as well as the enablers of sexual harassment in the work-place.

The systems audit of the flower farms assesses the inbuilt structural and personnel related capacities of the flower farms to address themselves to sexual harassment. It, specifically, interrogates the policies, implementation structures as well as practices and culture at the work place. The aim is to gauge the comprehensiveness, credibility, acceptability, user-friendliness, and capacities of systems and personnel as well as related practices at the work-place. To do this, it charts out the experience of flower farms which have adopted the use of the model policy as well as those who have not yet been introduced to the policy. It consolidates emerging best practices and draws out lessons from the challenges faced by farms. This study also provides a top line analysis of the business case for safeguarding against sexual harassment at the work-place.

At all times in this study, a special lens has been applied to track the peculiar status and role of women workers as relates to sexual harassment.

1.2 Objectives of the Study

The main objectives of this study are:

- a) To highlight and analyze the experiences and learning by companies in a similar context - that have adopted and institutionalized the model sexual harassment policy – and draw insights from these experiences;
- b) To enquire into the business case for the adoption and implementation of the model sexual harassment policy by flower farms in Kenya; and,
- c) To make recommendations on how to successfully implement a best-bet sexual harassment policy for the flower sector.

1.3 Study Scope, Sample and Methodology

1.3.1 Scope

The study's sectoral area of focus is the cut flower farms. Geographically, these are flower farms in Kenya, particularly in Kiambu, Laikipia and Nakuru counties. The report is coloured by lessons and insights from outside Kenya, often following learning across the cut-flower value chain. The substantive scope relates to sexual harassment at the work-place. However, where appropriate, the study has on occasion situated sexual harassment within the broader context of Gender Based Violence (GBV). The main beneficiaries under this discussion are workers and farm management in the flower farms, both being users of the sexual harassment policy. Ultimately, though, the findings are applicable to improving the protection of women workers at the work-place.

1.3.2 Study Sample

The study samples 4 of the 10 flower farm under the WRW pilot project on sexual harassment.

1.4.3 Study Methodology

A mix of data collection approaches was applied, for the purpose of generating both quantitative and qualitative information and data. These include:

- a) Literature Review;
- b) Key Informant Interviews;
- c) Focus Group Discussions; and,
- d) Administration of questionnaires.

1.3.4 Limitations of the Study

A number of limitations to this study have been identified.

First, there were difficulties in accessing flower farms for the purpose of conducting the study, particularly, the farms which did not participate in the sexual harassment pilot project phase. As such, only 3 of these non-pilot project farms were sampled. Even then, information obtained from these farms was obtained through interviews with workers off the farm. There was no access to farm management for corroborative or supplementary information and data. In contrast, 4 pilot project flower farms were accessed in the course of the study, enlisting interview and discussion sessions with, both, management and non-management staff, as well as access to official sexual harassment policy documents. In light of the foregoing, the study does not purport to make precise comparisons between the two sets of farms. Instead, reasonable allowance may be provided for any disparities in the findings between the two sets of farms.

Even in the 4 pilot project flower farms accessed, it was not possible to access all required information, especially, information relating to financial allocations to safeguarding causes, for purposes of quantifying actual costs of setting up the work-place safeguarding systems. Similarly, it was not possible to obtain reliable information on aspects of flower sales and opportunity costs related to safeguarding systems at the work-place. In some cases, where the study required cross-departmental input, only managers from core human resources and gender departments were readily available to participate.

In many cases, there was no reliable data or statistics for apprising the impact and outcomes of safeguarding frameworks. This is mainly because flower farms have not developed effective monitoring and evaluation and documentation frameworks for tracking and reporting upon the impacts and outcomes of their safeguarding activities. As such, this study pays preponderance to qualitative information, with quantitative data being used to demonstrate trends. Documentary review and FGDs are intensively employed in the study for this purpose.

2.0 LEGAL AND REGULATORY FRAMEWORK ON SEXUAL HARASSMENT

2.1 International Normative Framework on Sexual Harassment

International legal instruments, labour standards, and international advocacy platforms have, over the years, set the pace for national protection initiatives, in so far as tackling sexual harassment in the workplace is concerned. The Beijing Declaration and Platform for Action adopted at the United Nations Fourth World Conference on Women also addresses sexual harassment. Under this declaration, sexual harassment is included in the definition of what constitutes 'violence against women.'¹ The declaration has, over the years, provided momentum to non-state actors and mobilized governments to formulate laws and workplace policies against discriminatory working conditions and sexual harassment.

2.1.1 The International Covenant on Economic Social and Cultural Rights

The United Nations General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 16 December 1966, through GA. Resolution 2200A (XXI). It came into force on January 3, 1976, thereby committing states parties to take steps towards guaranteeing the enjoyment of economic, social, and cultural rights (ESCR) - including labour rights - to an adequate standard.

States parties are duty-bound to safeguard this right through, among other stipulated measures: technical and vocational training; the promulgation of appropriate economic policies; and, the protection of workers from discrimination in the workplace. The Covenant introduces the concept of "progressive realization" of economic, social and cultural rights, thereby placing the duty of setting up systems incrementally realizing these rights.

Crucially, the Covenant stipulates that economic, social and cultural rights should be enjoyed "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Sexual harassment is considered an aspect of gender-based discrimination. Article 6 of the Covenant guarantees the right to work; the opportunity to gain a living off freely chosen and acceptable work. It specifically states that workers are entitled to "decent work." This includes the right to "just and favourable" working conditions, defined to include safe working conditions and equal opportunities at the workplace.

The ICESCR is crucial because it provides the foundational substantive entitlements that States parties must protect, key principles of protection and an elaboration of the components of the main rights. It also provides a framework through which the state is monitored by the UN Committee on Economic, Social and Cultural Rights, with the participation and input of Civil Society Organizations (CSOs).

¹ Paragraph 178(c)

2.1.2 The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is an international treaty adopted by the UN General Assembly on 10 December 2008 and establishing complaint and inquiry mechanisms under the ICESCR. The Optional Protocol provides for individual *locus standi* before the Committee on Economic, Social and Cultural Rights (CESCR). It requires ratification before it can bind states parties, thus providing a direct avenue for individuals or groups to achieve accountability for government policies and practices. Besides the individual complaints mechanism, the Optional Protocol also includes an inquiry mechanism which permits the CESCR to investigate, report on and make recommendations on "grave or systematic violations" of the Covenant. Parties may opt out of this obligation on signature or ratification. Kenya has not accepted the provisions of the Optional Protocol that allow individuals who are aggrieved to canvass complaints before the CESCR nor the provisions permitting the inquiry mechanism.

2.1.3 United Nations Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) came into force in 1979, an fore-runner normative framework for the protection of women and girls from discrimination. This was a time when knowledge of the subject of sexual harassment was not advanced. Not surprisingly, the CEDAW did not contain the express prohibition of sexual harassment. However, the CEDAW makes provisions against discrimination of women under several contexts, thus, subsuming such conduct as sexual harassment at the work-place.

As the discourse on sexual harassment grew, the Committee on Elimination of Discrimination Against Women, the body that monitors implementation of CEDAW, specifically clarified in General Recommendation No. 19 of 1992 that equality in employment could be impaired when women are subjected to gender-specific violence, including sexual harassment. Indeed, the Convention expressly proscribes discrimination against women in employment.² Additionally, it directs States Parties to guarantee the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.³

The CEDAW urges States Parties to take special measures aimed at accelerating *de facto* equality between men and women,⁴ going further to justify such affirmative action and distinguishing it from discriminatory practices. Measures towards promoting *de facto* equality between men and women are to be time-bound, to be discontinued when the objectives of equality of opportunity and treatment have been achieved.

² Article 11(1), CEDAW

³ Ibid. Article 11(1)(f)

⁴ Ibid. Article 4

The CEDAW pays regard to the contribution of harmful or patriarchal cultural norms to sexual violence. Article 5 requires States Parties to take appropriate action to:

“...modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...”

2.1.4 International Labour Organization (ILO) Conventions

2.1.4.1 The ILO Convention No. 190 of 2019, Convention on the Elimination of Violence and Harassment in the World of Work

This is a historical convention that addresses itself in significant detail, to the specific questions of violence and harassment at the work-place. It also urges a more proactive and innovative approach by members and other labour sector stakeholders in finding solutions to violence and harassment at work. Member states to the convention are obligated to establish a legal and policy framework for implementing the convention, as well as an implementation monitoring framework.

It provides practical and wide definitions of, “Violence and Harassment”⁵ and, “Gender-based Violence and Harassment,”⁶ to anticipate and subsume the various circumstances manifestations of vulnerability of workers at the work-place.

“Violence and harassment” in the world of work is defined as:

“...a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.”

“Gender-based violence and harassment” means:

“...violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.”

These definitions mark a significant leap from the previous definitions of sexual harassment, which proved problematic in their narrow scope, thereby restricting legal proof and proscription of such conduct. First off, the concept of “harassment,” as opposed to “sexual harassment,” which, while not new to gender protection jurisprudence, has not yet been admitted into the jurisprudence of many domestic jurisdictions. Harassment can be applied

⁵ Article 1(a)

⁶ Article 1(b)

broadly to cover a wider range of conduct, even without the typical elements that constitute “sexual harassment.” In this way, workers are afforded wider protection against harmful workplace conduct that previously, would have fallen short of amounting to the offence of sexual harassment. Secondly, the convention casts the net wide by defining “violence and harassment” through, among others, the “aims,” “results,” or “likely results,” of the said conduct. This means that, in reaching a conclusion about whether a given set of behavior amounts to violence and harassment, the aforementioned variables may be cited. Furthermore, the convention speaks to the possibility of a wide range of possible harms to the victim of violence and harassment, categorized as: physical; psychological; sexual and economic harm. In addition, the description of, “violence and harassment,” includes both, “single and repeated” actions of the offensive conduct. It thus creates clarity on the much litigated question of whether such offensive conduct should be practiced more than once before it can be considered as harassment.

The convention is borne out of years of consolidation of experience of sexual harassment. It thus, explicitly makes provision for extensive coverage of the various scenarios of work-based violations. It applies to all sectors; public and private. It also covers all workers: employees or private contractors; volunteers and job-seekers, among others. In defining the “work-place” for the purpose of the convention’s application, the work-place is defined to include: the physical work-place premises; work-related communications, including through Information and Communications Technology (ICT); work-related trips; and, transportation vessels utilized for the purpose of work.

The convention obligates member states to take appropriate measures to proscribe gender based violence and harassment in the world of work.⁷ These measures include: adoption and enforcement of appropriate laws and policies; taking into consideration violence and harassment associated psychological risks in management of occupational safety and health; identifying hazards and assessing the risks of violence and harassment in the work-place; and, providing training through accessible and consumable formats to workers and other persons concerned.

Article 10 requires member states to take appropriate measures to:

- a) Monitor and enforce national laws;
- b) Ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures, in cases of violence and harassment at the work-place;
- c) Protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers;
- d) Legal, social, medical and administrative support measures for complainants and victims;
- e) Protect the privacy of individuals involved in incidents of violence and harassment;

⁷ Article 7

- f) Provide for sanctions, where appropriate;
- g) Provide that victims of gender based violence and harassment in the world of work have access to effective, responsive and safe complaints and dispute resolution mechanisms;
- h) Recognize the effects of domestic violence and so far as is reasonably practicable, mitigate its impact; and,
- i) Empower labour inspectorates to execute their workplace inspection mandate effectively.

Convention No. 190 will enter into force 12 months after two member States have ratified it. It will, however, have an impact even before then since all member States are required to bring it to the attention of their competent national authorities, thereby ensuring that it receives visibility at national as well as international levels.

Kenya should ratify the Convention so as to ensure its direct applicability as part of Kenyan law. Whereas Kenya has enacted progressive statutes that regulate sexual harassment at the work-place, these laws do not go far enough to make practical and detailed provisions both in substance and in practical implementation frameworks. This Convention will, thus, be instrumental in providing guidance to the development of protective and safeguarding frameworks at the work-place.

2.1.4.2 The ILO Recommendation 206, Recommendation Concerning the Elimination of Violence and Harassment in the World of Work

The ILO Recommendation 206, as read together with Convention No. 190 provide a clear framework for action and an opportunity to shape a future of work based on dignity and respect, free from violence and harassment. Though, they are not binding upon member States, they represent a big leap towards providing guidance to labour sector stakeholders in developing protective work-place systems. The Recommendations provide an elaborate catalogue of relevant considerations for governments and in turn, employers, should make in the development of laws and policies. It advocates for a participatory process among labour sector stakeholders in developing and policies, including, the design of the laws and policies and monitoring of the work-place policy.

The Recommendations state that:

- a) Work-place policies should proscribe conduct that amounts to gender based violence and harassment at the work-place and establish a violence and harassment prevention programme;
- b) Specify the rights and responsibilities of workers and the employer; contain information on complaints procedure;
- c) Provide that all internal and external communications related to incidents of violence and harassment will be duly considered and acted upon;

- d) Specify the right to privacy of individuals in relation to incidents; and,
- e) Include measures to protect complainants, victims, witnesses and whistle-blowers against victimization or retaliation.

Article 9 requires that member States adopt appropriate measures for sectors or occupations and work arrangements in which the expectation of violence and harassment may be more likely. Noting the poor funding of the labour and gender protection sectors, it also urges member States to provide resources and assistance for workers in the informal sectors and their associations in order to prevent and redress violence and harassment in the world of work.

The pointers provided by the Recommendations provide a valuable checklist for businesses in developing their safeguarding and anti-sexual harassment frameworks at the work-place. Moreover, it guides government in developing its inspection checklist and implementation monitoring tools for gauging employers.

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

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provides that states parties should adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement. It specifically requires states parties to 'combat and punish sexual harassment in the workplace.' Its objectives are the: elimination of discrimination against women; protection of the right to dignity; the right to participate in the political and decision making process; the right to education and training; the right to economic and social welfare rights; and, the right to health and reproductive rights, among others. The Maputo Protocol is unique in that it contextualizes protection from gender based discrimination and other violations through African protective perspectives. It also provides a mechanism by which States parties to the Protocol may be held to account through the reporting mechanism.

Having ratified the Maputo Protocol, Kenya is bound by its provisions. It is apparent, however, that, beyond promulgating legislation against sexual harassment, Kenya has done fairly little else to combat sexual harassment in the work-place. While Kenya has put in place a raft of formidable legislation to address sexual and gender based violence, the state has not allocated sufficient resources in enforcing these progressive provisions.

2.1.6 The United Nations Guiding Principles on Business and Human Rights (UNGPHR)

The United Nations Guiding Principles on Business and Human Rights (UNGPHR) were promulgated by the Human Rights Council in June 2011. They are based on the “Protect, Respect and Remedy Framework,” which stipulates the State’s responsibility to protect against human rights abuses by actors including businesses, business role to respect human rights in all their activities including supply chains. The UNGPHR offers a global reference that restates and gives guidelines on how States should protect those under their jurisdiction from business-related human rights abuses; business should respect human rights; and how both States and businesses should ensure that victims of such abuses have access to effective remedy. These rights include the rights of workers in the work place and further, include protection from sexual harassment.

The Guidelines provide for 3 main operational requirements for businesses to satisfy their responsibility to respect human rights. First, business enterprises are asked to adopt a human rights policy that outlines human rights expectations of personnel, business partners and other parties who are directly linked to its operations, products or services. This policy should be publicly available, communicated internally and externally to all personnel, business partners and other relevant parties. Most importantly, the policy should be reflected in operational policies and company procedures as necessary to embed it throughout the business enterprise. Secondly, business enterprises should conduct human rights due diligence on their impacts on a constant basis. They should identify actual and potential human rights impacts and act to address these impacts. Businesses should then publicly communicate how they have addressed the said impacts. Thirdly, business should establish internal mechanisms to prevent or redress the adverse human rights impacts that flow from the company’s operations or existence.

Kenya has endorsed the UNGPHR. The government of Kenya embarked on the process of developing a National Action Plan on Business and Human Rights (NAP) in 2015 to help it implement the UNGPs. Broadly speaking, the NAP consolidates policy actions by government agencies, businesses and other relevant stakeholders to further promote the respect of human rights by businesses. It also improves the range of protection offered by the government to victims of business-related human rights violations. A National Steering Committee (NSC) on a NAP has been spearheading the development process that has resulted in this document. This NAP zeros in on five thematic areas identified by stakeholders as the key priority areas that the NAP should initially focus on. These are labour, revenue transparency, environment, land, and access to justice.

The objectives of this NAP are:

- a) To ensure the State performs its duty to protect individuals and communities from business-related human rights abuses in a manner that is consistent with its domestic and international obligations;
- b) To guide businesses on the measures they should take to meet their responsibility to respect human rights in their operations;
- c) To offer a roadmap strengthening access to State-based judicial and non-judicial remedies for victims of business-related harm. It will also promote human rights due diligence by businesses to ensure that they play their role in the attainment of SDGs in a manner that respects human rights; and,
- d) To form a basis for dialogue between the State, businesses and civil society organizations on promoting respect for human rights by businesses.

The NAP applies to all businesses operating in Kenya regardless of whether they are parent companies or subsidiaries, locals or multinational, large or small, private or State owned. The NAP on the UNGPBHR is integral since it guides government's legal and policy direction as well as funding priorities for the development and enforcement of frameworks for promoting workers' rights in the context of business. It is crucial that the final NAP makes practical recommendations that lead to the development of systems that protect and safeguard workers from sexual harassment, beyond the letter of the law.

2.1.7 Sustainability 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.⁸ Certification standards serve a complementary role to national legal and regulatory frameworks, in so far as promoting social conditions at the workplace are concerned. Social certification standards serve a central role in regulating the global cut-flower value chain. They address themselves to work-place conditions that include: freedom of association; health and safety; gender based violence; and, fair remuneration, among others. Certification schemes are, in theory, voluntary schemes adopted by businesses keen on improving and demonstrating their social performance – in the case of social certification.

The leading certification standards are benchmarked against global human rights standards, including: the various international legal instruments regulating human rights and International

⁸ Baseline and Readiness Assessment, KHRC (2019)

Labour Organisation (ILO) conventions. Additionally, they are contextualized to local national legislation and, in many cases, benchmarked to base certification standards.

The prominent certification standards that are applicable in Kenya and providing social certification are:⁹

- i. Milieu Project Sierteelt (MPS)/MPS Socially Qualified (SQ) Certification Scheme;
- ii. Fairtrade Standards/Fair Trade International Hired Labour Standard;
- iii. The Ethical Trading Initiatives (ETI) Base Code;
- iv. Kenya Flower Council Flowers and Ornamentals Sustainability Standards;
- v. Fair Flowers Fair Plants (FFP) 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.
- 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; and,
- vii. Social Accountability International SA8000 Standard Kenya Bureau of Standards (KEBS) 'KS1758 Code of practice for the horticulture industry.'

A survey conducted by the Kenya Human Rights Commission (KHRC) has revealed several key lessons and challenges that beset certification schemes.¹⁰ Most certification schemes pursue compliance based criteria rather than an evaluation based frameworks. Secondly, the schemes have not invested in empowering workers to play a central role in the processes of certification. Thirdly, the 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 consensus normative standards among the various stakeholders. These challenges are relevant to many social issues affecting workers in the work-place, including on the question of sexual harassment.

⁹ Ibid.

¹⁰ Ibid.

2.2 National Legislation on Sexual Harassment

2.2.1 The Constitution of Kenya

The Constitution of Kenya invokes specific fundamental rights, including: In the case of *NML v Peter Petrausch*,¹¹ the Employment and Labour Relations Court in Kenya held that the following articles had been violated by an employer who had sexually harassed an employee: article 27 (on equality), article 28 (on dignity), article 29 (on protection from violence) and article 41 (on reasonable working conditions). The court stated that, “The Court must be careful not to see sexual harassment as just another unfair termination reason, but see it for what it is: conduct that violates the multiple rights of the individual.” As such, the courts have been innovative in finding avenues for upholding the rights of victims of sexual harassment through several constitutional provisions.

Article 27 of the Constitution makes provision for Equality and freedom from discrimination.

“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”

Direct or indirect discrimination on the following grounds is prohibited: “race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.” Sexual harassment is considered to be discrimination on the grounds of sex. However, in light of the historic marginalization of women in Kenya, the Constitution allows the State to take legislative and other measures, including affirmative action programmes and policies designed to redress these disadvantages.

Sexual harassment has also been found to violate the dignity of its victims. Article 28 specifies that, “Every person has inherent dignity and the right to have that dignity respected and protected.”

Article 30 proscribes slavery, servitude and forced labour. The ILO has defined forced labour to include:

“...situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities...”

Sexual harassment at the work-place fits this broad definition, particularly, the component of use of violence or intimidation.

Article 36 guarantees workers the freedom of association, with the associated right to form or join a trade union. Trade unions play a central role in protecting and promoting workers’ rights in the work-place. Hand in hand with other work-place platforms, they are crucial in monitoring

¹¹ [2015] eKLR

and asking questions on, among other issues, incidents of sexual harassment. Closely allied to this provision is Article 41 on Labour Relations, which not only allows guarantees the right to form, join or participate in the activities and programmes of a trade union, but the right to reasonable working conditions. "Reasonable working conditions," could be construed broadly to include working conditions that do not expose workers to sexual harassment.

Article 43 makes provision for the protection of economic and social rights. Among these rights is, "the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care." Under certain circumstances, sexual harassment has been found to violate victims' standard of health.

The Constitution provides outline level stipulations that require elaboration through statutory and policy development. However, it also provides an avenue through which survivors of sexual harassment, representatives of the survivor, anyone acting in the interest of a group or groups of persons or in the public interest and an association acting in the interest of its members, may institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

2.2.3 The Employment Act

The Employment Act defines sexual harassment as the case where an employer or co-worker:

"...directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express:

- (i) promise of preferential treatment in employment;
- (ii) threat of detrimental treatment in employment; or
- (iii) threat about the present or future employment status of the employee;
- (b) uses language whether written or spoken of a sexual nature;
- (c) uses visual material of a sexual nature; or,
- (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction..."

According to the Act, "Employee," means:

"...a person employed for wages or a salary and includes an apprentice and indentured learner."

This definition leaves it open to interpretation the status of independent contractors and sub-contractors, especially where the latter are seconded to the work-place by a contractor. It also defines "forced or compulsory labour" to include elements that constitute sexual harassment, viz:

“Forced or compulsory labour means any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service.”

The Act outlaws discrimination against employees or prospective employees and harassment of employees on a raft of grounds, including sex. Section 6(2) requires employers who employ more than 20 workers to establish a policy statement on sexual harassment, after consulting with the employees or their representatives. This provision is the basis for the promulgation of sexual harassment policies in work-places, including flower farms. In the flower farms of Kenya, many employers establish policy statements for the purpose of achieving legal compliance, rather than as a definitive framework for preventing and redressing sexual harassment. It calls attention to the wording of section 6(2) that requires a “policy statement,” rather than a policy and a comprehensive system for addressing sexual harassment. This, therefore, means that, upon establishing, filing and displaying the written organizational policy document, many employers assume that they would have discharged their obligation as per the law.

It must be said, however, that the Employment Act goes further to spell out minimum contents of the sexual harassment policy, besides containing the statutory definition of sexual harassment. The policy should contain a policy statement to the effect that:

- “(i) Every employee is entitled to employment that is free of sexual harassment;
- (ii) The employer shall take steps to ensure that no employee is subjected to sexual harassment;
- (iii) The employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer’s direction, who subjects any employee to sexual harassment;
- (iv) Complaints of sexual harassment may be brought to the attention of the employer; and,
- (v) The employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.”

The Act falls short of explicitly directing employers to establish structures for addressing or redressing sexual harassment. It mainly requires them to establish a policy statement through a collaborative process, incorporating the foregoing headings under such a statement. Furthermore, the Act does not, of its own elaboration or through an adjunct set of Ministerial guidelines or subsidiary instruments, provide practical direction as to an effective workplace framework for addressing sexual harassment.

Domestically, the Employment Act, 2007, at section 6 describes what entails sexual harassment of an employee. Employers with 20 employees or more are required under this section to issue

a policy statement on sexual harassment after they have consulted employees or their representatives, if any. The section further outlines mandatory provisions to be included in every policy statement on sexual harassment. These stipulations are general in nature and do not go far enough towards providing adequate guidance on the composition of an effective safeguarding and anti-sexual harassment framework at the work-place.

Under section 88 of the Employment Act, failure to comply with any provision of the Act whose penalty is not provided for is punishable by a fine not exceeding KES 50,000 or to imprisonment for up to three months or to both. This section would apply to an employer who does not comply with section 6 of the Act as discussed above.

In April 2019, the Kenya Law Reform Commission (KLRC) published the draft Employment Act (Amendment) Bill, 2019. This bill proposes amendments to the Employment Act, 2007. A number of these changes would have a bearing on how workers are protected from sexual harassment and are discussed, below.

The draft Bill proposes to change the definition of ‘employee.’ Under the Employment Act, an employee is defined as:

“...a person employed for wages or a salary and includes an apprentice and indentured learner.”

The Bill seeks to introduce the following definition:

“(E)mployee” means a person (who) works in the service of the employer under an express or implied contract of service, under which the employer has right to direct and control the details of work performance and excludes contract for services.

This definition excludes apprentices and learners; they would, therefore, not be entitled to statutory employment benefits as under the present Act. It also leaves out other workers, including private contractors. This definition mirrors the jurisprudence of the Kenyan courts. For purposes of establishing the existence of employer-employee relationship, the courts have delved into the substance of the work arrangement, rather than the form of the contract. The new definition stresses upon substantive factors, including the employer’s scope to “direct and control the details of work,” of the employee. It excludes private contractors.

This definition poses challenges in the context of protecting persons who do not fit within this scope of “employees,” from sexual harassment. The Employment Act states that:

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

At this stage, it should be noted that the bill seeks to reduce the said threshold number of employees from 20 to 5. Because the definition mainly speaks to employees, as defined to lock out private contractors, interns and trainees, it is not clear whether a company which contracts more than 5 people from any of these precluded groups is required to promulgate a sexual

harassment policy. More crucially, it is not clear how sexual harassment involving these persons is to be addressed at the work-place: whether they fall under the protective or adjudicative jurisdiction of the sexual harassment policy at their work-place.

On the subject of the threshold number of employees that should trigger an employer to establish a sexual harassment policy, the Bill is progressive. It has been contended that persons who work among a smaller establishment of work-force are – all matters holding constant - just as vulnerable to sexual harassment as those who work in large teams. As such, the Bill rightly reduces the threshold number of employees. The debate, however, may centre on the precise appropriate threshold number of employees or workers.

It is submitted that, while the narrow definition of “employee” rightly serves a technical function that regulates employee-employer relations, the scope of protection against sexual harassment should speak to a broader relationship covering other workers and third parties who may not fall under the bracket of “employee.”

In tandem with the constitutional provisions against discrimination as stipulated in Article 27, the Bill seeks to widen the ambit of protection against discrimination at the work-place. It does this by seeking to expand the grounds upon which an employer may not discriminate against an employee or prospective employee.

Section 5(3) of the Employment Act prohibits discrimination on the grounds of:

“...race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status;

in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.”

Under the proposed amendments, the Bill seeks to widen the proscribed factors of discrimination to include discrimination on grounds of:

“...race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth...”

It thus, introduces other protected characteristics: health status; ethnic or social origin; colour; conscience; belief; culture; dress; and, birth. The Bill retains the protected characteristics under the Employment Act: race; sex; pregnancy; marital status; colour; disability; religion; and, language.

As regards, dress code, this provision would restrict the scope for imposition or prescription of a dress code at the work-place. It is submitted that a dress code that serves the ends of health, safety, wellbeing and that reasonably advances a professional company image and is sensitive to reasonable cultural beliefs, would be appropriate for the work-place. A dress code that is applied in a manner to offend reasonable cultural positions, advance discrimination on any of the listed bases, or which projects an objective which are not fair to any worker or groups of workers, is bound to fail.

2.2.4 The Sexual Offences Act

The Sexual Offences Act creates the offence of sexual harassment by any person ‘in a position of authority or holding a public office’. Even in the case where there is consent amongst both parties, as is the case where the parties to a transactional sexual relationship conspire to facilitate the access to a work-place benefit by a party, in exchange for sexual favours, sexual harassment may still be ascribed to the said situation. It is enough that one of the parties abused his or her position of authority for sexual favours.

In a departure from the position adopted through other penal statutes in Kenya, the Sexual Offences Act establishes minimum sentences for the violation of offences established thereunder. The offence of sexual harassment by a person in a position of authority attracts a minimum imprisonment term of 3 years or a minimum fine of KES 100,000, or both.

2.2.5 Occupational Safety and Health Act

The Occupational Safety and Health Act, 2007, makes provisions related to the safety, health and welfare of workers and all persons lawfully present at workplaces. “Safety and health,” in this context, have been construed liberally; it is possible that the consequences of sexual harassment and related conduct may come under the ambit of this statute.

Indeed, the jurisprudence of the Employment and Labour Relations Court has favoured a broad definition of sexual harassment. In *PO v Board of Trustees, A F & 2 others*¹² the court held that sexual harassment is a health and safety concern, which could rightly be considered and litigated under the provisions of the Occupational Safety and Health Act, 2007.

Section 8 of the Occupational Safety and Health Act states that:

“An Occupier shall not dismiss an employee, or discriminate against or disadvantage an employee in respect of the employee’s employment, or alter the employee’s position to the detriment of the employee, by reason only that the employee makes a complaint about a matter which the employee considers is not safe or is a risk to the employee’s health.”

Sexual harassment is considered to compromise the safety of employees, and posing particular risks to them.

¹² [2014] eKLR

2.2.6 The Labour Institutions Act

The Labour Institutions Act of 2007 provides the legal anchorage for the management of labour affairs by government agencies. It established a number of agencies, boards and bodies for this purpose and stipulates their respective roles and functions.

The Labour Institutions Act, enjoins employers to pay a minimum wage to their employees. It establishes the Wages Council, which is tasked with recommending the wage levels of workers to the Cabinet Secretary, who then promulgates and publishes the wage levels and benchmarks in the gazette, through a Wages Order. It has been contended that the minimum wage in the agricultural sector is inadequate and fails to assure workers of financial resilience. The low wage levels in the agricultural plantation sector open up workers to vulnerability. There have been concerted efforts at ensuring that a Living Wage is achieved in place of the current wage thresholds. A Living Wage is the threshold remuneration received for a standard work week by a worker in a particular place, sufficient to afford a decent standard of living for the worker and her or his family. Among the most notable efforts at driving a live-able minimum wage is the multi-stakeholder effort in the Malawi tea sector.¹³

The wage-setting processes, both through the Wages Order and the Collective Bargaining Agreement need to be more participatory and empirical, to incorporate insights, expertise and progressive wage practices, in order to attain live-able minimum wages in the tea sector of Kenya. Decisions on wages should be driven by long term goals of achieving both, increased productivity and a sustainable living wage. The National Wages Council should have appropriate and credible representation of workers, employers, government, labour sector experts and special interest groups, – including women workers - to gain credibility and ownership among the labour sector stakeholders. The national minimum wage setting process should be informed by a clearly defined and open raft of factors, and based on the application of up-to date empirical information and trends towards the achievement of a living wage.

2.3 Gender Programming in Schools through Comprehensive Sexuality Education and promoting STEM for Girls and Women

The Government of Kenya made the commitment to adopt a comprehensive rights-based sexuality education, in 2013. Under the policy, the content of the national education curriculum would be revised to include Comprehensive Sexuality Education (CSE) in primary and secondary schools.

¹³ Anker, Anker and Chiwaula (2017)

However, 6 years on, this commitment has not been effected, mainly because a consensus between national education sector stakeholders have not been able to forge a consensus on the inclusion of rights-based approaches that advance reproductive health positions. A number of particularly divisive issues have been exposed including, the question as to whether the system should promote the access to condoms and abortion rights, vis-à-vis the more conservative approach of promoting sexual abstinence. Introducing CSE in schools also remains a challenge because Life Skills - the subject that subsumes most of the projected topics, is currently, not examinable, thereby offering little incentive for inspiring the uptake of CSE in the schools' curriculum.

Children in schools would benefit from CSE, gaining knowledge and understanding of: sexual and reproductive health; aspects of gender equality and human rights; among others. These are essential subjects for the emerging generation of young persons and adolescents, useful in their personal and group empowerment, encouraging active engagement in community dialogue and personal decision making; improving communication skills and self-confidence; and for, positively disrupting harmful and discriminatory gender norms in their society. CSE is integral in reducing or preventing incidences of Sexually Transmitted Diseases (STDs), reducing teenage pregnancies and domestic and sexual violence.

In Kenya, as in many countries, the trend in education for a long time has been that boys and men dominate in numbers as regards the uptake of Science, Technology, Engineering, and Mathematics (STEM). The implication for girls is that they have been marginalized from job opportunities that require a background in STEM education. With the growth of technology, STEM education has become particularly useful and it is projected to be even more so, in the future work-place context.

2.4 Recommendations for improving the regulatory framework on Sexual Harassment	
a	<p>From Policy Statements to Safeguarding System</p> <p>The Employment Act should be reviewed to require employers to develop and implement comprehensive operational protection and safeguarding frameworks against sexual harassment at the work-place, beyond the present provisions that only require employers to develop policy statements on sexual harassment.</p>
b	<p>Legislative Review and Ratification and Adoption of International Laws and Standards</p> <p>i. Kenya should ratify and enact the provisions of the ILO Convention 190 of 2019 to facilitate the direct effect and applicability of the Convention's provisions in protecting workers from violence and harassment at the work-place, particularly provisions which prescribe the threshold for developing protection and safeguarding systems at the work-place.</p> <p>ii. Kenya should adopt the ILO Recommendation Concerning the Elimination of</p>

	<p>Violence and Harassment in the World of Work (ILO Recommendation 206 of 2019), by establishing subsidiary legislation in the form of regulations, rules or guidelines that stipulate minimum workplace safeguarding standards, for adoption by employers. Through a process that enlists the participation of labour sector stakeholders, a standard sexual harassment policy and safeguarding framework may be developed to accompany the regulations, rules or guidelines, to provide an adaptable minimum template for employers in the agricultural sector.</p> <p>iii. To protect vulnerable workers in smaller flower farms, section 6(2) of the Employment Act, which requires only employers who employ more than 20 workers to develop and adopt sexual harassment policies at the work-place, should be amended to require all employers, regardless of the number of workers they employ, to establish and implement sexual harassment policies.</p> <p>iv. To broaden the avenues for seeking redress and resolution of incidents of violence and harassment at the work-place, Kenya should accept the provisions of the Optional Protocol to the ICESCR which facilitate individual complaints before the CESCR and the inquiries mechanism.</p>
c	<p>Anti-Gender Based Violence Support System at County Level</p> <p>County governments in Kenya, through the county assemblies, should enact county legislation providing the legal framework on Gender Based Violence (GBV) to make provision for protection against GBV in the county and to co-ordinate and synchronize the interventions of national and county level government on GBV. This framework may be guided by the Model County Legislation on Gender Based Violence for County Governments developed by the National Gender and Equality Commission (NGEC).</p>
d	<p>Comprehensive Applicability of National Laws</p> <p>i. National laws should adopt a broad and practical scope – including a physical and virtual construction of “the workplace” – in the context of sexual harassment at the workplace, in line with the provisions of the ILO Convention 190 of 2019.</p> <p>ii. Municipal law on sexual violence - the Employment Act and the Sexual Offences Act – should follow in the tracks of the ILO Convention 190 of 2019 and the ILO Recommendation 206 of 2019, by explicitly broadening the coverage and scope of the offences relating to harassment and violence at the work-place. Among the elements that should be captured in scope, include: the definition of the work-place as covering both public and private settings; and, the inclusion of private contractors, volunteers, job-seekers and interns, as being within the coverage and protection of the sexual harassment policy, besides employees.</p>
e	<p>Protection of Vulnerable Persons</p> <p>National laws on violence and harassment should contain specific explicit provisions that</p>

	<p>require that the employer guarantees:</p> <ul style="list-style-type: none"> i) The protection of victims, witnesses and whistleblowers from retaliatory acts; ii) The protection of the privacy of individuals involved in sexual harassment incidents; iii) That the work-place policies provide for adequate sanctions against violations; iv) Effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies; and, v) That safeguarding systems recognize and address the effects of harmful and discriminatory cultural practices and beliefs on sexual harassment.
f	<p>Implementing the United Nations Guiding Principles on Business and Human Rights</p> <p>In line with the UNGPBHR, the Employment Act should be reviewed to require employers to:</p> <ul style="list-style-type: none"> i) Promulgate a human rights policy that outlines human rights expectations of personnel, business partners and other parties who are directly linked to its operations, products or services and communicate this policy internally within the company and externally, to the public and to the company’s value chain. Employers should, subsequently, develop and effect operational procedures for effectively implementing this policy across the company; ii) Undertake human rights due diligence on the impacts of the company, identify and address these impacts and address these impacts and publicly communicate how these impacts have been addressed; iii) Put in place and effect internal preventive, redress and monitoring and evaluation frameworks as are applicable to human rights at the work-place.
g	<p>Fair Remuneration</p> <p>The Labour Institutions Act should provide for a participatory, open and empirical process and framework for establishing and enforcing a minimum wage that also amounts to a living wage for agricultural sector workers. In specific terms:</p> <ul style="list-style-type: none"> i) The wage-setting processes, both through the Wages Order and the Collective Bargaining Agreement need to be more participatory and empirical, to incorporate insights, expertise and progressive wage practices, in order to attain live-able minimum wages in the tea sector of Kenya.¹⁴ ii) Decisions on wages should be driven by long term goals of achieving both, increased productivity and a sustainable living wage. The National Wages Council should have appropriate and credible representation of workers, employers, government, labour sector experts and special interest groups, –

¹⁴ FIDA (2017)

	<p>including women workers - to gain credibility and ownership among the labour sector stakeholders.¹⁵</p> <p>iii) Wage-setting processes, both through the Wages Order and the Collective Bargaining Agreement (CBA) should be participatory and empirical, to incorporate insights, expertise and progressive wage practices, in order to attain live-able minimum wages in the tea sector of Kenya. Decisions on wages should be driven by long term goals of achieving both, increased productivity and a sustainable living wage.</p> <p>iv) A living wage, informed by, both, the imperatives of achieving the basic needs for workers above inflation rates and the need to assure productivity and a living income for tea sector farmers, should be adopted by the Wages Council. The Wages Council should, thus, be well resourced for the purpose of executing its wage-setting mandate adequately.</p>
h	<p>Social Certification</p> <p>In order to ensure the effectiveness of social certification standards in influencing protection and safeguarding of workers, the following steps should be effected:</p> <p>i) Certification and audit bodies should ensure that the process of standard-setting and work-place audits are inclusive, enlisting the participation of stakeholders - including workers and trade unions – to achieve a comprehensive substantive content for standards and credible audit processes.</p> <p>ii) Certification standards and the methodologies of auditing should be informed by a broad consensus among stakeholders, based on a common understanding and endorsement of normative frameworks on human rights and protection.</p> <p>iii) The capacity of workers, trade unions and watchdog organizations should be developed to enable them to understand and participate effectively in the certification and audit processes.</p> <p>iv) Certification bodies should ensure that certification standards are set and drafted in a manner that requires the client farms to demonstrate that they have met specific social outcomes, rather than compliance with low-level outputs.</p> <p>v) Audit firms should adopt audit methodologies which seek to evaluate the outcomes rather than the output-based compliance by farms.</p>

¹⁵ Ibid.

i	<ul style="list-style-type: none"><li data-bbox="305 203 1435 384">i. The Government of Kenya should introduce age-appropriate instruction in CSE in the schools' curriculum and as examinable modules in primary and secondary schools, to improve awareness of children on, among others: birth control; family planning; protection from STDs; and, protection from Gender Based Violence (GBV).<li data-bbox="305 432 1435 579">ii. The Government of Kenya should develop programmes aimed at promoting the equal access and uptake by girls and women of STEM education to ensure that women are competitive in job market that emphasizes knowledge and background in STEM subjects.
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3.0 ASSESSMENT OF THE SEXUAL HARASSMENT SAFEGUARDING SYSTEMS AND EXPERIENCES OF SAMPLED FARMS

This study involved an analysis of the sexual harassment policies and safeguarding systems of 4 of the 10 pilot project flower farms as well as of the experiences of workers and management in the farms, as regards sexual harassment. The aim was to audit the effectiveness of the sexual harassment safeguarding system at the work-place, generate good practices and identify challenges to the effective protection of workers from sexual harassment. Sexual Harassment safeguarding systems of Farms A, B, C and D, were assessed, for this purpose.

3.1 Lessons from the Experiences of Pilot Project Farms

3.1.1 Influence of the Model Sexual Harassment Policy

In a 2012 study on sexual harassment in the flower farms in Kenya by the Kenya Human Rights Commission (KHRC), named “Wilting in Bloom,”¹⁶ work-place sexual harassment policies were found to fall short on various accounts. First, the policies of many farms did not provide adequate guidelines to support internal investigation of sexual harassment. Secondly, they did not provide adequate sanctions for violations. Additionally, gender committees – then, mainly comprising women employees - did not inspire confidence in the male employees. It was also reported that farm management in some companies claimed that these committees were, “a tool for witch-hunting.”

In the present study, it has been found that the sexual harassment policies in the pilot project farms are considerably developed, marking an improvement in their scope and substance. Though they are not exhaustive of the requirements of an effective sexual harassment policy, they, generally, define sexual harassment conclusively, provide for a generally acceptable scope for the policy’s operation, stipulate the various steps in handling of complaints and provides for sanctions for violations.

The Gender Committees are, today, roundly accepted by workers and management as a legitimate and central framework for ensuring accountability on a number of gender based violations, including sexual harassment. This marks an improvement in the sector.

The current study reveals that the model sexual harassment policy has been influential in defining and guiding the development of the sexual harassment policies in all 4 farms. The farms have drawn significant guidance from the model policy in crafting their respective

¹⁶ Wilting in Bloom (2012)

policies. They have all adopted the following broad structural or substantive features into their policies:

- a) A policy statement that assures of the organization's commitment to addressing sexual harassment;
- b) High level endorsement of the policy – either by a Director or the CEO;
- c) A comprehensive definition of Sexual Harassment;¹⁷
- d) Annual training regimes for workers and management on sexual harassment and orientation programmes for recruited workers;
- e) Insistence on a representative and capacitated gender committee as the central organ in the complaints redress process; and,
- f) Enhancing due process, confidentiality and the protection of victims and witnesses.

There is a general acceptance by workers that sexual harassment is offensive and worthy of being proscribed at the work-place. It is now roundly acknowledged by men and women workers that sexual harassment is harmful and that, a combination of systemic and social dialogue is required for the eradication of sexual harassment in the work-place. Moreover, there is an all-round acknowledgement by workers and management that sexual harassment is a fairly common phenomenon in the work-place.

There are significant pointers to the commitment of the 4 sampled flower farms (Farms A, B, C and D) in addressing sexual harassment. Cases of workers who have been found liable for sexual harassment and subsequently, dismissed, have been recorded. Anti-sexual harassment notices are conspicuous in all 4 flower farms. The gender committees in all 4 farms are well primed and trained on addressing sexual harassment. They are constituted in a manner that allows for appropriate gender representation and are democratically voted into office by the entire work-force. There is marked management support and facilitation of the operations of the gender committee.

Farm A and Farm B show a higher level of internalization of safeguarding practices and culture than Farm C and Farm D. A number of commonalities abound, with regard to the non-adoption of core provisions of the model sexual harassment policy by all 4 farms. For instance, a study of the 4 policies reveals an overbearing emphasis on redressing instances of sexual harassment, rather than seeking to prevent the same. Secondly, the safeguarding systems at the 4 farms reveal a weakness is management systems for implementing the same. Third, the safeguarding systems in at least 3 of the 4 farms, are mostly inward looking, thereby failing to address themselves to challenges posed by the cultural influences of the host community. Additionally,

¹⁷ Except for 1 of the 4 pilot farms, whose definition is not considered to be comprehensive

all 4 farms have not adopted the compliance monitoring framework as under the model sexual harassment policy. As a result, there is no reliable system for implementing the policy in the farms. Similarly, there is no real time basis available to the management, for monitoring and assessing the efficacy of the safeguarding system and for learning. Lastly, the farms have not built into their safeguarding system, a reporting mechanism, to guide internal operations as well as external communications and positioning.

The early outcome of the model sexual harassment policy experience is that it has contributed to demystifying sexual harassment in the work-place. Sexual harassment is no longer taboo subject; not to be spoken about openly. On the contrary, both male and female workers in the 4 farms speak relatively freely and fairly knowledgeably about sexual harassment. Speaking with the benefit of an understanding of the history of the discourse on sexual harassment in the flower farms of Kenya, CSO practitioners, government officers, trade unionists, workers and farm management, were all of the general opinion that there is a marked improvement in safeguarding workers from sexual harassment, as compared with the situation, a decade ago.

In conclusion, while there is little, reliable, cumulative quantitative data in the farms that tracks the journey of the safeguarding systems over the years, there is a common sense by stakeholders that the model policy has contributed to establishing fairly effective systems at the work-place for addressing sexual harassment. It is also acknowledged that significant further steps and learning are still needed for the purpose of developing these systems fully, refining the same systems upon constant learning and ultimately, forging a protective workplace culture.

3.1.2 Enablers of Sexual Harassment in the 4 Pilot Farms

Sexual harassment is, naturally, mainly practiced covertly. In the farms, the main perpetrators are supervisors and managers, thereby making it difficult to detect and prosecute effectively. However, sexual harassment is also perpetrated by groups of workers against their target victims, often in a more open space. Women form the majority of the victims of sexual harassment. Conversely, men are the main perpetrators of the violation, though a few men have also been victims. Sexual harassment at the work-place is a product of systemic failures, socio-cultural positions and economic factors.

a) Socio-Cultural Factors

The prevailing community culture around the cut flower farms is largely discriminatory of women. They have the tendency of normalizing aspects of gender-based discrimination. Not

surprisingly, sexual harassment - an offence that is predominantly committed by men - is widely considered to be a petty infraction, a peccadillo. The cultural norms at play make excuses for violence by men. Women are expected to fit within this patriarchal mould of the society, including putting up with gender-based violations and discrimination. Naturally, these norms have diffused into the work-place to influence the relationships and behaviours of workers in the flower farms.

These beliefs and practices affect the implementation of safeguarding systems. There are instances when these beliefs have coloured the decisions of key actors in addressing sexual harassment and violence at the work-place. Many perpetrators of sexual harassment also act upon these communal impulses. In turn, victims of sexual harassment – invariably, women employees – have expressed a deep-set reluctance to report incidents of sexual harassment at the work-place for fear of running afoul of the prevailing work-place order, which is held together by the need to preserve the male hegemony.

As such, women who have been violated often opt not to lodge complaints for the reason that they would antagonize their colleagues. This also means that witnesses to the harassment, upon whom victims would have relied for the purpose of corroborating their complaints, are often uncooperative. The general sense is that sexual harassment is not a serious matter over which to lose one's job and that a complaint against a colleague is, therefore, made in bad faith. Not surprisingly, many workers favour an informal resolution to complaints of sexual harassment, in a bid to contain the potential social fallout. Victims of sexual harassment sometimes lack the support that is expected from the family structure. The common paradox is that, sexual harassment has been used as an excuse for prosecuting the conduct – as perceived - of the female survivor of gender-based violence. The spouses or partners of female victims of harassment have often found ways of suggesting that the violated wife or partner was complicit in bringing about her own fates through any number of means, including: perceived suggestive dressing and flirtatious behaviour. Even where the female spouse or partner is not accused in this way, her spouse or partner may dissuade her from originating a protracted complaints process, upon the fear that it would fracture community relationships and visit shame upon the family. In extreme cases, women suffering sexual harassment at the hands of colleagues at the work-place have, additionally, suffered spousal violence owing to the resultant conflict at home. In this way, the patriarchal cultural norms have militated to render a double victimization of the woman survivor of sexual harassment.

Among the 4 pilot project farms, only Farm A demonstrated an appropriate degree of linking work-place culture with a level of community engagement that is required to advance a common dialogue towards a culture shift towards enhancing an all-encompassing culture of protection.

b) Inadequacies of safeguarding frameworks at the workplace.

Systemic and social weaknesses at the workplace have been found to predispose employees to sexual harassment. Workers are vulnerable to sexual harassment at various stages. These include, when they are seeking a transition from casual to permanent employment or seeking a promotion at the work-place, owing to their desperation to secure a coveted permanent position, thereby being forced into accepting the sexual advances of supervisory or managerial staff, in exchange. This situation is replicated where employees are seeking leave of absence from superiors or seeking to escape the due course of work-place disciplinary processes, as in the case where a worker reports to work late or does not meet the daily work output targets. On occasion, employees flip the context by inappropriately propositioning their superiors, leading to employee-instigated sexual harassment. This happens mostly when workers are seeking improvement of work-place terms, or seeking to evade disciplinary processes. However, employees have also been known to approach their superiors with sexual propositions in order to secure employment opportunities for their relatives.

Amongst workers of the same general cadre, sexual harassment takes various forms, including: pestering colleagues for sex; offensive touching; cat-calling with sexual overtones and innuendoes; projecting lewd and lascivious behaviour, including jokes and comments; and, transmitting or displaying offensive and sexualized images, especially through mobile phones.

Whereas sexual harassment is a fairly common occurrence in the workplace, incidents are hardly ever reported by the complainants. A multitude of reasons contribute to this, including the feeling by workers that the work-place systems for addressing sexual harassment are inadequate. Most workers cite the fear of victimization for their non-reporting of sexual harassment. Often, the perpetrator wields relatively more influence in the work-place, compared to the victim, calling into play the latter's job security. Work-place systems have not been tested sufficiently to assure workers of protection from victimization or retaliation by powerful respondents. In addition, the complaints process is deemed to be too taxing upon the complainant. In many farms, it is a drawn out process that pits not just the complainant and the respondent against each other, but also colleagues. This has also been the experience of potential witnesses. Many times, complainants do not have access to counseling services where required. Workers have also cited the little regard for confidentiality in the prosecution of complaints. This causes the invasion of the privacy of parties to a complaint and causes undue scrutiny.

The 4 pilot farms have assigned management roles and responsibilities for protecting workers from sexual harassment. At face value, however, these management systems do not coherently address the intricacies involved in implementing a preventive and redress system in an

integrated manner, at the work-place. The systems do not assign corresponding responsibility lines and overall accountability functions across the management infrastructure. For instance, whereas different managers and supervisors at the farms are, generally, tasked with enforcing the respective sexual harassment policies, there is no clear articulation of their specific roles as relates to the different operation contexts. More crucially, there is little evidence of an integrated system that aggregates accountability within an office, for the purpose of overall supervision of management tasks as regards addressing sexual harassment. The 4 farms have not adequately conducted due diligence or established monitoring, evaluation and learning capacities or reporting mechanisms. As such, the farms are not able to track the performance of their respective safeguarding systems effectively or to render conclusive reports to inform management learning and decisions.

c) Capacity Gaps in enforcing a holistic safeguarding system

Considerable head-way has been made by all 4 pilot project farms in developing the capacities of work-place actors in enforcing the sexual harassment policies. In particular, the respective gender committees of the said farms are knowledgeable about sexual harassment. However, the safeguarding systems at the farms require: deeper investment in the knowledge by management, gender committees and workers on sexual harassment; community engagement for holistically influencing a safeguarding culture; protective systems that assure of job security, protection, health and safety for users of complaints mechanisms and an early warning system that emphasizes on preventing incidences and addressing the root causes of sexual harassment in the work-place.

d) Socio-Economic Factors

Among the root causes of sexual harassment are the low wages paid to employees and the particularly depressed economic situation of women in the community.

Fair remuneration is central to safeguarding employees from sexual exploitation. A fair wage contributes to the attainment of: quality healthcare and access to medication; quality education; adequate food of acceptable dietary value; social security; appropriate housing; and, sanitation, among others.

Most farms, including all 4 pilot project farms sampled, pay a minimum wage. However, while the minimum wage is integral to regulating workers' remuneration, the wage levels under this framework still do not afford workers a living wage.¹⁸ A Living Wage enables the employee to afford food, water, housing, education, health care, transport, clothing, and other essential

¹⁸ Ibid.

needs. In addition to these, it provides the employee with resilience in the face of adverse eventualities. Studies in the tea sector have consistently shown that the basic needs of plantation workers and their families far outstrip the statutory living wage.¹⁹ An analysis by Richard and Martha Anker set living wage benchmarks between KES 11,937 to KES 22,104, in a 2015 report, depending on the location, for plantation workers. It is contended that wages in the flower sector are similarly below thresholds that would enable workers eke a dignified living. It is posited that a Living Wage would cushion the employee from economic frailties and provide them with adequate economic resilience, consequently, reducing their vulnerability to exploitative work-place practices, including sexual harassment.

Beyond the Living Wage, another socio-economic challenge that affects workers – more so women workers - relates to the burgeoning rate of single-parenthood and the resultant socio-economic challenges it portends for women. Workers in flower farms have noted an uptick in the rate of divorce.

Several reasons have been advanced to explain this relatively new phenomenon, most of them pointing to socio-economic pressures that beset couples in the flower growing communities. Through FGDs in the flower farms, employees opined that a significant number of workers in the flower sector are migrants, hailing from distant counties of Kenya. Migrant workers often relocate alone to the work-station, leaving their spouses and families in their ancestral homes. They stay at the work-station for extended periods of time and naturally, contract relationships with colleagues at the work-place. These are often casual relationships, mainly to satisfy economic or sexual convenience. There have also been instances where they have led to stable marriages. These relationships result in the birth of children. The ensuing trend is for the men to abandon their pregnant or child bearing partners, thus occasioning a spike in single motherhood among the workers. As a result, many single mothers dot the labour catchment communities of the cut flower growing farms, their male partners having escaped the provision of parental responsibility, care and maintenance for their children.

Historical gender-based discrimination meant that opportunities for education were first given to the boy-children or men, in the family, at the expense of girls and women. The dividends of this age-old discriminatory practice are today being reaped in the flower farms, where male workers are better educated than women. Men generally attract higher paying jobs because of their superior education. Women, on the other hand, are relegated to the ranks of unskilled labour, often working amongst the lowest cadres in the flower farms. Because of their lower levels of education, many women do not understand the protective provisions of labour laws, nor do they have confidence to articulate their entitlements or aspirations. They are, thus,

¹⁹ Anker and Anker (2016)

open to exploitation. It is not a wonder that many employers prefer to retain women workers in the lowest cadres in their farms for long spells.

Often, they have little knowledge or resources for ensuring that the men meet their parental obligations, as per the law. It also does not help that most employees are not aware of birth control and contraception options that may check the contraction of unplanned pregnancies. Even where they are aware, the prohibitive cost of contraceptives places them beyond the reach of most workers. While a number of front-runner flower farms provide free contraceptives and birth control treatment to workers, the majority of farms are yet to embrace this. Furthermore, social norms are such that women are rarely able to take unilateral decisions in relation to birth control and family planning. Through FGDs the contraceptive injection is the most favoured birth control option by women employees who have access to contraceptives. However, they often have it administered against the knowledge of their male partners, for fear of sowing conflict in the household, and in the process running the risk of straining the relationship, should the man find out.

3.1.3 Trends and Grey Areas in Sexual Harassment Safeguarding

This study unearthed a number of insights based on the experience of the 4 pilot farms in implementing the model sexual harassment policy at the workplace.

a) Vulnerability of Management staff to Sexual Harassment

Previously, it was thought that general workers in the lower cadres in the farms predominantly bore the brunt of sexual harassment, owing to their relatively low levels of influence and decision making powers at the farm. While general workers are vulnerable for this and other reasons, it has emerged that management staff at the farms are, particularly, vulnerable to sexual harassment. Management level staff can be categorized to include directors or executives, senior managers or team leaders, junior managers and supervisors. The most common scenario is for senior managers or executives to harass their junior counterparts. In some cases, harassment occurs amongst compeers, on the same professional level.

With the exception of supervisors, members of management are not unionizable, therefore lacking the representation of union shop stewards for the purpose of channeling their grievances. This reduces their scope for actively organizing themselves to canvass for their interests. Union representatives have a role, albeit a last-ditch role, in the event that a company's gender committee cannot effectively address workers' grievances. The practice in

most farms is that a manager may address any personal or professional work-place issues with his or her line manager. Many managers feel that this forum is neither practical nor credible as a channel for addressing sensitive and personal problems as may be posed by sexual harassment.

Secondly, considering that managers are more likely to be harassed by a director or an executive who wields great influence or owns the farm, it is no surprise that managers are reluctant to report incidents of harassment. The prospect of canvassing a grievance against an influential figure within the farm is daunting to prospective complainants. Adequately disciplining the owner of a company on account of sexual harassment is considered by many practitioners, to be a difficult proposition for management teams or work-place frameworks of accountability. Even less practical is for a complainant to successfully retain his or her job after successfully prosecuting a complaint and continue working under safe and friendly terms, within the same company. Faced with this challenge, the courts have innovated considerably over the years to prescribe a legal solution to this problem, through the doctrine of "Constructive Dismissal." In the South African case of *Ndebele vs. Foor Warehouse (pty) Ltd t/a Shoe Warehouse*,²⁰ the then Industrial Court of South Africa's Deputy President stated as follows regarding the subject of constructive dismissal:

"Constructive dismissal arises when the employee terminates the employment contract in circumstances such that he is entitled to terminate it without notice by reason of the employer's intolerable or unreasonable conduct. It may also arise where an employee resigns and the resignation cannot be held to be voluntary in the real sense as it was promoted by the employer's unlawful or improper conduct, such as assault, sexual harassment or unsubstantiated allegations of theft or dishonesty."

This reasoning has, subsequently been applied in recent Kenyan jurisprudence,²¹ to give compensatory relief and exact punitive damages against an employer, under circumstances where it is untenable for an employee to remain in employment under the offending employer. The employee need only demonstrate that the employer's actions were so unreasonable that the employee had no option but to resign. Sexual harassment has been cited as among the cases that would lead to harmful environment at work, thereby contributing to constructive dismissal.

Managers in flower farms have also found it impracticable to report incidents of harassment perpetrated by fellow managers to the gender committee, which largely comprises general

²⁰ (1992) 13 ILJ 1247

²¹ *Alice Mbithe Mwanzia v Xpress It Courier Limited*, Cause Number 636 of 2013, the Employment and Labour Court of Kenya

workers. Managers are considered to have considerably more information and knowledge about the work-place policy positions and frameworks than general workers, that to submit to a committee of general workers would not be viable. Many workers have, additionally, felt that a manager or supervisor, who is disciplined by a gender committee comprising general workers, is likely to retaliate against the gender committee members, just as the general workers in a gender committee are likely to use their platform to settle scores with a manager. Thus, in most farms, there is no clear, standing structure for addressing sexual violations between managers.

The trend in a few sampled farms is to have the CEO adjudicate over such a complaint. Many managers would prefer a special team of adjudicators rather than an individual adjudicator over such a sensitive issue as this. A team that is well trained and officially mandated to address sexual harassment complaints, at this level, would provide for a sense of mutual accountability amongst themselves, leading to a decision that is more acceptable by the complainant and the respondent. Lastly, the abovementioned CEO-oriented complaints framework does not contemplate potential complaints of sexual harassment against the CEO or a director.

The Model Sexual Harassment Policy, as revised in 2017 by Hivos, contemplates a few of these scenarios and makes provision for them. First off, to address the difficulty faced by the gender committee in addressing a complaint leveled against a senior manager, the model policy establishes the “Special Panel.” Under Complaints Procedure 5.2.2 the special panel introduces a special panel handles complaints “brought in relation to or by an employee of the rank of Senior Manager or of a higher rank, or in respect of a complaint brought by or against any other person who not in the employment of the Company.” It comprises of a mix of senior and non-senior staff, as well as union committee representation, thereby retaining the representative characteristic, while at the same time inspiring confidence of all cadres of staff, owing to its representation of both the highest level officers and the lowest cadres. The membership of the special panel comprises:

- i) 2 Senior staff nominated by the Chief Executive Office, provided that where the Chief Executive Officer is party to the complaint, a Director of the Company shall nominate the 2 staff;
- ii) The Human Resources Manager, provided that where the Human Resources Manager is party to the complaint, the Chief Executive Officer shall nominate a Senior Manager;
- iii) 1 member of the Union Committee, nominated by the Chair of the Union Committee;
- iv) 1 Member of the Gender Committee, not being managerial staff, nominated by the Gender Committee.

Because of the legitimacy and gravitas that such a panel brings to the conversation, it is possible that such a panel could effectively address a complaint against the CEO or a company executive. However, it is also noted that executive officers of organizations are normally under

the supervision of Boards of Directors. Allegations of misconduct by the CEO are, routinely, investigated by the Board. This study found merit in allotting the role of investigating alleged sexual harassment by a company executive to both a properly constituted Special Panel – similar to the one proposed under the model policy – and the Board of Directors. The Special Panel brings in the credibility of representation and subject matter know-how, having been trained on sexual harassment. Crucially, it also reserves a much needed consistency in handling sexual harassment across the farm, being a standing committee. On the other hand, the Board of Directors is legally tasked with making the ultimate supervisory decisions about a company's leadership. In this case, the Special Panel would conduct preliminary investigations and render its decision to the Board of Directors for execution or, where appropriate, to hear out an appeal from any of the aggrieved parties to the said complaint.

b) Projecting dress as a contributor to sexual harassment

In all 4 farms, respondents suggested that the manner of dressing by employees – particularly, female employees, – had the capacity of exciting passive colleagues into committing sexual harassment. The assertion is that, workers who dress up provocatively excite base intentions by other workers, including inviting other workers into sexually harassing them. The argument proceeds on the premise that women can dress in a way that causes such deep sexual arousal in a man that the man is stimulated beyond the limits of his self-control and is prompted to act upon his desires, without restraint. Employees in the 4 farms have also suggested that the manner of dressing – especially where one wears clothes which are deemed to be more revealing than the norm - may, itself amount to sexual harassment against colleagues. Whereas this dominant position does not mirror the official tenor of the farms, the full effect of existing dress codes is not clearly communicated to workers, leaving room for a gender biased interpretation and application by workers, under the influence of cultural positions.

Over the years, this theory has been widely discussed through a number of lenses, including: scientific, philosophical and legal perspectives. On a legal plane, this argument falls flat. Inappropriate dressing is not a legal defence to the offence of sexual harassment or indeed any other sexual offences. Under the Kenyan criminal law, provocation through dressing does not override the need for consent before engaging in sexual conduct. Similarly, under the civil law – in proving tortious liability – a claim of provocation through dressing does not qualify to apportion all or some blame for the consequences of sexual harassment to a victim, only by virtue of her “inappropriate” dressing. The doctrine of “Contributory Negligence” is not applicable to this situation.

A number of legal scholars have offered their reasoned positions on this matter:

“The belief that clothing can indicate consent to sexual assault or can invite sexual harassment stems from the empirically proven fact that people infer intent and attitude of others based on their clothes. Because those inferences are often inaccurate, clothing is not probative or relevant evidence of the intent or attitude of the wearer. In addition, the widespread misinterpretation of clothing strongly suggests that introducing it to show intent or attitude will likely be prejudicial. For these reasons, clothing should be inadmissible in a criminal prosecution if offered to show the complainant's attitude or intent.”²²

On the second question as to whether a certain level of skimpy dressing at the work-place may, on its own, amount to sexual harassment, or any offence, at all, this study fell back on the obtaining legal position.

The advent of the Sexual Offences Act of 2007, saw the repeal of the chapter on “Offences Against Morality,” as previously contained in the Penal Code.²³ Offences relating to exposing body parts through inappropriate or minimal dressing were, until then addressed under the now-repealed offence of, “Indecent Exposure.”

The Sexual Offences Act defines the offence of sexual harassment to include the component of, “Hostile Environment Sexual Harassment.” Hostile Environment Sexual Harassment applies where:

“...sexual advances or requests have the effect of interfering with the alleged victim’s work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service...”²⁴

The Employment Act defines sexual harassment to include the case where a co-worker:

“...shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee’s employment, job performance, or job satisfaction.”²⁵

Typically, the uninvited display of private parts by a colleague at the work-place would interfere with the victim’s work or create an offensive working environment, thereby falling within the parameters provided under the Sexual Offences Act. The Employment Act is more specific. The display of one’s private parts at the work-place could be construed to amount to physical

²² Lennon, Lennon and Johnson (1993)

²³ Chapter 63, the Laws of Kenya.

²⁴ Section 23 (2) (b), the Sexual Offences Act, 2007

²⁵ Section 6 (1) (d), the Employment Act, 2007

behaviour of a sexual nature, which subjects the employee to behaviour that is unwelcome or offensive and poses detrimental effects on the victim's performance or job satisfaction. However, the courts have mainly allowed a charge of sexual harassment to stand, where such bodily exposure included the willful display of "genitalia" – rather than allowing the broad-brush reference to "private parts" to other persons, without consent.

Discriminatory community culture and practices have contributed to the disproportionately huge emphasis placed on women's dressing and its implications at the work-place. Short or tight dresses and skirts and low riding neck-lines have been cited as inappropriate dressing. On the contrary, male workers who wear their trousers waists low, adorn tight-fitting clothes, unbutton their shirts beyond the top one or two buttons, or who altogether go about their work bare-chested, have attracted little to no blame.

In summary, provocative dressing at the work-place is not necessarily a waiver of bodily autonomy and a cue for sexual consent. On the other hand, as discussed in the foregoing, the willful display of genitalia at the work-place, without consent or legitimate cause, by both men and women, amounts to sexual harassment. Lastly, a person who sexually harasses a colleague at the work-place may not advance the defence of provocation through the manner of dress.

The more established flower farms have developed human resources policies and codes of conduct to govern general conduct of employees and other persons at the work-place and to set standard operating procedures. This also has the effect of bringing clarity on the accepted conduct at the work-place. The Farm C Human Resources Policy contains the company's code of conduct which applies to all employees and provides the framework of principles for conducting business, dealing with other employees, clients and suppliers. It also provides for a dress-code which aims at ensuring that employees turn out in "... a professional, ethical and socially acceptable manner of the highest standards." It requires employees to observe: "proper grooming and attire," at the work-place. The Code goes on to specify that:

"Dress and grooming of employees shall be clean, neat, and in a manner appropriate to their assignment and in accordance with the following standards:

- i) Personnel are expected to dress in a manner that projects a professional image.
- ii) Style of clothing for males and females should always reflect a professional atmosphere and should not be a distraction to other employees.
- iii) Denim/jeans shall not be worn except on weekends or on special occasions with the approval of your immediate supervisor. If worn the PPE clothing must be worn to cover the same.
- iv) Employee's hair shall (be) neatly combed, clean and appropriately styled. It should not be a distraction to other employees.

- v) Employees shall not wear visible body piercing jewelry except earrings in the ear. Tattoos shall be covered at all times.
- vi) Department managers, at their discretion, can implement a “Business Casual Day” policy. However, employees should take into consideration their work activities for that day which includes client meetings both in and out of the office when deciding to participate.
- vii) PPE shall be used at all times and where these are not provided, shoes shall be close-toed and of a professional nature. No flip-flops or slippers may be worn.”

Farm C’s dress code seeks to ensure that the work-place is safe for workers and that professionalism is maintained, with the company’s image at the heart of considerations. It is gender neutral and seemingly applies the same standards to men and women.

For a dress code to be sound under the law, it must satisfy, among others, the provisions of the Constitution of Kenya that forbid structural or other discrimination. Article 27 of the Constitution provides for equality and freedom from discrimination. It states that, “Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”²⁶ It also outlaws the direct or indirect discrimination by the state, legal persons or natural persons, against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.²⁷ The stipulations under the dress code, including the restrictions on free dressing, should be reasonable and proportionately applied. Presently, the 4 pilot farms do not have overtly discriminatory policies on dress. However, community culture and beliefs, women’s dressing at the work-place, is largely conceived as potential contributor to their own violation or altogether, sexual harassment against their male counterparts. To plug the vacuum created by the lack of understanding of the dress code - which vacuum has been usurped by a patriarchal interpretation of dress codes - there is need to establish clear dress codes and ensure effective communication of the codes to employees, to ward off discriminatory positions on dressing at the workplace.

c) Addressing Sexual Harassment through Integrated Management Systems

In all 4 pilot flower farms, the sexual harassment policy is, rightly, the main company policy document regulating sexual harassment at the work-place. While the sexual harassment policy should provide core substantive and framework protections and commitments regarding sexual harassment within the flower farms, it must be acknowledged that sexual harassment

²⁶ The Constitution of Kenya, Article 27(3)

²⁷ The Constitution of Kenya, Articles 27(4) and 27(5)

manifests across different operational, sectional, and social contexts within the farm. It may, thus, be impractical to contain all these variable factors into the sexual harassment policy. Other work-place policies are also important in regulating sexual harassment. These may include policies on: Human Resources Policy; Recruitment; Housing; Dress Code; Promotion; Leave; and, Wages, among others. In the 4 pilot farms, management systems were found to be inadequately aligned to ensure a complementary approach to addressing sexual harassment at the work-place.

It is, therefore, crucial that safeguarding roles and responsibilities across the farm are integrated into the management plans and systems. For effective management, there is need to ensure that these linkages are drawn and communicated effectively and that the lines of accountability and responsibility are clear. In a nut-shell, while the sexual harassment policy should provide core guidance on the administration of anti-sexual harassment safeguarding systems, the operation of other relevant work-place policies should complement this function.

d) Engagement with the Labour Catchment Communities

With the exception of Farm A, the 4 pilot farms have not invested in a structured community engagement strategy for the purpose of ensuring holistic approach to protecting workers from harassment in the work-place. This study found that employees at the flower farms are predominantly informed and influenced by well-worn social norms and communal beliefs and practices from the labour catchment villages. Some of these customs and practices are discriminatory against women, therefore, contributing to sexual violence in the work-place. It was also found that these practices have the capacity to impede or altogether, scuttle, advancements made through awareness-raising for behaviour-change or empowerment initiatives. A common contributor to this is the opposition that workers who champion or believe in gender equality and protection from harassment, meet in their home communities. Sometimes, employees, especially women, who assert gender equality suffer physical and other gender-based violence at home, as a result of their views. It is crucial that work-place programming for gender protection goes in tandem with community programming on the same, for the purpose of enlisting a critical mass within the community for the purpose of enhancing sustainable gender equality.

Community engagement goes a long way towards demystifying gender based violence and sexual harassment, in particular, these being taboo subjects in many communities. It aids communities understand the nature and effects of sexual harassment and enjoins them in joint efforts at eradicating sexual harassment. Best practice in holistic programming on anti-sexual harassment safeguarding has been registered by the National Organization of Peer Educators (NOPE), working under the Blooming Schools and Communities Project, a Hivos sponsored

project, in Uganda. In this project, NOPE took the approach of advancing the gender protection – particularly protection of women workers in flower farms from sexual harassment and HIV and AIDS – through programmes in the flower farms, labour catchment communities and primary schools, in Uganda. The early effects of this initiative have included: better reception of gender protection messaging by the community; cooperation with community as agents – known as Ambassadors of Change (AOC) - of gender protection agency and increased buy-in by the community of the gender protection initiatives as well as of the flower farms' core operations. Working with children's gender clubs in several schools in Uganda has led to the growth of a budding generation of gender protection proponents in schools. The children have also been instrumental in advancing advocacy for gender protection within the schools and communities. The early outcomes of the project have been positive, most glaring being the increased social capital gained by the flower farms, thereby potentially demonstrating, not just programmatic outcomes on gender protection but a business case for the flower farms.

Anti-sexual harassment programming should enlist the participation of communities for optimal effect. Community engagement strategies should, however, should be developed to assure the mutual benefit of both communities and flower farms. There should be clear expectations and contribution by both parties. Lastly, Corporate Social Invest (CSI) should not advance models that create an unhealthy dependence on either one or the other party.

e) Community Based Sexual Violations Early Warning System

An Early Warning System (EWS) is the set of capacities needed to generate and disseminate timely and meaningful warning information that enables at-risk individuals, communities and organizations to prepare and act appropriately and in sufficient time to reduce harm or loss.²⁸ In the context of the flower farm, the EWS would mainly consist of a clear, efficient and effective communication channel between resource persons in the flower farm and in the host community, for monitoring, relaying and sharing information on the status and performance of safeguarding initiatives. These impediments may include: deep-seated and retrogressive social and cultural practices; systemic flaws in the flower farm's management or operations; souring of relationship between the flower farm and the host community, leading to the loss of a social licence to operate; local political positions; and; natural or man-made disasters, among others.

Because gender based violence in most flower farms is, to a large extent, also dependent on local community beliefs and practices on gender, a successful Sexual Violations EWS in most flower farms, would involve a partnership between the flower farm and the surrounding

²⁸ Community Early Warning Systems (2013), IFRC, as adapted from UNISDR 2009 and others

community. A community engagement strategy by flower farms should, therefore, ideally, precede the development of a mutually beneficial EWS for the protection of workers and community members.

Four crucial steps in developing an effective EWS have been identified, as follows:²⁹ At the onset it is crucial to identify the risks and share the Risk Knowledge with stakeholders in order to build the baseline understanding about hazards and vulnerabilities. This initial risk due diligence also helps stakeholders to identify and set priority risk areas and manner of addressing the same. Secondly, a risk-monitoring framework should be developed as appropriate for addressing the identified risks. The element of monitoring has the value of constantly updating risk assessments and informing strategy for addressing the risks and vulnerabilities. Thirdly, Response Capabilities should be developed to ensure that all actors are able to act appropriately to contribute towards the mitigation of risk or vulnerability. Lastly, the EWS should be informed by Warning Communication which ensures that monitoring information into actionable messages which are understood by those that need, and are prepared, to hear them and act upon the same information to mitigate risks.

The Sexual Violence EWS should be sufficiently gendered to ensure that the respective vulnerabilities of women and men are considered. Moreover, other marginalized persons within the work-place and the community should specifically be considered. Besides women and girls - other vulnerable groups in the flower farms and host communities include: PWDs, persons living with HIV and AIDS, temporary workers, tribal minorities, elderly workers, single mothers, and, casual or seasonal labourers.

The EWS helps farms and the community to track the shifting and evolving dynamics relating to sexual harassment in real time, subsequently, informing the development or reconfiguration of systems and relationships and the enhancement of relevant capacities, to address these risks.

f) Role of Trade Unions in Protecting Workers from Sexual Harassment

It was established that trade unions have not played an active role in advancing the protection of workers from sexual harassment. The trade unions mainly see their main role as intervening only where a sexual harassment complaint escalates to a grievance. In this case, the branch level union officials would provide representation to the aggrieved employee(s).

²⁹ Ibid.

Indeed the absence of the trade union from the anti-sexual harassment framework is conspicuous. It has been suggested that a member of the union committee may be invited to sit in at the hearing of a complaint by the Gender Committee. However, this position is not strictly provided for under the work-place policies. Under the CBA between KPAWU and flower sector employers, the CBA exhorts employers to respect sections 5 and 6 of the Employment Act; the said sections address themselves to Discrimination in Employment and Sexual Harassment, respectively. Beyond restating the relevant protective provisions of the statute, the CBA does nothing else to actively ensure that the process of collective bargaining and in particular, the trade union and its structures provide practical protective mechanisms in respect of sexual violence at the work-place.

The weaknesses of the trade union system in the agricultural plantation sector may in part stem from their own systemic inadequacies. A study conducted by Hivos³⁰ to ascertain the capacity gaps of trade unions across Eastern Africa, is illustrative. First off, challenges relating to organizational governance and management continue to ail workers' representation. Among the areas identified as requiring capacity development are: long term planning; budgeting; organizing; recruitment; strategy for education of workers; industrial relations; workplace dispute handling; and, negotiations towards the Collective Bargaining Agreement. These shortfalls are disruptive to the union's quest to achieve its day-to-day objectives.

In FGDs with workers, the present study found that KPAWU has not actively tapped into the increasingly emerging opportunities offered by the discourse and frameworks on CSR to advance labour rights protection of workers. This is a pointer to the trade union's deficiency in the union's technical capacities for advocacy and organization. The union has not latched onto the growing global and national demand for corporate accountability, the growing body of knowledge and knowhow on how to utilize extra-territorial frameworks for accountability; and a progressive municipal legal environment, offer opportunities at advancing workers' rights and welfare beyond traditional forms organizing.³¹ Moreover, KPAWU has remained wary of striking complementary partnerships with like-minded civil society organizations, thus limiting the potency of labour rights advocacy and the space for cross-learning and co-creation of advocacy solutions.³²

³⁰ Organizational Capacity Assessment of Trade Unions in East Africa – Representation of Workers in the Flower Sector in Kenya, Tanzania, Uganda, Ethiopia and Rwanda, Hivos May 2018.

³¹ FIDA Tea Baseline (2019)

³² Ibid.

g) The Changing Context of the Work-place and the Future Outlook of Work

The ILO Commission on the Future of Work identified automation, Artificial Intelligence (AI), the gig economy, and changing demographic and social shifts as among the factors that are changing the very nature of work. These changes portend difficulties, especially, for women workers in so far as achieving gender equality at the work-place goes.

Disruptive technologies affect both the quantity and quality of women's jobs while existing systemic constraints impact the ability of women to transition into new sectors and the roles of tomorrow.³³ In the case of flower farms, where women mainly provide unskilled labour, this will require altogether new skills. It does not help that structural discrimination has meant that women and girls do not have as much access to STEM education as their male counterparts. This has, over the years, impacted upon the kind of jobs that women can access in the farms, and more crucially, the kind of jobs to which they may be able to transition in future.

Contingent work and new "gig" economy opportunities are disrupting traditional work models. While providing some flexibility for women workers, these work models also present new challenges with increased violence and harassment, unpredictable hours, and unequal wages and benefits.³⁴

Increased automation of production processes is fast catching on in the Kenyan plantation sector, more so in tea plantations, where mechanization has replaced manual labour in some of the largest farms. It is seeping into the flower sector in a markedly slower and less pervasive manner, mainly because of the delicate nature of the flower, demanding of tender human touch to process. However, automated systems are fast replacing manual labour in processes that include watering and fertigation.

The effect on the job security of employees in the work-place cannot be understated. The prospect for future redundancies, leading to destitution on a massive scale, and vulnerability to abuse and exploitation is real.

While a significant level of change is inevitable be wished away in many sectors, employers are exhorted to manage any necessary transitions in a manner that ensures decent working conditions for workers, the protection of labour rights and in a manner that enables workers to acquire relevant skills for work, re-skilling for future work and up-skilling for progression at the work-place.

³³ Women Deliver, BSR (2019)

³⁴ Ibid.

Related to this is the emerging trend where some flower farms prefer to procure farm labour by subcontracting the provision of labourers to third companies. By entering into this agency arrangement, the flower farms are intent on cutting out the logistical and financial outlay that comes with employing workers on more permanent bases. In such cases, the tasks are assigned by the flower farm, but labourers work under the control, management and payment of the subcontractor.

Through this arrangement, workers stand to lose out on the safeguards that come with employment. For instance, this arrangement allows flower farms to concentrate on core production priorities, without paying much regard to the levels of remuneration, health and safety, welfare, employment benefits and long term career benefits of the employees. The Kenyan courts have pronounced themselves extensively on how to determine whether a worker qualifies as an employer or a private contractor. In the case of *Fredrick Byakika v. Mutiso Menezes International*,³⁵ it was stated that:

“...an Independent Contractor is: a registered taxpayer; will work his own hours; runs his own business; is free to carry out work for more than 1 Employer at the same time; invoices Employer each month; and is not subject to usual “employment’ matters such as deduction of PAYE, annual leave, and sick leave.”

Obligations to private contractors are mainly spelt out in the contract for services. On the other hand, an employee has the benefit of more robust statutory protections and employment benefits. Where farm labourers are classified as private contractors, they are bereft of the said protections, including: job security and a raft of other benefits.

To address emerging and anticipated impact of the Fourth Industrial Revolution on jobs and labour rights, the World Economic Forum (WEF) has suggested that, “leaders should seek to understand current socio-economic transformations and shape a future in which people are at the heart of economic growth and social progress.”³⁶ The WEF is supporting efforts at developing roadmaps for addressing the anticipated and actual effects of workforce transitions.

³⁵ [2016] e-KLR

³⁶ The Future of Jobs Report (2018)

4.0 FINDINGS OF SURVEY OF NON-PILOT PROJECT FARMS

To gain an understanding of the situation of sexual harassment in non-pilot project farms, a survey of 90 workers from 3 flower farms in Naivasha, was conducted. Based on the administration of questionnaires to workers from Farm E, Farm F and Farm G, the findings would be important in understanding workers' insights and experiences with sexual harassment safeguarding systems, outside the context of the model workplace sexual harassment policy.

4.2 General Findings from the Non-Pilot Project Farms

The broad majority of workers in the flower farms are in the age range of 25 to 40 years. Among the general workers who were interviewed from the 3 non-pilot project farms in Naivasha, more than 50% of the respondents were consistently in this age range. This is the child bearing age for most adults. It is also the age at which most workers are at their most productive stage in life. Most of the workers have attained KCSE certification, having graduated from secondary school. 60% of respondents from Farm E, 53.1% from Farm G and 69.8% from Farm F, have attained this qualification.

Most of the flower farms in Kenya have adopted sexual harassment policies as required by the law. However, these policies have not been translated into systems that adequately safeguard and protect workers from sexual harassment. Whereas most respondents confirmed that there are indeed sexual harassment policies and gender committees at their work-places, a consistent majority of respondents professed that they do not properly understand the meaning of sexual harassment. 60% of respondents from Farm E, 56.6% from Farm G and 56.6% from Farm F stated that they did not understand sexual harassment. In contrast, 60% of workers from Farm E affirmed that there is indeed a sexual harassment policy at the work-place, compared with 33.3% from Farm G and 63.3 % from Shalimar. Many workers opined that sensitization and awareness creation amongst the workers on sexual harassment would be useful in enabling workers to understand their rights and how to protect themselves from sexual harassment at the farms.

This survey confirmed that women bear the brunt of sexual harassment much more than their male counterparts. When the respondents were asked whether they knew of any men at their work-place who had suffered sexual harassment at the workplace, 16.6% of respondents from Farm E, 9.9% from Farm G and 6.6% from Farm F stated that they knew such men. In contrast, when asked about their knowledge of women who had suffered sexual harassment at their work-place, 60% of respondents from Farm E, 83.3% from Farm G and 63.3% from Farm F stated that they knew of such women.

Sexual harassment in the flower farms is a common occurrence. Asked whether the incidence of sexual harassment at their workplace was, “Very Common,” “Fairly Common,” or, “Rare,” the respondents stated as follows. From Farm E, 46.6% said it was very common, 43.3 % stated that it was fairly common and 9.9% said that it was rare. From Farm G, 43.3% stated that sexual harassment was very common, 33.3% stated that it was fairly common, while 23.3% said that it was rare. At Shalimar, 36.6% said it was very common, 29.9% said it was fairly common and 33.3% said it was rare.

Asked whether the gender committee at their workplace was effective in addressing sexual harassment, 23.3% from Farm E, 19.9% from Farm G and 16.6% from Farm F answered in the affirmative. 60% from Farm E, 70% from Farm G and 56% from Farm F stated that the gender committees were not effective. Even then, given the choice of reporting incidences of sexual harassment to the Human Resources Manager, Sector Managers, Union Shop Stewards and the Gender Committee, most respondents still preferred reporting to the Gender Committee. Among the respondents, 60% from Farm E, 43.3 % from Farm G and 50% from Farm F selected gender committees. The next most trusted avenue of seeking redress was the Human Resources Manager, with 23.3% from Farm E, 26.6% from Farm G and 29.9% from Shalimar.

According to workers in the 3 farms, supervisors and managers are often the main perpetrators of sexual harassment at the work-place. They wield wide discretion to offer, deny or discontinue employees’ contracts. Because many workers – mostly women – suffer from economic hardship, they dare not jeopardize their employment status in the farms by refusing to accept the sexual advances from their superiors or by reporting the supervisors.

Among the key drivers of sexual harassment in the farms are systemic challenges. The allocation of non-standard forms of work - including seasonal and temporary work – to employees creates power a differential amongst employees, thereby rendering a number of them vulnerable. This, in turn, creates ripe ground for perpetrators to carry out sexual harassment against the vulnerable workers, with promises of improved status in the work-place or threats of non-continuation of employment. Sexual harassment mostly occurs at specific points in the workplace. These include, at: recruitment, promotion to permanent employment status, renewal of contract, disciplinary processes, at the time of granting leave or leave of absence, and upon allocation of work, to workers. Additionally, many workers suffer sexual harassment during transportation of workers and in isolated greenhouses. Many workers do not understand the meaning of sexual harassment or the manner of protecting themselves from sexual harassment, thus opening them up to exploitation without recourse to protection. Though most flower farms in the country have formulated sexual harassment policies, these policies are ill understood by the workers in the farms, one reason for this being the non-involvement of workers on the development of the policies by the management. The vast

majority of policies in the farms have been developed unilaterally by the management. This has consequences for the ownership of these policies across the farm.

Whereas a significant number of the respondents stated that they had suffered sexual harassment in the farms (31% of all respondents across the 3 farms), they also expressed an unwillingness to report incidents of sexual harassment. One reason advanced was the fear of reprisals for reporting sexual harassment cases. Many farms have not established safeguarding structures that allow for safe reporting and protection of workers from retaliatory action and victimization.

The respondents also cited harmful cultural norms that perpetuate patriarchy in the society, as being responsible for the high levels of gender based violence at the work-place. The host communities that serve as the labour catchment areas for the Naivasha flower farms are notorious for the pervasive culture that restricts the socio-economic development of women and often, tolerating gender based violence. In these communities, sexual harassment is considered to be a petty infraction, not worthy of stirring upheavals at the work-place. As such, women workers who hail from these communities lack the requisite social support networks at home, which solidarity would be crucial in standing up against sexual harassment at the work-place. Furthermore, many women who stand up to sexual harassment at the work-place find themselves shunned by the community. They are often blamed for the dismissal of a member of the community from the work-place or for the souring of relations between community members. In some cases, women have been divorced by their husbands on account of stirring ill-will amongst the community, or they have altogether been blamed for being complicit in the sexual harassment.

The preventive and redress frameworks for sexual harassment at the workplace have been found to be ineffectual in protecting workers. Many sexual harassment policies are not comprehensive enough to address sexual harassment at the work-place. They are also not worker-centred; lacking in participatory implementation frameworks; open and transparent processes; and, mechanisms for protecting vulnerable victims and witnesses.

4.3 Comparison between Pilot Project Farms and Non-Pilot Farms

A comparison between the experiences of workers in the 4 pilot flower farms and the 3 non-pilot farms, reveals a significant disparity in the development and functioning of safeguarding systems in the two sets of farms, just as it has also revealed a number of common features and trends across flower farms.

One common feature of the two sets of farms relates to the near universal adoption of work-place sexual harassment policies by flower farms. Most flower farms in Kenya have now promulgated sexual harassment policies as part of their management policies. These policies, mostly, proclaim institutional commitment to protecting workers from sexual harassment. In many cases, they also spell out the mandate of work-place committees and management in administering these policies. The rapid uptake by farms of the sexual harassment policies may be attributed to a number of factors. Most notable among the push factors is the national legal framework – the Employment Act, 2007 – which requires all employers who employ more than 20 workers to establish the said policies. In this way, many farms are driven, first, by the impulse to achieve legal compliance. Secondly, social certification bodies, through the instrument of certification standards, have increasingly demanded that farms adhere to minimum standards, as benchmarked to global legal instruments on human rights. These standards insist upon, among others, protection of workers from harassment in the work-place. Flower farms have, thus, sought to ensure compliance with the requirements of social certification. Among both sets of flower farms, only Farm A – one of the pilot flower farms - has demonstrated an elaborate and structured approach to addressing social issues in the farm, through a holistic framework. At Farm A, there is a management commitment to addressing these issues through the doctrine of Shared Value. All the other farms – pilot farms and non-pilot farms - have, on the face of it, approached the question largely as a compliance matter; without an enduring vision or strategy.

In both sets of farms, gender committees are a common fixture that is assigned the task of addressing sexual harassment at the work-place. However, it was found that workers in the pilot farms have a lot more faith in the capacities of the gender committees to address sexual harassment at the farms. Similarly, workers in pilot farms evinced a higher level of understanding of sexual harassment than those in non-pilot farms. This may, in part be attributed to the insistence on training and awareness creation that is the hallmark of the pilot project. All 4 pilot flower farms have had their gender committees, management and some workers trained on sexual harassment, at least, once a year. They have also made efforts to disseminate the knowledge gained to the general work-force. In non-pilot farms, many workers professed that they had not been sensitized on sexual harassment.

From discussions with workers from the different sets of farms, it is clear that workers in the pilot farms have shown a higher level of belief in the protection systems established to address sexual harassment, than do workers from non-pilot farms.

There is a general concession as to the existence of sexual harassment in the flower farms and a general consensus to address sexual harassment. However, the level of commitment to addressing sexual harassment varies. This phase has marked the increased uptake of sexual

harassment policy statements and the development of skeletal systems for addressing sexual harassment. It is proposed that for an effective and safeguarding environment at the work-place, farms should invest in the development of holistic frameworks that allow for: participation of all stakeholders; accountability; predictability; capacity development; monitoring, evaluation and learning; and, reporting. Crucially, safeguarding systems should be designed to address both preventive and redress objectives.

4.4 Recommendations on How Flower Farms May Better Protect Workers from Sexual Harassment	
a	<p>Comprehensive Contract of Employment and Contract for Services</p> <p>Flower farms should provide all permanent and temporary workers with comprehensive contracts, written in simple language that is easy to understand, clearly spelling out contractual obligations, standardized tasks and deliverables, benefits and protections - including protections against sexual harassment.</p>
b	<p>Sexual Harassment Safeguarding Systems and a Sustainability Strategy</p> <p>A Holistic Scope for Sexual Harassment Policies</p> <p>i) Flower farms should, through a consultative and participatory process, review and adopt exhaustive and comprehensive definitions of sexual harassment in their respective policies, to ensure that harmful conduct at the work-place is addressed in a structured manner. Sexual harassment policies should adequately define and proscribe harmful conduct and provide for the protection of workers from the range of conduct that has been defined as, “sexual harassment” and as, “violence and harassment in the world of work,” by the Employment Act and the ILO Convention 190 of 2019, respectively.</p> <p>ii) Flower farms should make explicit provisions in their respective in-house sexual harassment policies to define the operational scope of the policy as including: the immediate physical or geographic work-place or premises of the company; all other spaces inside or outside the work-place where the company’s work is lawfully executed; company housing and vehicles or facilities contracted or accessed for the purpose of advancing the company’s work; all relevant contact among workers – inside or outside the company’s physical premises - which have a bearing on their respective work-place relationships; and, all relevant media of communication facilities, including virtual platforms that facilitate contact between employees.</p> <p>iii) Flower farms should adopt sexual harassment policies which regulate the conduct of all relevant actors who enter legally or work in the flower farms, including: owners; directors; management staff; supervisors; employees; casual labourers;</p>

	<p>temporary staff; private contractors; service providers; guests and visitors.</p> <p>Sustainability Strategy</p> <ul style="list-style-type: none"> i. Through a consultative process, flower farms should develop and implement a sustainability strategy that aims to address their economic, social and environmental impacts within their value chain. ii. Flower farms should adopt triple-bottom-line and integrated reporting as part of their annual and impact reports, as part of their commitment to their stockholders and value chain actors to contributing to sustainability in the sector and within their immediate community.
<p>c</p>	<p>A Comprehensive and Effective Sexual Violence and Harassment Safeguarding System</p> <ul style="list-style-type: none"> i) Flower farms should establish and implement wholesome protection and sexual violence and harassment safeguarding systems at the work-place, to give full effect to policy statements and commitments on protecting workers from sexual harassment. ii) Flower farms, in collaboration with CSOs and Government, should ensure that workers and members of the community are knowledgeable and understand sexual harassment, its forms and causes and in the host community. In addition: <ul style="list-style-type: none"> ▪ Gender Committee and the Special Panel members should be trained on how to oversee the implementation of the sexual harassment policy at the work-place and on their role in supporting community action against sexual harassment; ▪ Farm management staff should undergo training on how to implement an integrated scheme for addressing sexual harassment at the work-place; ▪ Workers should be sensitized on the meaning, forms, causes, effects, and frameworks for addressing harassment in the work-place and within the community; ▪ Specific members of the host community should be sensitized on the meaning, forms, causes, effects, and frameworks for addressing harassment in the work-place and within the community and on their role in addressing sexual harassment. iii) Safeguarding systems for protecting workers from violence and harassment in the world of work should build upon a minimum threshold set of components, including: <ul style="list-style-type: none"> ▪ Clear and comprehensive definition of harassment and violence, adequate scope for operationalizing the policy; and, unambiguous provisions regulating the conduct and protection of proximately foreseeable categories of persons who attend the work-place for whichever legal purposes; ▪ Strategies for preventing as well as redressing sexual harassment incidents at the work-place; ▪ Establishment of well-resourced and capacitated gender committees, which are allowed time and space to address gender violence and sexual

	<p>harassment at the work-place and, management staff, equipped with knowledge and knowhow on effective results-based management in relation to harassment at the work-place;</p> <ul style="list-style-type: none"> ▪ Protection of vulnerable persons from gender-based violence and harassment. These protective frameworks include: allowing marginalized groups – namely, women, persons with disabilities, members of ethnic minorities and others – special consultative platforms on gender based violence; establishing safe and user-friendly witness and whistle-blower protection systems; allowing union representation and brief-watching for the benefit of all parties to gender-based violence complaints; disentangling the complainant from the respondent from work-place contact or supervisor-supervisee relationship, during the complaints handling period; insistence on due process, confidentiality, expedition in processing complaints, simple and clearly understood sexual harassment complaints frameworks; and, provision of counseling support for workers who are affected by gender based violence; ▪ Integrated management systems for the relevant work-place policies that regulate gender-based violence and harassment; ▪ Participatory monitoring and evaluation frameworks for appraising the status and levels of protection of workers from sexual harassment at the work-place; ▪ Community engagement for the buy-in of local and host populations to enlist their participation and partnership in the development of a community and work-place culture that protects workers from sexual harassment; ▪ Early warning mechanisms to detect the risk factors and the incidence of sexual harassment in real time. These include, impact assessments, participatory monitoring and evaluation, worker and community engagement and a gender committee that is strengthened for the purpose of receiving information, insights and complaints with direct communication channels to farm management; and, ▪ Provision for sustainability reporting and integrated reporting requirements by the organization, to demonstrate the organization’s annual social, financial and environmental performance and to demonstrate the linkage between these reporting parameters.
<p>d</p>	<p>Synchronized Implementation of Work-place Policies, Codes of Conduct and Codes</p> <p>Synchronization of the Operation of different Work-place Policies All relevant work-place policies which regulate relationships, conduct and practices that may lead to sexual harassment, should be developed with clear provisions against gender based violence and sexual harassment. Management responsibility and accountability should be assigned to specific persons at the work-place, with a clear approach towards integrating the operation of the different policies.</p>

	<p>Dress Code</p> <p>Where deemed appropriate a dress code for the work-place should be developed clearly defining its purpose and the limits of its applicability. The flower farm should adopt clear messaging on its position as regards the application of the dress code to prevent the alternative interpretations and application of the same.</p> <ul style="list-style-type: none"> ▪ The dress code should be applied for the purpose of enhancing health and safety of workers, and a professional image at the work-place. ▪ The dress code must not be used to objectify women or men or applied in a discriminatory manner at the work-place. ▪ The dress code should be enforced only with reasonableness and with a sense of proportionality, with due regard to freedom of expression and protection from discrimination as well as to reasonable cultural positions. ▪ The dress code should not be advanced as an excuse or defense for sexual violence. <p>An Complementary Code of Conduct or Conflict of Interest Policy</p> <p>Where deemed appropriate, a code of conduct or conflict of interest policy should be developed to provide general guidance on acceptable behaviour and conduct at the work-place. In the context of sexual harassment, the code of conduct or conflict of interest policy should make provision for:</p> <ul style="list-style-type: none"> ▪ Declaration of perceived or actual conflict of interest where a complainant and a respondent in a sexual harassment allegation are in a supervisor-supervisee relationship a proximate co-workers within a section, familial relations, or in a romantic or business relationship; ▪ Option to mitigate the perceived or actual conflict of interest by removing oneself from the supervisory relationship mentioned in the foregoing, permanently or on a temporary basis; and, ▪ Option of suspending a party to a complaint from the workplace or transferring the said party, where deemed appropriate.
e	<p>Enhanced Role and Functions of the Gender Committee and the Constitution of a Complementary Special Panel</p> <p>i. The Gender Committee should be explicitly tasked with leading the implementation of the Sexual Harassment Policy, alongside the Human Resources Manager. The Sexual Harassment Policy should specifically task the Gender Committee to, among other functions:</p> <ul style="list-style-type: none"> ▪ Investigate and adjudicate over reported complaints of sexual harassment at the work-place. ▪ In liaison with the Human Resources Manager, plan, organize and oversee the conduct of periodic sexual harassment monitoring and evaluation and due diligence. ▪ Provide input into the company’s annual integrated report, particularly on sexual harassment at the work-place.

	<ul style="list-style-type: none"> ▪ Facilitate wide consultations with workers and community members and generate appropriate policy propositions for preventing, redressing and detecting sexual harassment, for presentation to the Human Resources Manager for ratification and implementation and for policy review. ▪ To monitor the implementation of the sexual harassment policy at the work-place. ▪ To disseminate knowledge, information and sensitize workers and community resource persons on sexual harassment. <p>ii. Employers should provide Gender Committees with space and adequate time within working hours to address committee business, on a monthly basis. It is proposed that Gender Committees be allocated at least 3 hours of time during official working hours to address the committee’s business.</p>
f	<p>Identifying and Addressing Root Causes of Sexual Harassment</p> <p>i) Flower farms should undertake impact assessments, conduct due diligence exercises and constant monitoring and evaluation in order to identify the impacts of their operations, develop strategies for pre-empting and redressing these impacts and establish early warning mechanisms for tracking and forewarning about negative social impacts at the work-place, in real time;</p> <p>ii) Flower farms should specifically investigate and identify the root-causes of gender based violence at the work-place and develop strategies for preventing and addressing these externalities. The said root causes of violations should be extrapolated widely to include: socio-economic; socio-cultural; systemic and capacity weaknesses that trigger gender-based violations.</p> <p>iii) Specific root causes of sexual harassment which have been identified under this study should be addressed. These include: the challenges posed by patriarchal community beliefs and practices that discriminate against women and girls, flower farms should engage workers and core segments of the host community in awareness raising, sensitization and public education on sexual harassment, its effects and the need to eradicate it from the society; payment of wages that fall below the level of a living wage, to unskilled flower farm workers, rendering them destitute and opening them up to gender-based violence and exploitation; low levels of understanding by workers and their communities of sexual harassment and its effects and implications for women, workers and the wider society; Flower value chain practices which predispose workers to labour conditions that are exacting and irregular, thereby exposing them to sexual violations.</p>
g	<p>Vulnerable Employees, Casual Labourers, Private Contractors and Sub-contracted workers are Resilient to Socio-Economic and Socio-Cultural Challenges</p>

Fair Remuneration

- i. Flower farms should pay Living Wages to their employees, casual labourers and private contractors, in order to afford workers and their families their basic needs for socio-economic resilience and a livelihood of dignity, thereby reducing their vulnerability to sexual harassment. Where the provision of labour is procured through a sub-contractor, flower farms should ensure that such labourers are paid a Living Wage.
- ii. Stakeholders in the cut-flower sub-sector should establish a structured multi-stakeholder dialogue and co-creation process for achieving a Living Wage. This platform should draw upon relevant learning and developments from Kenya and other jurisdictions in analyzing living wage levels and their capacity to sustain employees, establishing living wage benchmarks and strategies for achieving these benchmarks.
- iii. Flower farms should adopt a remuneration culture that rewards experience, education and performance by adopting and implementing a participatory annual performance appraisal for all its employees the basis for determining professional progression and for identifying personal professional development needs.

Social Security and Social Protection

- i. Flower farms should provide all employees – permanent and temporary – and their immediate families with health insurance cover with wide and ready access to afford health facilities as may be practical for employees and their families. Where
- ii. Flower farms should ensure that all their employees have access to statutory medical insurance under the National Health Insurance Fund (NHIF) and pension under the National Social Security Fund (NSSF), to support the economic resilience of workers.
- iii. Flower farms should provide all employees – permanent and temporary – and their immediate families with access to adequate housing and shelter or adequate housing allowance, under conditions that assure the employees adequate physical space, sanitation, privacy and dignity.

Protection for Sub-contracted Workers

Where a flower procures labourers from a sub-contractor, the flower farm should ensure that such labourers are contracted upon fair contractual terms that include fair remuneration, protection from discrimination – including from gender-based discrimination and guarantee a decent working environment and access to statutory medical insurance cover and pension.

	<p>Economic Development for Women at Household and Community Level</p> <p>Government, working with private sector actors and CSOs should ensure that host communities in the flower catchment regions are sensitized on gender equality and equity. This should be aimed at boosting their knowledge and influencing their attitudes and practices in order to promote the ownership, access and use of productive assets by women at household level and decisional autonomy for women on socio-economic matters, thereby contributing to the economic resilience of women in the community.</p>
<p>h</p>	<p>Sexual and Reproductive Health and Rights Information and Services</p> <ul style="list-style-type: none"> i. Government should ensure that men and women in the cut-flower catchment community are sensitized on reproductive health and family planning with the aim of enhancing informed joint or personal decision-making on reproductive health and family planning and in particular, the decisional autonomy of women over their bodies, where appropriate. ii. Government should enhance the access to information and services on family planning and affordable birth control methods for men and women at the workplace and in the communities. iii. The flower farms, in partnership with CSOs and other stakeholders, should, through community and schools engagement programmes promote the voice of women in household decision making, including on birth control and family planning matters. iv. The employer should address, through policy or operational decisions, factors that predispose women workers to becoming single mothers. These factors include: payment of low wages; housing policies that do not encourage families to live together; and, poor access to affordable birth control methods and to knowledge on birth-control, among others. v. To address the problem of non-provision of maintenance support and child-care support by fathers in the host communities, men and women should be sensitized on parental responsibility and the legal implications of defaulting in child support. vi. Government, working in collaboration with CSOs should avail mediation services to parents for the execution of Parental Responsibility Agreements (PRA) and, where appropriate, legal aid be provided to single mothers in order to enforce the PRAs, in the eventuality of default by the fathers.
<p>i</p>	<p>Capacity Development for Workers and Host Communities</p> <ul style="list-style-type: none"> i) Employers should undertake periodic sensitization of workers on sexual harassment in accessible formats, in order to improve their understanding of sexual harassment, its manifestations, causes, effects and the mechanisms for preventing

	<p>sexual harassment at the work-place.</p> <p>ii) Flower farms should adopt good practices that ensure that workers and prospective workers are sensitized on sexual harassment at different stages and are made aware of protective frameworks available to them. They should be sensitized during the recruitment process, upon employment and, at least once every year, through accessible and easy to understand formats.</p> <p>iii) Knowledge derived through capacity building and sensitization sessions for the Gender Committee and farm management should be disseminated to the general workforce and time and materials for such dissemination should be provided by the farms.</p>
j	<p>Effective and Participatory Management</p> <p>i) Farm management should be trained on how to effectively manage workplace safeguarding system with specific reference to: understanding of gender based violence and sexual harassment; developing and operating participatory monitoring and evaluation frameworks; undertaking due diligence and impact assessments; and, contributing to integrated reporting framework.</p> <p>ii) The operation of work-place policies that have a bearing on sexual harassment and gender based violence should be integrated, with clear responsibility and accountability channels defined and implemented.</p> <p>iii) Tasks, chores and operational procedures at the work-place should be standardized and regularized and terms of reference for workers spelt out in a comprehensive manner.</p>
k	<p>Effective Work-place and Community-Based Sexual Harassment Early Warning System</p> <p>i) Members of the labour catchment community should be sensitized on sexual harassment to enhance their knowledge and to influence their attitudes and practices, thereby easing the universal acceptability of corresponding work-place anti-sexual harassment campaigns.</p> <p>ii) In developing and implementing safeguarding frameworks at the work-place, the host community should be consulted and enlisted as partners in the initiative. A standing and accessible framework of communication between the farm and the community and a viable grievance redress channel should be established between the farm and the community and to serve as an EWS.</p> <p>iii) Flower farms, working hand in hand with host communities and other relevant actors should develop an EWS, based on the following components:</p>

	<ul style="list-style-type: none"> ▪ Collaboratively undertaking sexual harassment risk due diligence to identify sexual harassment risk indicators to inform strategies for addressing and mitigating risks; ▪ Develop and implement a risk monitoring framework in order to track the nature and levels of risks and update risk information and mitigation strategy; and, ▪ Development of risk response capabilities in specific, accessible resource persons within the work-place and the host community to enable them to act appropriately to contribute to the mitigation of vulnerabilities. <p>iv) The Sexual Violence EWS should be sufficiently gendered to ensure that particular vulnerabilities of women are mitigated and that the full participation of both women and men is secured.</p>
I	<p>Equity and Equality of Opportunity at the Work-place</p> <ul style="list-style-type: none"> i. Flower farms should adopt affirmative action policies and practices to ensure equitable representation of women and other vulnerable persons at the work-place – PWDs, persons living with HIV and AIDS, temporary workers, tribal minorities and older workers - in the leadership ranks of the farm, including, through allocating women’s quotas for managerial and supervisory positions. ii. Flower farms should support women employees to undertake tasks that have traditionally been viewed as men’s through job skills-training to allow for transition to their new roles. iii. To enable women workers to successfully take up leadership opportunities, their leadership skills should be enhanced through portfolio-appropriate skilling and leadership training.
m	<p>Access to Trade Unions</p> <ul style="list-style-type: none"> i. The Government should ensure that all workers - permanent and temporary – are enabled by their employers to register with trade unions of their choices, in order to benefit from representation and union support in industrial matters. ii. Trade unions should sensitize workers in flower farms on the benefits of registration with a trade union, enter into recognitions agreements with flower farms and register workers into the union. iii. Flower farms should ensure that workers who are party to complaints and disciplinary procedures at the farms have access to representation by trade unions. iv. Flower farms should provide space for trade unions to hold elections for union committee members within the work-place and facilitate their access to

	<p>adequate and clearly defined time, during working hours, to engage in organizing activities.</p> <ul style="list-style-type: none"> v. Farm level union committee members should be enlisted as standing members or ex-officio members in work-place Gender Committees, and as part of the complaints-hearing process, in order to represent the interests of specific workers or the general workplace population or to watch brief on their account, for monitoring and reporting. vi. The work-place CBA between flower farms and the trade union should explicitly provide defined complementary roles for the trade union in participating in the development and monitoring the implementation of the sexual harassment policy. <p>Capacity Development and Partnership</p> <ul style="list-style-type: none"> i. Leaders of trade unions should undergo capacity development aimed at boosting their institutional and operational capacities and organizational sustainability and to improve their efficiency, effectiveness and responsiveness. Among the identified capacity needs areas are: strategy development; internal good governance; operational level efficiency; financial sustainability; research and development; and tactical effectiveness. ii. Trade unions and shop-floor union committee officials should undergo capacity development in order to develop their technical knowledge and skills for effective organizing, including on: collective bargaining; research and evidence building; understanding and utilizing global value chains; among others. iii. Trade unions should adopt strategies of co-operation with allies and other labour sector stakeholders to widen the capacities and impact in labour rights advocacy and capacity building, including strategic partnerships with relevant civil society organizations, certification bodies, growers' associations and consumers' associations, among others.³⁷ <p>Participation and Inclusion of Workers in Organizing</p> <ul style="list-style-type: none"> i. Trade union officials and their representatives at the shop-floor should be elected through a predictable, democratic and fair process, with the participation of all union members, and at defined periods. Special interest groups, including women, tribal minorities, PWDs and others, should be represented among the said team of officials. ii. To ensure that relevant gender considerations are addressed effectively by trade
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³⁷ FIDA Tea Baseline (2019)

	<p>unions and union committees, a subcommittee on special interests – which covers, among others, gender concerns – should be established at both trade union and shop-floor levels, with the mandate of advancing key gender issues and tracking the adoption and implementation of the same.³⁸</p> <p>Government’s Role in Labour Relations</p> <p>The Government should play its role as the guarantor of the collective bargaining process and an impartial arbiter in seeking solutions in the event of industrial disputes between employers and workers’ representatives. Labour Officers should oversee the enforcement of CBAs and the observance of due process in industrial action, and protect against the brutalization or victimization of trade union officials or workers’ representatives or the damage of work-place property by striking workers.</p>
n	<p>Effective Advocacy for Improving the protection of workers from Sexual Harassment</p> <p>Effective and sustainable influencing on sexual harassment in the flower farms requires a multi-stake holder partnership Labour and Socio-Economic Rights advocacy in the tea sector should be a multi-stakeholder partnership and the use of different advocacy approaches.</p> <ol style="list-style-type: none"> i. Anti-harassment advocates should undertake a comprehensive mapping and involvement of sector stakeholders across the global flower value chain in candid and progressive dialogue aimed at improving social practices in the sector. ii. Initiatives at intra-value chain sustainability and accountability for the social impacts of flower sector actors should be developed encouraged or initiated and supported through complementary action, including through: co-influencing; capacity development; information sharing, and knowledge development and learning frameworks. <p>Current Opportunities for Advocacy on Sexual Violence</p> <p>Haki Mashinani and other CSOs and trade unions working on Gender Protection should utilize current and standing opportunities and platforms towards improving the protection of workers from sexual harassment. These opportunities include:</p> <ol style="list-style-type: none"> i. The current review of the Employment Act 2007 through the Employment (Amendment) Bill, 2019, by the Kenya Law Reform Commission and the National Assembly, which offers an opportunity for enhancing the scope of the offence of sexual harassment and its applicability within the work-place and a chance to ensure that the law places obligations upon employers to develop specific safeguarding frameworks and capacities at the work-place; ii. The current process of amending the Labour Relations Act, 2007, via the Labour Relations (Amendment) Bill, 2019 provides an opportunity to strengthen the

³⁸ Ibid.

	<p>system of workers’ representation in Kenya;</p> <ul style="list-style-type: none"> iii. The passing of the Violence and Harassment Convention (Number 190) and the Violence and Harassment Recommendation (Number 206), in June 2019, by the International Labour Conference provides CSOs and trade unions with the opportunity to influence the adoption of the progressive provisions of the aforementioned instruments into national law, into sustainability certification standards and into sector-wide sustainability initiatives – including the Floriculture Sustainability Initiative (FSI) – among others; iv. The current global dialogue on the Future of Work/The Future of Jobs, which presents labour rights intermediaries to ignite dialogue for co-creating solutions to the challenges of the Future of Work within the global and local flower sector value chain as well local dialogue with government, regulators and other sector stakeholders; and, v. The ongoing process of developing a NAP on the UNGPBHR for Kenya, which presents human rights actors with a platform for influencing national regulatory and policy framework respecting trade and business, on the basis of contemporary human rights standards and good practice.
<p>o</p>	<p>Effective and Credible Structure for Addressing Specific Vulnerabilities of Management staff to Sexual Harassment</p> <p>To address the vulnerability of management staff to harassment among their ranks, flower farms should:</p> <ul style="list-style-type: none"> i. Develop open, transparent and participatory management systems, with checks and balances among peers, clear and regular Terms of Reference (TORs), Key Performance Indicators (KPIs), schemes of work, performance review and appraisal systems. ii. Establish a committee of management staff tasked with advancing and addressing management welfare and professional concerns of management staff. The Committee should be facilitated to meet regularly, as appropriate, and to have a standing periodic meeting with the company’s CEO and directors, for the purpose of channeling the views and concerns of management staff. The Committee should draw representation from across the different cadres of management and reflect the gender make-up of management staff. iii. Management staff should be trained periodically on sexual harassment to enhance their understanding and participation in addressing harassment at the work-place. iv. To address the practical and credibility challenges faced by the regular Gender

	<p>Committee in presiding over harassment complaints relating to management staff, a Special Panel as established and constituted under the Model Sexual Harassment Policy should be put in place for the purpose of investigating complaints against or involving senior management staff.</p>
<p>p</p>	<p>Addressing Emerging Labour Rights Challenges relating to the “Future of Work.”</p> <ul style="list-style-type: none"> i) Flower sector stakeholders should convene sectoral dialogue forums with the aim of finding sustainable solutions on achieving automation and mechanization to identify strategy for gradually transitioning into mechanization while at the same time protecting workers’ jobs, interests and welfare, through the transition period. ii) Pursuant to the recommendations of the ILO Global Commission on the Future of Work, and in order to manage future changes in working environments and culture, both the Government and employers should initiate processes towards ensuring lifelong learning for agriculture sector workers. This will enable workers to acquire skills, re-skill, and up-skill as appropriate to cope with large scale work-place transitions. Employers should, similarly invest in addressing and mitigating the foreseen socio-economic challenges in the work-place occasioned by innovation, increased automation and mechanization and by the growth of the gig economy. iii) To better understand and respond to the impact of changes in the nature of work, the Government and employers should undertake studies on the effects of these changes on the job security of women and undertake appropriate regulatory action to address these challenges in a manner that enhances the resilience of these workers. iv) To address work-place pressures and stress occasioned by the changing nature of the work-place, companies should provide their employees with sufficient social and professional support mechanisms including: counseling services; mentorship; sufficient rest; and, leisure. v) To support women and men to successfully transition and thrive in the face of the changing nature of work, companies should design inclusive 'Future of Work' strategies that address, both, the systemic challenges that women and men face at the work-place and new challenges presented by new work structures.
<p>q</p>	<p>Review of the Model Sexual Harassment Policy</p> <p>As a best practice guiding template document, the Model Sexual Harassment Policy should be reviewed to reflect lessons drawn from the pilot project phase and to accord with new and emerging global and national laws and legal instruments. The policy should thus:</p> <ul style="list-style-type: none"> i. Require that flower farms conduct periodic due diligence exercises on sexual

	<p>harassment to inform the development, review and better implementation of the sexual harassment safeguarding system.</p> <ol style="list-style-type: none"> ii. Designate the following persons as among identified most at risk groups within the flower farm, and for whose protection from gender based violence and sexual harassment, special protection should be effected, as discussed variously in this report: women workers; women in the community; casual labourers; sub-contracted labourers; independent contractors; persons living with HIV and AIDS; PWDs; members of tribal minorities; and, single mothers. iii. Make provision the sensitization of job applicants to the company on sexual harassment and on avenues for channeling any complaints of sexual harassment, while still at the recruitment stage, in addition to the other stages listed as flare points for abuse. iv. Provide for a comprehensive implementation monitoring and evaluation framework, which is both outputs and outcomes based, for use by management staff and members of the gender committee. v. Make provision for the development and implementation of a Gender Violence Early Warning System. vi. Commit the company to developing a sustainability report and an annual integrated report to communicate the company's social, environmental and financial performance. vii. Make provision for the enhanced functions of the gender committee, in addition to those already covered under the Model Sexual Harassment Policy, in supporting the implementation of the sexual harassment safeguarding frameworks at the work-place, including: <ul style="list-style-type: none"> ▪ Participation in gender and sexual violence due diligence; ▪ Monitoring and evaluation of the implementation of the sexual harassment policy in the work-place; ▪ Sustainability Reporting; and, ▪ Community engagement to disseminate knowledge for behaviour change and for liaison and resource persons, as part of the EWS.
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5.0 THE BUSINESS CASE FOR AN EFFECTIVE SEXUAL HARASSMENT SAFEGUARDING FRAMEWORK IN THE FLOWER FARMS

5.1 The Need for a Business Case

A business case is a value proposition that is developed for the purpose of informing a decision maker and convincing them to undertake a specific course of action. The business case is, thus, the rationale or justification for implementing a project, based on a prognosis of the benefits, costs and risks, as well as an evaluation of any viable alternatives to the said project.

The uptake of a work-place sexual harassment policy by flower farms has been rapid, over the last ten years. The substantive content of these policies and the diligence with which they are implemented varies across flower farms. To ensure that farms understand the implications of implementing a holistic safeguarding framework as described above, an assessment of the business case was attempted through this study. The discussion under this chapter is restricted to qualitative insights and analyses as it was not possible to generate empirical quantum of actual and potential costs in a monetized format, from sector actors. It is, therefore recommended, at the outset, that a follow-up study to quantify these costs be undertaken by individual flower farms, in order to establish this missing component to the business case.

This chapter, therefore, addresses itself to a number of issues relating to the implementation of a safeguarding framework: an analysis of the benefits; an assessment of the risks involved in establishing the framework; challenges and opportunities in implementation; and lastly, recommendations for ensuring the effective uptake of this initiative.

5.2 The Benefits of Adopting an Effective Sexual Harassment Safeguarding Framework

The adoption of an effective safeguarding framework at the work-place brings with it a number of direct and indirect benefits to the flower farms. Case studies by BSR along various product value chains suggest that responsible labor practices translate into financial rewards through expanded markets, higher productivity, reduced costs of compliance, and reduced staff turnover.³⁹ BSR's experience has shown that the stories these cases tell are applicable more broadly across a wide range of industries, economies, and geographies. Most of these benefits are capable of being quantified in monetary terms. They mainly manifest, however, as social advantages that are crucial for a business to operate sustainably.

³⁹ BSR (2019)

First, employers who are faced with contestations about violation of workers' rights normally have to contend with a significant amount of time and money lost in fending off these accusations or in remediating the said breaches. The cost and time spent in public relations exercises, investigation of allegations or in rectifying systemic failures in protecting workers from abuse can be significant. It also disrupts the ordinary operations of the company by taking away valuable personnel time and financial resources, thereby impacting on the organization's net outputs.

Secondly, the cost of reparations and legal fees expended in redressing incidents of non-compliance with legal safeguards at the work-place are normally considerable. Compliance with the provisions of labour laws helps a company to avoid criminal sanctions against its officials for offences committed, damages for civil liabilities in tort and the payment of compensation for the violation of human rights obligations. Under the Employment Act and the Sexual Offences Act, sexual harassment attracts considerable jail sentences and fines. These are mainly applicable to natural persons who have been found guilty through a criminal trial process. Companies may also be liable under the civil jurisdiction. In the 2014 case of *SRM v GSS (K) Limited and Dominic Ooko*⁴⁰ the Employment and Labour Relations Court set the pace on matters of sexual harassment at the work-place, both on substantive questions as well as the quantum for damages. Sexual Harassment is likely to be treated by the courts as an aggravated offence, beyond the typical violation relating to unfair dismissal. In this case, the damages payable by the company were costed at KES 5,928,000. In addition companies defending civil suits incur hefty legal costs.

For the long term sustainability of a company's business, reputational damage occasioned by non-compliance with laws and regulations or from systemic violations of workers' rights can set back the company significantly. An impugned reputation is, first and foremost, bad for business as it impacts directly on market access. Increasingly, buyers and retailers in the cut-flower value chain are demanding sustainable labour practices, of their value chain business partners. Waitrose Foundation's position regarding value chain social performance is illustrative of the seriousness with which retailers are beginning to consider social factors:

"As long-standing members of the Ethical Trading Initiative (ETI) we take our responsibility towards the people whose labour helps us stock our stores extremely seriously. Our Responsible Sourcing Code of Practice reflects the ETI base code and details what we expect from all of our suppliers, including terms of pay and working conditions, workers' rights and representation, health, safety and working hours.

⁴⁰ Cause number 220 of 2014, eKLR

We seek to build lasting relationships with our suppliers and are committed to upholding human rights throughout our product and services supply chain. We support the United Nations (UN) Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights.

We only work with suppliers who share our values of fairness and respect for human rights and welfare. All our suppliers are monitored on how they are performing against our Responsible Sourcing Code of Practice through regular independent inspections.”⁴¹

Under the Law of Tort, the employer has a duty of care to ensure that all persons who legally come within the work-place are not subjected to any harm, provided that such harm is foreseeable and that it is committed within the employer’s sphere of influence. In the Law of Tort, the standard of care refers the degree of prudence and caution required of an individual who is under a duty of care. A company may discharge this duty of care by adopting appropriate practices towards protecting workers and other persons whose presence at the work-place is legal and foresee-able. The model sexual harassment policy has been developed through a protracted sector-wide conversation that builds upon international and national human rights legal instruments and sector best practices in safeguarding. Thus, implementing the model sexual harassment policy at the work-place may help a company to achieve the requisite standard of care required to protect employees and other persons from sexual harassment at the work-place, thereby discharging its duty of care and avoiding legal liability.

Social sustainability certification has been integral in regulating social practices across the cut-flower value chain. Fairtrade, KFC and MPS-SQ are among the prominent certification labels that now require farms to meet social compliance standards, benchmarked according to global human rights instruments and the ILO standards. The instrument of sustainability certification also includes an inbuilt communication mechanism with consumers who are increasingly conscious of the social conditions of workers along the value chain. Moreover, retailers, traders and flower sector growers’ associations are taking an active role in demanding sustainable social practices from their respective value chain partners. Among the retailers, Sainsburys has developed its own compliance codes to which its suppliers must adhere. At the same time, flower growers are being rallied around the ambition of achieving social sustainability by 2020, under the banner of the Floriculture Sustainability Initiative (FSI). These initiatives have the potential of leveraging peer accountability mechanisms to ensure that social conditions across the value chain – including protection from sexual violence – are improved. Inbuilt to the system of minding the social performance of one’s company and the performance of one’s own

⁴¹ By Sara Bernow, Jonathan Godsall, Bryce Klempner, and Charlotte Merten, More than values: The value-based sustainability reporting that investors want, McKinsey and Company, August 2019

value chain, social certification and retailer codes have the potential to impact and regulate access to markets, based on the said parameter.

Compliance with a company's legal obligations brings with it stability and certainty about an organization's capacity to continue as a going concern. In Kenya, a raft of social, environmental and financial compliance regulations and laws are applicable to companies. Failing to meet these requirements may lead to the loss of a company's licence or to fines, thus affecting the company's capacity to continue in operation. Good social performance by a company may have direct consequences on a company's economic sustainability, particularly in the long term. Building strong relationships with stakeholders, a loyal customer base and nurturing intellectual capital impacts the long-range success of the company. In the case of Farm A, this study found that, generally friendly and participatory management system and a deliberate engagement with the host community has contributed not just to, improved work-place conditions for workers; it has also borne crucial social capital which enhances the economic viability and performance of the farm. In the case of Farm A, happy workers have translated into a better motivated work-force, thereby registering increased productivity. Similarly, a host community that sees the socio-economic dividends of good social conditions at the work-place means goodwill for the farm, in terms of physical security, steady supply of workers for the farm and cooperation with the farm on operational issues. Farm A has nurtured the capacity of the local community to tap into the farm through, among others: training of youth on motorcycling and supporting them to acquire motoring licences, thereby enabling them to provide *boda boda* transport sustainably to the Farm A's work-force; provision of access to free *wi-fi* at designated times, thus enabling communication and technologically supported entrepreneurship; among others. According to Farm B, a direct consequence of their progressive social conditions at the work-place is the retention of workers for longer and increased productivity, among others. Besides the reduction in staff turnover, a work-force that is protected from sexual violence also reduces instances of absenteeism - health related or otherwise.

In dire situations, a flower farm whose social conditions are grossly inadequate may attract industrial strife from the trade unions and the work-force, leading to industrial action, even violent strikes. Kenya's agriculture sector is not unfamiliar with protracted industrial action, some of which have led to significantly reduced outputs by the farms and in some extreme cases, physical damage to operational infrastructure and facilities, even closure of a formerly prominent flower farm.

5.3 The Risks in Adopting an Effective Sexual Harassment Safeguarding Framework

Many flower farms have cited the actual costs and time involved in setting up and implementing an effective safeguarding framework, as an impediment to their uptake of the scheme. The main costs involved relate to capacity development for staff and host

communities, development of communication and sensitization material, the coordination costs of implementing the safeguarding framework, handling complaints, research and due diligence, monitoring and evaluation and reporting.

It has also been suggested that a multi-actor intervention at the work-place increases scrutiny of the flower farms, thereby increasing the risks of exposure, in the event of non-performance, weak protective systems or a disagreement between implementing partners. Allied to this is the fear that compromising privileged information about the farms may be transmitted to other actors. This fear feeds off the history of mistrust between flower farms, on the one hand, and watchdog NGOs and trade unions, on the other hand. Civil society organizations working in flower farms have, however, changed tack from their traditional mould of whistle-blowers to a co-creator of solutions. The WEF has observed that civil society actors are demonstrating their value as facilitators, conveners and innovators as well as service providers and advocates, while the private sector is playing an increasingly visible and effective role in tackling societal challenges.⁴²

Flower farms have also cited the fear of losing of their intellectual property and in particular, information respecting practices that accord them a competitive advantage in the sector leaking out to competitors, as reasons why they are reluctant to allow external collaborators into the farms.

A number of respondents from FGDs suggested that a work-force that is knowledgeable of its rights is likely to lead to increased agitation and demand for more liberties and protection at the work-place, thereby paralyzing the smooth running of the company. In this case, opening up the sector to a broad discussion of labour rights and human rights is seen to promote a trajectory that may spiral out of the company's control.

5.4 Challenges in Developing and Implementing an Effective Sexual Harassment Safeguarding Framework

The sustainable implementation of a safeguarding framework in the flower farms continues to meet a number of challenges.

Many flower farms visualize their value proposition as predominantly based upon achieving financial outcomes for the farm. As such, programmes that are perceived to detract from this course are not a priority for the farms. These programmes include the development of elaborate safeguarding frameworks on sexual harassment. As such, most flower farms have

⁴² The Future of Jobs Report (2018)

mainly undertaken minimal interventions that merely allow them to achieve compliance with sustainability certification frameworks and with obligations under national laws. Without cultivating programmes and systems that are structured and backed by holistic and effective management frameworks, these efforts are unlikely yield true outcomes.

Secondly, flower farms lack adequate technical knowhow on the development and implementation of holistic safeguarding frameworks. As such, they have relied upon the adoption of template sexual harassment policies, without deepening their capacity to ensure holistic safeguarding and protection for workers. They have, thus, not established management frameworks for tracking and adequately understanding the inter-relatedness of their social, economic and environmental performance. The vast majority of flower farms in Kenya do not report on their social performance. Neither has the concept of integrated reporting - a narrative that connects the company's economic performance to its social and environmental impacts – caught on. Integrated reporting nudges companies to consider value beyond financial terms, training the focus on long term strategy. There is evidence that the financial performance of companies corresponds to how well they contend with Environmental Social and Governance (ESG) questions.⁴³ More investors are seeking to determine whether executives are running their businesses with such issues in mind. When companies report on ESG-related activities, they have largely continued to address the diverse interests of their many stakeholders—a long-standing practice that involves compiling extensive sustainability reports and filling out stacks of questionnaires.

For a long time, market demand for social sustainability in the flower sector was weak. The result has been that flower farms have invested more in achieving environmental sustainability, which is more robustly demanded by certification bodies. Similarly, the enforcement of labour rights by government labour inspectors has been weak, a situation that has been attributed to an acute shortage of labour officers and inspectors. This has lulled flower farms into a sense of comfort in regards to meeting their labour rights obligations.

There is a consensus among the different flower sector stakeholders, CSOs and trade unions about the inadequacy of market-based incentives for flower farms to undertake elaborate social programmes for protecting workers from sexual violations. Allied to this concern is the technical difficulty faced by flower farms in identifying or by labour rights practitioners in ably demonstrating the benefits of social sustainability in a manner that is tangible and impacts on the bottom line.

⁴³ Bernow, Godsall, Klempner and Merten (2019)

Lastly, flower farms have bewailed the existence of a multiplicity of frameworks to which they are already subjected for the purpose of regulating and assessing their social performance. The forbidding costs of implementing the various sustainability certification frameworks, retailer driven sustainability codes and standards, government regulations and emerging frameworks for sustainability compliance and reporting present a barrier to the development of social sustainability in the work-place.

5.5 Conclusion

The benefits relating to the adoption and implementation of the safeguarding framework for sexual harassment considerably outweigh the risks.

Innovative ways should be sought for the purpose of minimizing the financial outlay in setting up and operating a safeguarding system. Through collaboration with government, CSOs and trade unions, the knowledge, knowhow and capacity development for farm staff and systems development may be shared, sustainably. Likewise, the legitimate concerns of some flower farms about time constraints may be addressed by implementing the bulk of the capacity development, the conduct of research and due diligence and consolidation of social components into the integrated report, outside of the peak flower seasons.

Whereas developing a holistic safeguarding framework requires additional financial costs of the employer, the benefits that accrue from this investment trump the costs, especially in the long term. These benefits not only go towards reducing expenses in crisis management, in the eventuality of allegations of incidents of sexual violence in the farm; they also relate to gains in work-place and community relations, which gains are likely to impact positively on the organization's balance sheet.

There still exists a trust deficit between flower farms, retailers and flower sector traders, on the one hand, and trade union and CSOs on the other hand. Though a significant amount of ground has been covered in gaining a level of rapprochement between the two sets of actors, there is need for more work to bridge the goodwill gap for a constructive conversation and co-creation for social sustainability. The WEF has observed the changing roles of civil society actors,⁴⁴ noting that, while the private is "...increasingly playing a visible and effective role in tackling societal challenges," CSOs are demonstrating their unique value as facilitators, conveners, innovators, service providers and advocates, in the context of economic development. The demonstrable value of CSOs as "enablers and constructive challenger(s)⁴⁵," should be

⁴⁴ World Economic Forum, *The Future Role of Civil Society* (2013)

⁴⁵ Ibid.

harnessed and developed to ensure that CSOs add value to sector-wide conversations on sustainability.

There is need for capacity development across the sector to enable the sector investigate and establish the business case of progressive social performance, so as to inform operational and financial practices. There is also need to stimulate flower chain incentives for good social performance. These ambitions should build upon emerging corporate tendencies to mind their social impacts as well as the growing consumer enlightenment and demand for social sustainability in agricultural production chains.

5.6 Recommendations Relating to the Business Case for an Effective Sexual Harassment Safeguarding Framework	
A	Flower sector stakeholders should stimulate the development of market demand and incentives for progressive social performance by flower farms, through: enhancing product traceability along the cut flower value chain; insistence on intra-value chain accountability amongst the various producers, traders, retailers and auctions; sensitization to ignite retailer and consumer consciousness and responsiveness to value chain practices; social certification that advances market access.
B	The Kenyan government should enforce labour laws more effectively through, among other, regular inspections, stringent sanctions for producers who are non-compliant with labour laws; and, capacity development and sensitization of flower sector producers and workers on social conditions at the work-place.
C	Standard setting and certification bodies should enforce social certification standards with equal priority and rigor as environmental and quality standards are applied across the cut flower value chain.
D	Flower sector stake-holders, governments, certification and standard setting bodies and Human Rights organizations, should pursue a consensus on acceptable standards for sexual harassment safeguarding at the work-place, based on current international human rights legal instruments and standards, for the purpose of developing common equivalence social performance and compliance frameworks that are applicable across the sector. This will provide guidance to flower farms on compliance targets relating to sexual and gender based violence at the work-place. Secondly, the application of a common best-bet base code will address the costs related to the proliferation of social certification regimes.
E	A knowledge development, management and sharing framework should be developed and implemented to support flower farms, flower sector stakeholders and other actors to gain competency on: undertaking business case analysis through true-pricing and monetization of business social externalities; best practices and lessons in social performance by flower farms; and, developing integrated reports to demonstrate the

	integrated impacts of the company's social performance, among others.
F	Flower farms, retailers and value chain traders should adopt a monitoring and evaluation framework for their social impacts to inform an integrated reporting approach to enable them to track and communicate the integrated impacts of their social performance to their value-chain and stock-holders.

6.0 CONCLUSION

The model sexual harassment policy, as implemented in 10 Kenyan flower farms has proved integral in reducing the vulnerability of workers to harassment and violence at the work-place. The model policy has been instrumental in significantly enhancing protection capacities of the said farms. The pilot project reveals a flower sector that has acknowledged the existence of sexual harassment in its midst and demonstrated a commitment to address itself to it in a structured manner.

Gender violence - including sexual harassment - is not merely a product of poor regulation at the work-place. It is also a product of the prevailing community culture and practices that are brought to bear on the work-place. It is also impacted upon by the efficacy of national legal and policy framework in protecting workers, as well as the contribution of voluntary value chain mechanisms that address social issues at the work-place. Therefore, addressing sexual harassment at the work-place requires commitment by actors within and without the work-place. It requires that, both, the systemic and social predisposing conditions are addressed. Plugging structural weaknesses in work-place systems must, therefore go hand in hand with addressing the root causes of harassment, including socio-cultural and socio-economic factors as well as legal actors.

How then, may a flower farm effectively discharge its responsibility of protecting workers from sexual harassment? The central finding of this study is that a comprehensive sexual harassment policy that informs a holistic protection and safeguarding system at the work-place is instrumental in promoting a work-place culture that protects workers from sexual violations. Whereas most farms have in recent years developed their respective versions of sexual harassment policies, in line with the law, sexual harassment is still palpably present in the flower farms. The gains made as a result of the adoption and implementation of these policies also belie the challenges that beset the flower farms in eradicating sexual harassment from the sector. With the policy as the springboard, employers should develop and implement comprehensive participatory management systems complete with: protective mechanisms for vulnerable persons; safe reporting channels; promulgation of protective policies and integration into a coherent management system; community engagement for sustainable all-round protection and early warning; constant participatory monitoring, evaluation and due diligence; and, the adoption of integrated reporting by the flower farms as an indication of value beyond economic outcomes. Joint learning amongst flower farms is, therefore, a crucial element towards enhancing innovation and co-creation for a sustainable protection and safeguarding culture at the workplace. Lastly, there is need for deeper research on the link between CSR and desired economic outcomes for businesses in quantifiable terms, in order to demonstrate the viability and business case for investing in protection and safeguarding framework.

Having led the way in innovating for the protection of workers from harassment, the floriculture sector should latch onto emerging opportunities to develop a broader culture of protection and safeguarding for workers. These opportunities lie in exploiting: the current conversations and developments relating to international labour standards, national laws, and certification and audit frameworks; growth of intra-value chain accountability to enhance sustainability; and, CSR, for social capital.

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