

DEVELOPMENTS IN THE FIELD

# The Implications of the Adoption of a Model Sexual Harassment Policy Within the Flower Sector in Kenya

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## I. Introduction

The Kenyan flower industry is one of the largest in the world and it is estimated to contribute around one per cent to Kenya's gross domestic product (GDP).<sup>1</sup> According to the Kenya Flower Council (KFC), Kenya exports about 70 per cent of its cut flowers for sale on the European market.<sup>2</sup> Women constitute around 65 to 75 per cent of the workforce in the Kenyan flower industry, performing unskilled and poorly paid jobs.<sup>3</sup> Female floriculture workers in Kenya experience high rates of sexual harassment (SH) and other forms of workplace violence.<sup>4</sup> SH is deeply rooted in power imbalances between the parties involved, which can impact on the ability of the victim to resist or expressly indicate that the conduct is unwelcome. Such power imbalance can threaten victims into silence, resulting in incidences going unreported.<sup>5</sup> According to a study on gender, rights and participation in the cut flower industry in Kenya, SH is particularly prevalent among women who are supervised by male managers.<sup>6</sup> It was found that the persistence of SH is related to the hierarchical employment structure of floriculture companies, coupled with the lack of female managerial staff, both of which also prevented women from reporting incidences of SH.

<sup>1</sup> Jez Fredenburgh, 'Made on Earth: The 4,000 Mile Flower Delivery', *BBC* (2019), <https://www.bbc.com/future/spoke/made-on-earth/the-new-roots-of-the-flower-trade/> (accessed 24 August 2021).

<sup>2</sup> Wainaina Wambu, 'New EU Lockdowns Threaten to Wilt Kenya Flower Industry's Full Bloom', *The Standard Newspaper* (10 November 2020), <https://www.standardmedia.co.ke/business/financial-standard/article/2001393296/new-eu-lockdowns-threaten-to-wilt-kenya-flower-industrys-full-bloom> (accessed 23 December 2020).

<sup>3</sup> Carla Henry and Jacqueline Adams, 'Spotlight on Sexual Violence and Harassment in Commercial Agriculture: Lower and Middle Income Countries', International Labour Office, Research Department Working Paper No. 31 (May 2018), [https://www.ilo.org/wcmsp5/groups/public/-dgreports/-inst/documents/publication/wcms\\_630672.pdf](https://www.ilo.org/wcmsp5/groups/public/-dgreports/-inst/documents/publication/wcms_630672.pdf) (accessed 14 July 2021).

<sup>4</sup> Susie Jacobs, Bénédicte Brahic and Marta Medusa Olaiya, 'Sexual Harassment in an East African Agribusiness Supply Chain' (2015) 26:3 *The Economic and Labour Relations Review* 393, 401; UN Women and International Labour Organization, *Handbook: Addressing Violence and Harassment Against Women in the World of Work* (2019), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/addressing-violence-and-harassment-against-women-in-the-world-of-work-en.pdf?la=en&vs=4050> (accessed 23 December 2020).

<sup>5</sup> Catherine Dolan, Maggie Opondo and Sally Smith, 'Gender, Rights and Participation in the Kenya Cut Flower Industry', Natural Resources Institute Report 2768, SSR Project No. R8077 2002-4 (2012), 38–40, <https://assets.publishing.service.gov.uk/media/57a08d49ed915d622c0018d5/R8077a.pdf> (accessed 25 October 2021).

<sup>6</sup> *Ibid.*

In this piece I examine the adoption of a model SH policy by floriculture umbrella bodies in Kenya as a mechanism to address SH. I highlight the strengths of this policy as well as the potential pitfalls, and reflect on the significance of the policy in addressing SH in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>7</sup> and the International Labour Organization (ILO) Convention No. 190.<sup>8</sup> In doing so, this piece provides an example of how company-level SH policies/commitments can lead to concrete changes, drawing from some of the good practices from those flower companies that have successfully implemented the policy.

## II. Sexual Harassment in the Workplace

SH in the world of work involves forms of unwelcome behaviour or conduct with a 'purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.'<sup>9</sup> Both internal factors (workplace setting, policies, systems and practices) and external factors (socio-economic and cultural conditioning, legal and non-legal frameworks) contribute to the prevalence of SH in the workplace. It is crucial to highlight the linkages between workplace SH and the systemic factors that reinforce gendered inequalities in the social, political and economic spheres. These forms of structural disadvantage can cause women's reproductive and productive work to be undervalued, thereby trapping them in cycles of violence and exploitation.<sup>10</sup> In accordance with international human rights law, including business and human rights frameworks such as the UNGPs and ILO Convention No. 190 on violence and harassment, business actors have responsibilities to address issues such as gender segregation in the labour market, low wages, and ineffective grievance mechanisms and remedies that create and perpetuate workplace SH.<sup>11</sup>

The UNGPs – developed to clarify how states and businesses should prevent, mitigate and remedy human rights abuses associated with business activities – serve as the central reference point for the entire spectrum of human rights that might be impacted by business activities, as well as the remedies available to rights-holders. However, it is only very recently that the UN human rights system has begun to engage in a gender analysis of the UNGPs in an effort to remedy their failure to adequately consider the ways in which business activities may be harmful to women's human rights. In 2019, the UN Working Group on Business and Human Rights (UNWG) adopted a report (Gender Guidance) that recommended the development of gender transformative remedies as a way to change the patriarchal norms and the unequal power relations that underpin discrimination, gender-based violence, and gender stereotyping.<sup>12</sup> In the same year, the right to a world of work free from violence and harassment was articulated in an international treaty through the adoption of the ILO Violence and Harassment Convention (No. 190) and Recommendation

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<sup>7</sup> Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011) (UNGPs).

<sup>8</sup> Convention Concerning the Elimination of Violence and Harassment in the World of Work, ILO Convention No. 190 (adopted on 21 June 2019, entered into force on 25 June 2019) (ILO Convention No. 190).

<sup>9</sup> UN Women and International Labour Organization, note 4, 6.

<sup>10</sup> Debra Efroymsen, *Women, Work, and Money: Studying the Economic Value of Women's Unpaid Work and Using the Results for Advocacy* (HeatBridge: 2010), [https://healthbridge.ca/images/uploads/library/Gender\\_summary\\_report\\_final.pdf](https://healthbridge.ca/images/uploads/library/Gender_summary_report_final.pdf) (accessed 8 April 2021).

<sup>11</sup> UNGPs, note 7, principles 11, 12, 13, 18, 19 and 22; ILO Convention No. 190, note 8, arts 6, 9, 10 and 11.

<sup>12</sup> Human Rights Council, 'Gender Dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/41/43 (23 May 2019) (Gender Guidance).

(No. 206) which provide a framework to prevent and address violence and harassment, based on an inclusive, integrated and gender-responsive approach.<sup>13</sup> The convention acknowledges that gender-based violence and harassment disproportionately affects women and girls due to underlying causes and risk factors such as gender stereotypes and unequal power relations, which must be addressed in order to end violence and harassment in the world of work.

The ILO instruments and the UNWG's Gender Guidance emphasize the importance of gender-responsive policies in the prevention of workplace SH. These norms also lay out the responsibilities of businesses and governments to effectively monitor the implementation of policies and legislation to prevent and respond to SH at work. Compliance initiatives could include utilization of corporate codes of conduct, auditing and certifications, which can be adopted at national or international levels.<sup>14</sup>

Although several studies have critiqued the weaknesses of social auditing and certification schemes,<sup>15</sup> this piece argues that these processes are important adjuncts to implementation of policies and legislation in the area of workplace SH. The critiques of certification and auditing frameworks have noted the power asymmetries that condition the ability of different stakeholders to shape agendas and modes of engagement, and have questioned the impact of such frameworks in terms of actually contributing to improved conditions for workers.<sup>16</sup> Nevertheless, certification schemes have, alongside other approaches, helped to address decent work issues, including SH. A baseline study on Results Based Social Certification in Kenya, for example, showed that certified companies had fewer cases of SH due to measures they had undertaken to prevent and respond to the issue, including through the adoption and implementation of SH policies.<sup>17</sup>

### III. The Creation and Content of the Decent Work for Women Programme

Between 2016 and 2020, the Netherlands Ministry of Foreign Affairs worked with civil society organizations (CSOs) to implement several programmes for international cooperation. One of these programmes was the Decent Work for Women Programme, which was carried out in Kenya, Uganda, Tanzania, Rwanda, Ethiopia, Malawi, Zambia and Zimbabwe.<sup>18</sup> The lead partners were the non-governmental organizations (NGOs) Hivos, the International Institute for Environment and Development (IIED) and Article 19. The aim of the programme was to contribute to decent work for women who earn their living through engagement in

<sup>13</sup> ILO Convention No. 190, note 8. ILO Recommendation No. 206 and the accompanying Resolution on the ILO Centenary Declaration for the Future of Work (adopted on 21 June 2019).

<sup>14</sup> Gender Guidance, note 12, 14, 18; ILO Convention No. 190, note 8, arts 4, 9 and 11.

<sup>15</sup> Valerie Nelson and Anne M Tallontire, 'Battle of Ideas: Changing Narratives and Power Dynamics in Private Standards Global Agriculture Value Chains' (2014) 31:3 *Agriculture and Human Values* 481; Valerie Nelson et al, 'Pathways of Transformation of Transgression? Power Relations, Ethical Space and Labour Rights in Kenyan Agri-Food Value Chains' in Michael K Goodman and Colin Sage (eds.), *Food Transgressions: Making Sense of Contemporary Food Politics* (London: Routledge, 2014), 15.

<sup>16</sup> Nelson and Tallontire, note 15.

<sup>17</sup> Hivos, *Baseline Study and Readiness Assessment for Mainstreaming of Results-Based Social Certification Systems in the Horticulture Sector in Kenya: Advancing Labour Rights through Results-Based Certification System* (2018), <https://hivos.org/assets/2021/02/Advancing-labour-rights-through-results-based-social-certification-system-2018-1.pdf> (accessed 24 August 2021), 42–43.

<sup>18</sup> Hivos, 'Women@Work', <https://east-africa.hivos.org/program/womenatwork/> (accessed 24 August 2021); Hivos, *Women Workers Rights in EU Legislation and Standards: Baseline Study Decent Work for Women* (Hivos and True Price: 2016), <https://www.hivos.nl/assets/2016/08/W@W-Women-workers-rights-in-EU-legislation-and-voluntary-standards.pdf> (accessed 24 August 2021), 3.

global value chains, most notably those working with flowers, fruits and vegetables grown for the export market. The aim of this programme was to achieve better working conditions for women in these sectors by securing the objectives of the ILO's Decent Work Agenda, including freedom from workplace SH and protection from HIV.<sup>19</sup>

The programme's pilot phase was carried out in 2015.<sup>20</sup> During this part of the programme, Hivos funded the development and testing of a generic model SH policy. The model policy was developed collaboratively with farm management, trade unions, NGOs, certification bodies and workers; the process was led by Women Working Worldwide (WWW) and Workers Rights Watch (WRW) in floriculture companies in East Africa. The pilot was informed by baseline studies that indicated that despite national legislative requirements, many flower farms did not have workplace SH policies.<sup>21</sup> For those flower farms that had SH policies, they lacked effective and viable structures for implementation.<sup>22</sup> In response to this regulatory void, Hivos provided technical expertise in the development of the model SH policy and in lobbying and mobilizing floriculture sector actors towards its adoption.

#### IV. Results

One of the major outcomes of the pilot phase was the adoption of the model SH policy in 2017 by the KFC and Fairtrade Africa (FTA).<sup>23</sup> These commitments were also incorporated into the text of their certification audit frameworks. The model SH policy details the establishment of compliance/grievance procedures by outlining guiding principles, alternative redress mechanisms, remedial measures, roles and responsibilities of different stakeholders, and awareness raising, including a SH checklist and complaints procedure process flow. To ensure implementation and oversight, the model SH policy recommends the creation of a workplace gender committee, duly elected by workers, adequately empowered (through regular training to provide knowledge and skills), and provided with space and time to address SH issues.<sup>24</sup>

The adoption of the model SH policy by the KFC and FTA is significant as it binds their collective membership of more than 150 flower farms in Kenya to implement the provisions and commitments in the policy. This means an incorporation of the policy as a part of their basic minimum certification standards, against which the social performance of affiliated flower growers in Kenya are audited. The policy also promotes an engendered, inclusive and participatory approach to addressing SH in the workplace. This approach aligns with the UNWG's Gender Guidance as well as the ILO Convention No. 190 that calls for the meaningful participation of women in addressing workplace SH.<sup>25</sup> The policy sets the expectation that companies establish support systems for victims of SH when they come forward; improve

<sup>19</sup> International Labour Organization, 'Decent Work', <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm> (accessed 29 December 2020).

<sup>20</sup> Hivos, *Stop Sexual Harassment Project: A Model Sexual Harassment Policy for the Flower Sector in Eastern Africa* (Hivos: 2015), [https://hivos.org/assets/2018/06/stop\\_sexual\\_harassment\\_project\\_0.pdf](https://hivos.org/assets/2018/06/stop_sexual_harassment_project_0.pdf) (accessed 14 April 2021), 6.

<sup>21</sup> The Employment Act (No. II of 2007) Legal Notice No. 28 (2014), [http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2014/LN28\\_2014.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2014/LN28_2014.pdf) (accessed 21 July 2021); The Employment Act 2006: Acts Supplement No. 5 to The Uganda Gazette No. 36 Volume XCVIX (2006),

[https://www.ulrc.go.ug/system/files\\_force/ulrc\\_resources/employment-act-2006.pdf](https://www.ulrc.go.ug/system/files_force/ulrc_resources/employment-act-2006.pdf) (accessed 27 July 2021); New Labour Law of Ethiopia, Proclamation No. 1156/2019, *Federal Negarit Gazette* (2019),

[https://www.mtalawoffice.com/images/upload/Labour-Proclamation-No\\_-1156-2019.pdf](https://www.mtalawoffice.com/images/upload/Labour-Proclamation-No_-1156-2019.pdf) (accessed 27 July 2021).

<sup>22</sup> Hivos, note 20.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> ILO Convention No. 190, note 8, art 9.

transparency and accountability when dealing with SH cases; and revise organizational systems and structures to ensure diversity, inclusion and respect, which are all principles highlighted in the model SH policy implementation checklist.

By 2020, 130 out of the targeted 160 floriculture farms in Kenya had adopted the model SH policy.<sup>26</sup> A study by the NGO Kenya Human Rights Commission (KHRC) found that although SH was still rampant in the flower sector, more than half of all floriculture workers felt that the new standards being applied within the industry had led to a significant reduction in SH at the workplace.<sup>27</sup> However, this piece underpins the fact that sexual violence in all its forms is severely under-reported across sectors. Multiple barriers, including fears of social stigmatization, job loss and further victimization, discourage women from reporting SH and other forms of gender-based violence.<sup>28</sup> Another study conducted by the NGO Haki Mashinani in 2020 indicated that Kenyan flower farms that had adopted the model SH policy demonstrated more responsive and effective anti-SH environments, compared with those which had not.<sup>29</sup> The study identified some of the factors that were thought to have led to the success of the model policy in reducing instances of SH in floriculture businesses; these factors included its explicit definition of SH and the creation of gender-responsive complaints-handling, along with appropriate sanctions for non-compliance. The study also found that the gender committees had been accepted in these farms by the workers and management as a legitimate and central framework for ensuring accountability regarding gender-based abuses, including SH. The farms were further found to have a better understanding of SH among employees; and a higher rate of credibility in their SH safeguarding systems, compared with the experience of farms that were yet to adopt the model SH policy.<sup>30</sup>

## V. Discussion

A closer look at the Gender Guidance reveals that this requires business enterprises to develop gender-responsive policies and mechanisms to address SH, including through the establishment of effective grievance mechanisms.<sup>31</sup> Indeed, adoption of policies alone cannot eradicate SH. Business enterprises need to implement them to promote a culture of protection for workers from any form of SH. The model SH policy has integrated the gender-responsive measures articulated in the UNGPs with a gender committee being central in receiving and handling complaints of SH on behalf of the companies. This framework seeks to ensure accountability for gender-based abuses, including SH, to both the workers and management.

Feedback on the effectiveness, or otherwise, of the model SH policy will go a long way in enhancing its impact. As more flower farms adopt the policy, the social multiplier effect may also play an important role in promoting anti-SH in the sector.<sup>32</sup> As noted by the studies

<sup>26</sup> Hivos, *Footprints of Change* (Hivos: 2020), <https://east-africa.hivos.org/assets/2020/12/Footprints-of-Change-Web-Version.pdf> (accessed 24 August 2021), 21.

<sup>27</sup> Kenya Human Rights Commission, 'Baseline and Readiness Assessment Report on Certification and Other Corporate Accountability Mechanisms' (2019) (unpublished).

<sup>28</sup> UN Women and International Labour Organization, note 4, 5–6.

<sup>29</sup> Haki Mashinani, *Late Blossoms! Time to Move Beyond Policy Statements to a Safeguarding Culture: A Baseline Study on the Implementation of the Model Sexual Harassment Policy in the Cut Flower Sector of Kenya: Experiences, Lessons and the Business Case* (2020), [https://hivos.org/assets/2021/02/Late\\_blossoms\\_baseline.pdf](https://hivos.org/assets/2021/02/Late_blossoms_baseline.pdf) (accessed 24 August 2021).

<sup>30</sup> *Ibid.*

<sup>31</sup> UNGPs, note 7, principles 20, 22, 29, 30 and 31.

<sup>32</sup> Charles F Manski, 'Economic Analysis of Social Interactions' (2000) 14:3 *Journal of Economic Perspectives* 115.

cited above, indications are that the model SH policy has been influential in defining and guiding the development of SH policies by different floriculture farms in Kenya. Besides adoption of SH policy, positive results have been demonstrated for those farms which have started implementation.<sup>33</sup> Out of the 160 targeted flower farms in Kenya, 130 (81 per cent) reviewed their selection and formation of gender committees' standards to enhance the handling of gender-related issues. These standards encompass the issues of fair elections as well as representativeness. In addition, after training on gender and women's leadership, human resource managers and supervisors from participating farms developed and adopted action plans to implement gender-responsive practices.<sup>34</sup> During follow-up meetings, there were reports of improvements from workers and trained supervisors especially on assignment of roles (such as irrigation and scouting which were previously assigned to men only) to both women and men equally without discrimination. Some farms also made commitments to support nursing mothers through allocating time for nursing and setting up day care centres. Other positive results include suspension and/or cancellation of certificates by certification bodies such as FTA and AfriCert<sup>35</sup> from farms that failed to address cases of SH and other labour rights violations reported by gender committees and workers. Furthermore, after training on legal rights, workers from participating farms started seeking legal advice and assistance on different issues such as unlawful termination of their contracts, exposure to harmful chemicals in the greenhouses, and injuries obtained while working.<sup>36</sup>

While there is marked improvement by farms in addressing workplace SH, the translation of policy statements into sustainable systems and cultures that protect workers from harassment is paramount. Setting out commitments, monitoring mechanisms and complaints procedures sends a strong message that SH will not be tolerated. It enables workplace actors to spell out the behaviours that are unacceptable, and their disciplinary consequences. This helps to reinforce the importance of gender equality and behaviour change.

There is, however, a need for all key stakeholders (workers, trade unions, certification bodies, CSOs and government actors) to be engaged in a constructive dialogue on how to prevent, mitigate and remedy SH. In a collaborative effort, each party needs to understand and implement its specific role and responsibilities, thereby creating a broad policy ownership, as well as a sustainable system of checks and balances. Trade unions need to monitor companies' compliance as one of the conditions in their collective bargaining. Certification organizations need to align their standards and compliance indicators to safeguard the human rights of all workers. Workers need to be part and parcel of the workplace grievance re-dress mechanisms to support the implementation of the policy. CSOs can play an instrumental role in terms of raising awareness among the different stakeholders and document experiences. The government needs to provide a positive environment to enable the development and enforcement of responsive laws and policies in accordance with the Gender Guidance and ILO Convention No. 190.

<sup>33</sup> Geert Phlix et al 'Decent Work for Women: End-Term Evaluation of the Citizen Agency Consortium Decent Work for Women Program' (Article 19; iied; Hivos: 2020), <https://hivos.org/assets/2020/10/EET-Decent-Work-for-Women.pdf> (accessed 24 August 2021), 58–59.

<sup>34</sup> Faith Muiruri, 'It is Thumbs-up for Women@Work Campaign as Flower Farms Put in Place Gender Sensitive Policies and Practices', *Kenyan Woman* (4 November 2019), <https://kw.awcfs.org/article/it-is-thumbs-up-for-women-work-campaign-as-flower-farms-put-in-place-gender-sensitive-policies-and-practices/> (accessed 24 August 2021).

<sup>35</sup> AfriCert, 'About Us', <https://africertlimited.co.ke/> (accessed 24 August 2021).

<sup>36</sup> Geert Phlix et al, note 33, 6, 58.

## VI. Conclusion

The model SH policy has proved integral in guiding flower farms in Kenya towards gender equality, although there is considerable ground to be covered before workers can be truly secure at the workplace. For effective protection of workers, it is necessary for flower farms to build upon the foundation provided by the workplace SH policy statements and develop deliberate, holistic and supported safeguarding frameworks against SH that address specific instances, but also the structural and social enablers of SH. Currently, more focus is required on the model SH policy implementation process, with careful documentation to enhance quality assurance and improvement measures. This will inform its long-term success, as well as providing insights on its replicability to other industries and countries.

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