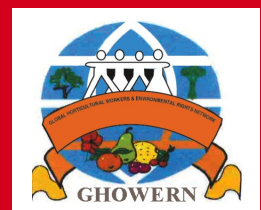


Thorns Amongst the Roses

A Cross-country analysis of Human Rights Issues
in Flower Farms in East Africa

Anna Mlynska, Gabriella Wass and Flavia Amoding



Editorial

Thorns Among the Roses: A Cross-country analysis of Human Rights Issues in Flower Farms in East Africa

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GOWERN (Global Horticultural Workers and Environmental Rights Network) is a regional network of activist organisations across East Africa. Since 2005 GHOWERN Members in Uganda, Kenya, Tanzania, Ethiopia and Zambia have carried out research, educational activities and local campaigns on discriminatory practices such as sexual harassment in the horticulture sector. GHOWERN aims to eliminate such practices from the workplace and communities around the farms.

IPIS (International Peace Information Service) is an independent research institute, providing governmental and non-governmental actors with information and analysis to build sustainable peace and development in Sub-Saharan Africa. IPIS' research is centred around four programmes: Natural Resources, Business & Human Rights, Arms Trade & Security, and Conflict Mapping.

Executive Summary

Floriculture is one of Africa's most lucrative export sectors and can bring significant benefits to producer communities, but only where operations are conducted in a manner that is sustainable and respectful of the rights of workers and communities.

Thorns Amongst the Roses summarises the human rights impacts that the International Peace Information Service (IPIS), the Global Horticultural Workers and Environmental Rights Network (GHOWERN), and other research institutes, have observed in the flower growing and cutting industries of Ethiopia, Kenya, Tanzania, Uganda and Zambia. These impacts are placed within a business and human rights framework, wherein the legal source for relevant rights are outlined and further detail is provided on the context in which rights can be affected. Principle findings include:

- **Sexual harassment** of workers is a widespread and ongoing problem in flower farms worldwide. A number of problematic dynamics allow it to continue unmitigated, including shame, misconceptions of abuse and practical difficulties in reporting.
- The flower industry's predominant employment of women renders it necessary to address **other gender-specific issues**, such as maternity leave, gender parity in employment and female specific health and social issues that impact on a woman's ability to work.
- Working on flower farms can entail **health risks** for workers. In addition to complications due to repetitive physical actions such as cutting, or physical exertion such as bending, workers run the risk of exposure to pesticides used in the farming process.
- The flower industry can adversely impact on its immediate and the wider environment. Such **environmental damage** largely stems from the use of pesticides and fertilisers, high levels of water consumption, and the impact of air freighting flowers to international markets.
- Many flower farms hire at least some of their workers on **temporary or casual contracts**. Whilst there appears to be a downward trend in the proportion of farm workers employed on such a basis, un-contracted workers remain an extremely vulnerable group amongst flower farm workers.
- Flower farm workers often say that their wages are not enough to live on. Sometimes flower farms pay under the national minimum wage but often, even where this national minimum is met, this salary is insufficient to meet a worker's basic subsistence costs. **Poverty wages** impact on a whole host of other rights.
- **Freedom of association** in flower farms can be violated both directly and indirectly. Many farms state that they allow or even encourage unionisation, yet may discriminate against unionised employees. Some openly refuse to allow workers to unionise. Unionisation is a fundamental right of flower workers precisely because it allows them to defend their other rights by facilitating their ability to negotiate and learn about them.
- **Children's rights** can be both directly and indirectly affected by the practices of the flower farming sector. When children work in conditions that are dangerous to their health and development or are prevented from receiving an education as a consequence of their work on flower farms their rights are directly affected. Moreover, where an adequate standard of living or access health care or education is rendered unattainable by children due to poverty wages paid to their parents, their rights are also affected.
- **Land-grabbing** has become an increasingly contentious issue and is linked to a number of potential rights violations, including the displacement of local populations from their customary land. It should also be considered in determining the impact of flower farms.
- The Gross Domestic Product (GDPs) of East African flower producing countries is dwarfed by that of consumer countries and countries that are the home state for flower companies. **Tax justice** is therefore crucial to weaker producing states, but the use of tax structures to limit the tax paid to producing states deprives them of much needed resources.

The paper concludes that, as with all industry and business practices, those engaged in the horticultural industry can gain a great deal of insight by looking at social and environmental issues through a human rights lens. Stakeholders can be affected by the horticultural industry in number of profound and multi-faceted ways. Failure to do human rights due diligence to identify and address any potential negative impacts on stakeholders not only risks violating international human rights standards but will undermine both a business's workers and the communities surrounding its operations. It therefore ultimately undermines the sustainability of a company's business model itself.

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Introduction

Floriculture is one of Africa's most lucrative export sectors, with one in four Valentine's Day roses bought in Europe originating from the continent. Africa's flower industry can bring significant benefits to producer communities, but only where operations are conducted in a manner that is sustainable and respectful of the rights of workers and communities.

Thorns Amongst the Roses summarises the human rights impacts that the International Peace Information Service (IPIS), the Global Horticultural Workers and Environmental Rights Network (GHOWERN), and other research institutes, have observed in the flower growing and cutting industries of Ethiopia, Kenya, Tanzania, Uganda and Zambia¹. It is based on existing studies, field visits by IPIS Research in 2013, and the expertise and research of members of the GHOWERN network of labour rights organisations.

Throughout this report, a business and human rights framework is used to assess potential and existing impacts of the floriculture sector on human lives. Indeed, the impacts of this sector can be assessed from a variety of perspectives: labour rights, unionisation, poverty alleviation and environmental protection. A human rights focus is intended to be complementary to such perspectives (which have been taken in comparable studies), providing a holistic and nuanced approach to looking at the complex spectrum of issues that the horticulture sector can raise. In this manner, the structure of this report is akin to a very broad human rights impact assessment (HRIA). As such, it represents a useful tool in helping companies, civil society, and many other stakeholders to understand the range of impacts the floriculture sector potentially has in East Africa.

This report covers issues spanning sexual harassment, gender dynamics, health and safety, environmental impacts, employment regularity, living wages, freedom of association, child rights, land-grabbing, and tax justice. Each of these sections will outline where specific human rights are derived from – that is to say, which international and regional laws provide for certain rights – and the most common issues surrounding each right in the context of the flower industry. Sections are accompanied by case studies that offer real-life examples of human rights that have been positively or negatively impacted.

Research for this paper entailed a literature analysis and on the ground field visits to flower farms, as well as reference to GHOWERN's longstanding experience in training and representing flower farm workers. The research was carried out in East Africa and Belgium by IPIS and GHOWERN throughout 2013 and 2014. It has sought to cover a novel geographical area. Whilst a number of organisations have conducted research on similar topics, few have synthesised evidence from Ethiopia, Kenya, Tanzania, Uganda and Zambia. By grouping these countries together, it has been possible to see where regional patterns emerge.

GHOWERN's work in East Africa

GHOWERN implements its activities through its members together with the collaboration of international partners. The main issues identified through research carried out by GHOWERN members from 2005 to date include: general working terms and conditions of service, low wages, sexual harassment, poor health and safety standards, and poor implementation of requirements stipulated in International Labour Organisation (ILO) Convention No 183 of 2000 on Maternity Protection. GHOWERN and its partners have also undertaken advocacy campaigns directed at entities such as the East African Community and East African Business Organisation and Horticultural Council of Africa members. Here, they have sought to advance worker rights issues such as sexual harassment and violence against women (May 2014) through petitions and press releases. At the regional level, GHOWERN and its international partner, Women Working Worldwide, have developed a policy on sexual harassment that includes mechanisms for handling reported sexual harassment cases. These tools are being progressively adopted by horticultural farms in Ethiopia, Kenya, Tanzania and Uganda. If effectively implemented, such policies and mechanisms can eventually reduce the prevalence of sexual harassment on horticultural farms in the region.

1 All of these countries have GHOWERN member organisations or unions.

Floriculture in East Africa

The floriculture industry is one of Africa's most lucrative export sectors². Trade statistics show the high value of exports of cut flowers from East Africa over the past years, with up to 14% of the world's export value of flowers originating from Africa³. Moreover, export value figures do not represent the low cost and sheer volume of East African flower exports: one in four of the roses Europeans buy on Valentine's Day originate from Kenya⁴.

In light of this, the European Union (EU) – East Africa's main importer of cut-flower exports – set up an interim Economic Partnership Agreement with the East African Community (Kenya, Uganda, Tanzania, Burundi and Rwanda) in 2007 in order to facilitate the ease of trade. This includes duty and quota-free access for East African Community imports to the EU, rules for settling trade disputes, and a gradual removal of duties and quotas over a period of 25 years⁵. Moreover, a comprehensive Economic Partnership Agreement has been negotiated to further facilitate ease of trade.

The floriculture supply chain can vary from being very simple (i.e. direct transfer from the grower to a specific supermarket) to more complex (i.e. via markets and auctions). There are also differences between cut flowers, cuttings, potted plants and so on⁶. This supply chain is, however, characterised by tight time-frames due to the perishable nature of flowers, and a relative lack of small-scale growers in countries of origin due to the technology required for flower-growing⁷.



Source: Evers, Amoding and Krishnan, 2014

The economic and social benefits of the cut flower industry for producer countries are clear. In Kenya, the flower industry provides an income for up to two million people from largely impoverished communities,⁸ whilst by 2011 Ugandan floriculture exports were generating employment and supporting the livelihoods of some 30,000 people – many women, and most from poor rural backgrounds.⁹ Floriculture is

- 2 African Business Magazine, *Is African Business Losing its Bloom?* 19 February 2012, available at: africanbusinessmagazine.com/sector-reports/agriculture/is-africas-flower-industry-losing-its-bloom/.
- 3 Trade statistics for international business development, Code: 0603 (Cut flowers and flower buds for bouquets, fresh or dried) International Trade Centre.
- 4 Flowerweb, "Kenya Floriculture Industry", available at: <http://www.flowerweb.com/en/topic/Kenya-Floriculture-Industry>.
- 5 European Commission Trade, *East African Community*, available at: ec.europa.eu/trade/policy/countries-and-regions/regions/eac/.
- 6 Ruud.L.M. van Uffelen&Nico.S.P. de Groot, *Floriculture World Wide; production, trade and consumption patterns show market opportunities and challenges*, Wageningen University and Research centre, 2010, available at:
- 7 Graphic by IPIS. Content from Evers, B, Amoding, A, Krishnan, A, *Social and economic upgrading in floriculture global value chains: flower and cuttings GVCs in Uganda*, Capturing the Gains Working Paper 24, 2014. p. 31.
- 8 Fairtrade, "Flowers", available at: <http://www.fairtrade.org.uk/en/farmers-and-workers/flowers>.
- 9 Op. cit..Evers et al., 2014, (n.7).

a capital-intensive business model, requiring high numbers of unskilled workers. This equates to millions of jobs worldwide, in addition to economic investment in countries, infrastructure, and tax revenue for host governments.

However, like other industries requiring high levels of often unskilled labour, employees are generally poor, in search of employment, and easily-replaced. As a result, employers are in a considerable position of power in their ability to dictate terms of employment.

The floriculture sector can also entail environmental destruction. The use of harsh chemicals can lead to local pollution, and flowers, especially roses, require considerable volumes of water to grow.¹⁰ In water-stressed areas, the diversion of water from meeting basic household needs towards industry can leave poor families without access to a clean, cheap water sources, seriously impacting their health and human rights.

Business and Human Rights

Globalisation has magnified the profound influence of business on daily life. Whilst acknowledging that the profit-making business model can have positive impacts for people, human rights advocates have become increasingly concerned about the serious human rights abuses in which certain business operations are implicated, both directly and indirectly. These include abuses such as labour rights violations, the payment of poverty wages, neglectful health and safety provisions, and the commission of abuse by contracted security personnel.

The United Nations has sought to provide a framework for these concerns in its Principles on Business and Human Rights (UNGPs). These principles provide an international and widely endorsed standard of conduct for both States and businesses regarding the interaction of business with human rights enjoyment. That standard is premised on the following three pillar framework:

1. Businesses must respect internationally recognised human rights;
2. States are obliged to protect human rights against the adverse impacts of business; and
3. Effective remedies must be provided for those adversely affected by human rights harms occasioned by business operations.

Infobox: The UN Guiding Principles on Business and Human Rights¹¹

Protect

- States have a broad set of international human rights obligations which necessitate the respect, protection and fulfilment of the human rights of individuals within their territory and/or jurisdiction.
- This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
- States should enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights and periodically to assess the adequacy of such laws and address any gaps.

10 Haug, R, Ohna, I, Aune, J, and Mwaitulo, S, May *Trade, Environment and Development: Import of Flowers from Africa to Norway*, Trade, Environment and Development: Import of Flowers from Africa to Norway, 2008, available at: www.umb.no/statisk/noragric/publications/reports/2008_nor_rep_43.pdf.

11 The UN Guiding Principles on Business and Human Rights, 2011, available at: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Respect	<ul style="list-style-type: none"> • Companies need to look at how their core business activities affect people's human rights. • The responsibility to respect means that they avoid infringing on the rights of others and they address adverse human rights impacts with which they are involved. • This applies irrespective of whether the State is meeting its duty to protect or not. • Each company should have in place a human rights policy and human rights due diligence process "to identify, prevent, mitigate and account for how they address their impacts on human rights". • CSR projects cannot be used to 'off-set' human rights abuses.
Remedy	<ul style="list-style-type: none"> • States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing human rights-related claims against business. • This includes considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. • Access to remedy includes both judicial and non-judicial mechanisms. For example, this section of the Guiding Principles also sets out a more influential role for National Human Rights Institutions as well as a set of criteria for company-based grievance mechanisms for individuals and communities.

Translating the responsibility to respect human rights into practice requires businesses to take certain steps. The UNGPs outline the basic tools and methodologies that should be used by businesses to operationalise their human rights responsibilities.¹²

Infobox: Steps for operationalising respect for human rights in business practice	
Policy Commitment	<p>Business enterprises should express their commitment by embedding their responsibility to respect human rights through a statement of policy which:</p> <ul style="list-style-type: none"> (a) Is approved at the most senior level of the business enterprise; (b) Is informed by relevant internal and/or external expertise; (c) Stipulates the enterprise's human rights expectations of personnel and business partners; (d) Is publicly available and communicated internally and externally; (e) Is embedded throughout the business enterprise.
Human Rights Due Diligence	<p>In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out a human rights due diligence process which:</p> <ul style="list-style-type: none"> (a) Should include assessing actual and potential impacts, integrating and acting upon findings, tracking responses, and communicating how impacts are addressed; (b) Should cover impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services; (c) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (d) Should be ongoing, recognising that the human rights risks may change over time.

¹² For more information on operationalising the Guiding Principles, businesses are encouraged to consult *UN Guiding Principles: An Interpretative Guide*, Office of the High Commissioner for Human Rights.

HRIA	In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.
Integrate findings	In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. The latter will vary according to: (i) whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; and (ii) the extent of its leverage in addressing the adverse impact.
Tracking response	In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response(s).
Reporting	In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders.

The **human rights impact assessment** (HRIA) forms a vital part of ensuring that enterprises respect human rights in the course of conducting their business operations. This paper takes the loose form of a human rights impact assessment, using standard, industry-wide methodologies and frameworks for rights analysis. It should be noted however that this HRIA is neither detailed nor comprehensive, as it does not focus on a specific farm, supply chain or community. Regardless, it can nevertheless present a useful tool for businesses undertaking preliminary research for their own HRIAs, particularly in identifying the most salient impacts of enterprise in the floriculture on human rights.

Human Rights Impact Assessment

Sexual harassment

Sexual harassment of workers is a widespread and ongoing problem in flower farms worldwide. A number of problematic dynamics allow it to continue unmitigated. These include shame surrounding reporting harassment and abuse, practical difficulties in reporting, and misconceptions of what constitutes harassment.

Key sources of relevant human rights	
<p>The right to be free from sexual discrimination</p> <ul style="list-style-type: none">• Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)• CEDAW Committee General Recommendation No. 19• ILO Convention 111 on Discrimination in Respect of Employment and Occupation	<p>The right to a healthy and safe working environment</p> <ul style="list-style-type: none">• Universal Declaration of Human Rights (UDHR), Articles 23 and 24• International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7• ILO Conventions 29 and 105 <p>The right to an effective remedy for the violation of fundamental human rights</p> <ul style="list-style-type: none">• International Covenant on Civil and Political Rights (ICCPR), Articles 2 and 14

What is sexual harassment? The U.S. Equal Employment Opportunity Commission has defined sexual harassment as follows: Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.¹³ Specific actions can include jokes and gestures; touching and other bodily contact such as grabbing a co-worker around the waist; repeated requests for dates that are turned down; unwanted flirting; and displaying sexually suggestive objects, pictures, or posters.¹⁴

However, **sexual harassment is not always recognised as such**. Many research studies on sexual harassment in the horticultural industry have found the occurrence of sexually harassing conduct (jokes, unwelcome touching etc.). However, when asked simply if they experienced harassment, women often reported that this was not an issue. This suggests that workers and managers may not realise that a right is being violated, as the nature of harassment is poorly understood.

How prevalent is sexual harassment? In addition to being hard to define or recognise, sexual harassment can also be a sensitive topic about which workers can feel uncomfortable and even ashamed discussing.¹⁵ This can also result in a lack of official figures on the prevalence of the issue.¹⁶ Nevertheless, a number of studies in the horticultural and flower sectors have included research into the occurrence of sexual harassment targeted at workers:

13 UN Women, *What is Sexual Harassment?* Available at: www.un.org/womenwatch/osagi/pdf/whatishh.pdf.

14 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, *Promoting Workers' Right in the African Horticulture: Labour Condition in The Ethiopian Horticulture Industry*, 2010, available at: www.women-ww.org/documents/Ethiopia-2010-action-research.pdf, p. 31.

15 Leipold, B. & Roels E., "The Impact of the Flower Industry on Kenya's Sustainable Development", *International Public Policy Review*, Vol. 7, No. 2, 2013, available at: www.ucl.ac.uk/ippr/journal/downloads/vol7no2/flowerindustry, p. 13.

16 Women Working Worldwide, *Promoting Womens' Voices From Around The Globe*, Spring 2013, available at: www.women-ww.org/documents/AAnewsletter%202013%20Final%20low%20res.pdf, p. 6.

- A 2013 report by International Public Policy Review on the impact of the flower industry on Kenya's sustainable development, found that seven out of twenty female workers on the farm in focus reported cases of abuse.¹⁷ Another survey conducted in Kenya between October and November 2012, confirmed that sexual harassment was an ongoing issue.¹⁸ Here, all 35 respondents surveyed had either had direct experience of being asked for sex in return for favours in the workplace, or knew someone who had been so asked.
- In Ethiopia, figures from different studies have shown a varying prevalence of sexual harassment of female workers. One 2012 study by Women Working Worldwide found that 24.62% of female Ethiopian horticulture workers had experienced sexual harassment.¹⁹ By contrast, another survey reported 91.25 % of the women workers interviewed as having experienced some form of sexual harassment.²⁰
- In a 2011 study by UWEA and Women Working Worldwide, 49.37% respondents stated that sexual harassment practices persisted on Ugandan farms.²¹
- Fewer figures could be found regarding sexual harassment in Tanzania and Zambia, though its prevalence has been confirmed in a number of reports.²² According to an article by Ethical Trade Initiative from 2010, a project co-ordinator at the Tanzanian Plantation and Agricultural Workers Union (TPAWU) said that, prior to the project being reported, "sexual harassment was rife – there were so many stories of women being hired in return for providing sexual favours to management and supervisors."²³

Why is sexual harassment so widespread on flower farms? One core reason is the high proportion of female workers in the flower sector.²⁴ Women largely occupy lower-paid positions in the sector, whilst management remains male-dominated.²⁵ War on Want also argues that the nature of the work on flower farms is also a factor: "women often work in very isolated conditions, in huge greenhouses where workers are spaced far apart and no one can hear or see what is happening."²⁶ A report on the Kenyan flower sector reported that over 55% of women in the country's cut-flower sector are single mothers with an average of three children.²⁷ Job insecurity, fear of reprisal and abuse of power may make women feel they have little choice but to tolerate sexual harassment.²⁸

What legal protections are there against sexual harassment? Sexual harassment constitutes a crime in Kenya, Tanzania, Zambia and Uganda.²⁹ However, Ethiopian law does not recognise sexual harassment as a criminal offence. The OECD report that "Sexual harassment is not criminalised under the Labour Code in Ethiopia, although the government reported in its latest response to CEDAW that it was 'ready to consider [criminalising sexual harassment] in the future after conducting research on the issues to identify the magnitude and nature of the problem'."³⁰

17 Leipold, B. & Roels E., 2013, (n.15), p. 13.

18 Women Working Worldwide, 2013, (n.16), p. 31.

19 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14) p. 6.

20 Women Working Worldwide, 2013, (n.16) p. 31.

21 UWEA in Collaboration with WWW, *Developing Strategies for Change for Workers in African horticulture - The case of Uganda*, 2011, available at: www.women-ww.org/documents/AAnewsletter%202013%20Final%20low%20res.pdf, p. 46.

22 For example, see Kunda Mutebele, *Cutflower report*, Nupaaw Zambia, Friedrich Ebert Stiftung, 28 April 2008, available at: www.fes-sambia.org/media/publications/Report_CUT_FLOWER_FINAL_FES_2.pdf, p. 6. See also; Ethical Trading Initiative, *A voice for Tanzanian women workers*, 1 June 2010, available at: <http://www.ethicaltrade.org/news-and-events/blog/julia-hawkins/a-voice-for-tanzanian-women-workers>.

23 *Ibid.*

24 Women Working Worldwide, *Promoting Women Workers' Rights in African Horticulture - Overview of research into conditions on horticulture farms in Kenya, Zambia, Tanzania and Uganda*, September 2007, available at: www.women-ww.org/documents/www_research_overview_final.pdf, p. 22.

25 *Ibid.*, p.18.

26 War on Want, *Growing Pains - The human cost of cut flowers in British supermarkets*, February 2007, available at: www.waron-want.org/attachments/Growing%20Pains.pdf, p. 9.

27 Kenya Human Rights Commission, *Wilting In Bloom- The Irony of Women Labour Rights in the Cut-flower Sector in Kenya*, 2012, available at: www.khrc.or.ke/component/docman/doc_download/48-wilting-in-bloom-the-irony-of-womens-labour-rights-in-the-cut-flower-sector-in-kenya.html, p. 53.

28 Women Working Worldwide, 2007, (n.24), p. 32.

29 Including: in Uganda, the Employment (Sexual Harassment) Regulations, 2012 (S.I. 2012 No. 15); in Kenya, The Sexual Offences Act No. 3 of 2006; in Tanzania, The Sexual Offences Special Provisions Act, 1998; and in Zambia, The Anti-Gender-Based Violence Act no.1 of 2011.

30 Gender Index: Ethiopia, available at: genderindex.org/country/ethiopia.

What is the impact of not having domestic laws on sexual harassment? The effect of the non-recognition of sexual harassment is that an affected worker has no right to report a complaint to the police or commence criminal proceedings against the perpetrator. Moreover, workplaces are not compelled to prevent or penalise harassment. Uganda's response to preventing such a gap in protection has been to enact the Employment Act of 2006, Section 7, which requires those employing over 25 people to adopt measures for the prevention of sexual harassment.³¹

However, although laws are often enacted to criminalise or prevent sexual harassment, a lack of procedural infrastructure can prevent these measures from being implemented in practice. Police stations may not have a gender desk or female officers. Women reporting harassment may even be further harassed or humiliated by the police themselves.³² Often, both authorities and victims do not have knowledge of the relevant laws.

What can farms do to tackle the issue of sexual harassment? Flower farms should have stringent policies and procedures for dealing with complaints of sexual harassment. Moreover to control the implementation of these procedures and protect/encourage workers that report abuse, flower farms should ensure that at least one member of the human resources management team is female, that Unions (where present) represent both genders, and that workers have access to a union to lodge complaints. Women Working Worldwide emphasises the importance of introducing more female senior employees to stop the reinforcement of male-dominated hierarchical structures on flower farms.³³

Unions and worker committees play an important role in preventing/dealing with harassment. Both workplaces and unions should have women or gender committees mainstreamed into the organisation's structure at branch, regional and national levels. Facilitating access for unions or enabling self-organisation, can be a key tool to achieving decent working conditions for women working in vulnerable employment situations. Branch Union and Women Workers Committees or Gender Committees should be provided with private offices and sufficient time to handle cases so as to give women the confidence that their complaints will be addressed.³⁴ All committees require adequate training on grievance handling mechanisms and procedures. Lastly, committees should actively encourage and protect workers who report abuse.³⁵

Case Study: Remote farms in Thika, Kenya

The Kenya Human Rights Commission (KHRC) undertook research on the national flower sector in 2011. Across 738 interviews with workers at 10 companies, they found that the unique set up of farms in the Thika area could have been a contributing factor to the prevalence of sexual harassment and rape encountered by women in the area. Most companies were located deep in coffee plantations and no transport or housing was provided to workers. As such, they had to seek accommodation in nearby suburbs and the long distances they had to walk to work made them isolated and vulnerable to sexual predators.³⁶

31 Kiwalabye, F., *Effects of Sexual Harassment at the workplace: a Ugandan Case Study*, Youth Crime Watch, Uganda/IgnatiusWorldwide Uganda, available at: www.svri.org/forum2011/EffectsHarassment.pdf.

32 Kithaka, A, Enforcement of the Sexual Offences Act in Kenya, Pambazuka News, 2008-08-05, Issue 392, available at: <http://www.pambazuka.org/en/category/letters/49923>.

33 Women Working Worldwide, 2007, (n.24), p. 14.

34 Women Working Worldwide, 2013 (n.16), p. 31.

35 Leipold, B. & Roels E., 2013, (n.15) p. 13.

36 Kenya Human Rights Commission, 2012, (n.27), p. 53.

Case Study: Female Managers at Maridadi, Naivasha, Kenya

According to a report by People Planet Profit, Jack Kneppers, Director and Owner of Maridadi Flowers, employs only female managers in departments where men and women work together.³⁷ He explained: "At one point I discovered that a young woman, a good worker, was suffering from depression because she was constantly being harassed by her boss for sex. So I fired him. People who mess about aren't welcome. That's the message."

Further Gender dynamics

As the flower industry predominantly employs women, it is necessary to pay particular attention to other gender-specific issues, in addition to sexual harassment. Maternity leave, and other female-related health issues such as the menstrual cycle and pregnancy, can all lead to women experiencing difficulties in the work environment.

Key sources of relevant human rights

- | | |
|--|--|
| <ul style="list-style-type: none">• UDHR, Articles 23 and 24• ICESCR, Article 7• CEDAW | <ul style="list-style-type: none">• ILO Occupational Safety and Health Convention No. 155• African Charter on Human and Peoples' Rights (ACHPR), Articles 28 and 15 |
|--|--|

Lack of gender equality in recruitment for senior positions pervades the East African flower sector.

In a 2011 study, the Uganda Workers' Education Association found that whilst women formed up to 80% of workers on flower farms in East Africa, hardly any held senior management positions.³⁸ Women Working Worldwide has also reported that women are mostly concentrated in lower paid jobs such as harvesting, sorting, grading, tending flowers, propagation and cleaning flower beds, while men tend to occupy the managerial and supervisory levels. A WWW report on Uganda stated that, while 61% of the total workforce at 12 farms interviewed was composed of women, only 8.16% of them held senior management positions.³⁹

Lack of gender parity in power relations with employers is also a dominant characteristic of the flower sector. Whilst cultural norms can in any case often mean that women have less political power than men, many women working on flower farms are single mothers with much at stake if they assert their rights and lose their job as a result.⁴⁰

Female workers can be given low allowances, unpaid leave, or even no access to maternity leave at all. Observance of international standards on maternity leave in all countries in which GHOWERN operates seems to have improved, though some provisions under ILO Convention No. 183 of 2000 are still not effectively adhered to. For example, pregnant women are often not given rest time (except in Tanzania), nor are they transferred to less risky workplaces or given lighter duties. As such, some pregnant workers may be expected to conduct the same kind of labour as other workers.⁴¹ Even on farms that do try to provide for expectant or new mothers, conditions can be hard. For example, the time given for breastfeeding breaks by farms is often very short. Women in one Ugandan study reported that the time

37 Hivos, *Fair Flowers - The Journey of the rose*, People Planet Profit, Special 2013, available at: www.p-plus.nl/resources/article-files/PHIVOSroses.pdf.

38 Uganda Workers' Education Association (UWEA), "We are dying"- Impacts of Pesticides on Workers on Ugandan Horticultural Farms, FIAN Germany, January 2011, p. 10.

39 Women Working Worldwide, *Promoting Women Workers' Rights in African Horticulture - The Case of Uganda*, Executive Summary, 2011, available at: <http://women-ww.org/documents/Uganda-executive-summary-final.pdf>, p. 7.

40 War on Want, *Zambian Flower workers*, available at: www.waronwant.org/overseas-work/sweatshops-and-plantations/zambian-flower-workers.

41 *Ibid.*

allotted for breastfeeding was insufficient to walk from the workstation to the crèche and back. In the same study, women reported that if they used their lunch hours to go home to feed their children and returned late they were sent home and lost a day's pay.⁴² Women can also encounter workplace problems related to the menstrual cycle, particularly where no toilet facilities are provided.

What are the figures on maternity leave at the flower farms? In one study in Tanzania, maternity leave of 84 days was granted once every three years on some farms for permanent workers. This does not meet legal requirements.⁴³ In Kenya, most farms do seem to provide permanent workers with maternity leave, though studies have noted workers being dismissed upon becoming pregnant or seeking to take maternity leave.⁴⁴ WWWW's 2011 report on Uganda found that most employers (64.08%) did comply with the legal requirement to provide 60 days of maternity leave (excluding weekends and public holidays). However, it was also reported that 19.45% of employers only provided maternity leave for 1-2 months.⁴⁵ In an Ethiopian union platform report, only 41% of the workers interviewed were entitled to paid maternity leave; 23% were entitled to unpaid maternity leave; and 15% reported that they were not entitled to any leave at all.⁴⁶

What can flower farms do to respect women's rights? Flower farms should abide by domestic labour laws or international best practice relating to maternity leave – whichever is higher. Paying attention to certain needs, such as providing restrooms and restroom breaks for women, granting pregnant women adequate rest time, and allocating less strenuous work in non-hazardous areas to pregnant women are crucial to respecting women's rights. Farms could also decide to pay women a full day if they take time off for breast-feeding, or require shorter working days due to breastfeeding needs. Pregnancy testing for women job seekers should never be tolerated. Lastly, promoting women to senior management levels and supporting women workers' committees can shift dynamics in favour of equality and ensure that relevant issues are identified before they become problematic.

Case Study: Discriminatory practices, Uganda

A study undertaken by the UWEA on 12 farms (11 flower farms and one fruit and vegetable farm) found a huge disparity between male and female pay. Shortly before leaving her job, one female manager reported: *"I cannot make any decision here unless I seek permission from either the General Manager or Managing Director."* This manager, who had earned a salary of 300,000 Ugandan shillings, was succeeded by a male Human Resources Manager who was paid a salary of close to 1,500,000 Ugandan Shillings. UWEA commented, "Whatever the reason, this practice demonstrated an unfair social practice that discriminated against women and which should be discouraged."⁴⁷

Health and Safety conditions at work

Working on flower farms can put workers' health at risk. In addition to complications due to repetitive physical actions such as cutting, or physical exertion such as bending, workers run the risk of exposure to pesticides used in the farming process.

42 Evers et al., 2014, (n.7). p. 31.

43 USAID, "Tanzania – Laws Regarding Gender, Reproductive Health and Family Planning", 2 July 2009, available at: www.esdproj.org/site/DocServer/TANZANIA_-_Legal_Summary.pdf?docID=3759.

44 Women Working Worldwide, 2007, (n.24), p. 16.

45 Women Working Worldwide, 2011 (n.39).

46 National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14). 6.

47 UWEA in Collaboration with WWWW, *Developing Strategies for Change for Workers in African horticulture - The case of Uganda*, 2011, available at: www.women-ww.org/documents/UWEA-final-research-report.pdf, p. 14.

Key sources of relevant human rights

The right to health

- UDHR, Article 25
- ICESCR, Article 12
- , Convention on the rights of the Child (CRC), Article 14
- ACHPR, Article 16
- CESCR General Comment No. 14
- Committee on the Rights of the Child General Comment No. 15

The right to enjoy just and favourable conditions of work

- UDHR, Articles 23 and 24
- ICESCR, Article 7
- ACHPR, Article 15
- ILO Occupational Safety and Health Convention No. 155/ETI Base Code Para 3

The Right to Water and Sanitation

- UDHR, Article 25
- ICESCR, Article 11
- CESCR General Comment 15
- Human Rights Council Resolution A/HRC/RES/15/9

What are the main threats to the health and safety of flower farm workers? One of the most frequently cited concerns of flower farmer workers regarding health and safety is the impact of pesticides on both their own and their communities' health. Constant, unprotected exposure to certain chemicals can result in grave long-term health problems, including respiratory problems and eye damage, whilst for pregnant women, certain chemicals can induce miscarriage. Other health problems stem from the arduous nature of the work – body and back pain from bending, crouching or standing for several hours a day or repetitive strain injuries.⁴⁸ Failing to provide certain necessary provisions, such as clean water, toilet facilities, or adequate shade, can also harm workers.⁴⁹

What are the specific impacts of pesticides on health? Different reports cite different impacts. These include headaches and dizziness, eye irritation, chest discomfort, skin irritation, allergies, respiratory problems and chronic asthma. In 2007, War on Want reported that “according to the Colombian National Institute of Health, women on flower farms experience higher-than-average rates of miscarriages, premature births and congenital malformations.”⁵⁰ A study undertaken in Kenya and Ethiopia in 2011 indicated that more than 59% of interviewees showed signs of mild pesticide poisoning, including chest discomfort and skin irritation.⁵¹ Those specifically employed to spray chemicals are at greater risk or more serious repercussions. Whilst these workers generally wear protective gear, this can sometimes be outdated or worn-down. However, unless employed on organic farms, all workers are at risk of pesticide exposure to some degree, as flower-growing is chemically intensive.⁵²

48 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14) p. 33.

49 Gudeta, D. T., Teherani-Kronner, Dr. P., *Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia*, University of Gent, 2011-2012, available at: lib.ugent.be/fulltxt/RUG01/001/894/550/RUG01-001894550_2012_0001_AC.pdf, p. 37.

50 War on Want, 2007 (n.26) p. 2.

51 Uganda Workers' Education Association (UWEA), 2011, (n.38), p. 8.

52 Evers et al., 2014, (n.7). p. 29.

Infobox: Potentially harmful pesticides commonly used in flower growing

Source: National Association of Professional Environmentalists, *The Impacts of the Flower Industry on Environment and Peoples Livelihoods in Uganda*, June 2012,

Common name	Active ingredients	Hazard
Amonium-Phosphole	Sec-butyl ammonium phosphate.	Toxic to humans, including carcinogenicity, reproductive and developmental toxicity, neurotoxicity, and acute toxicity.
Dyname	m-Xylylenediamine 1,3-Bis (aminomethyl) benzene	Corrosive. Causes eye and skin burns. Harmful if inhaled. May be harmful if swallowed or absorbed through the skin. May cause severe respiratory tract irritation with possible burns. May cause severe digestive tract irritation with possible burns. Exposure Routes: inhalation, skin absorption, ingestion, skin and/or eye contact.
Folio Gold	Metalaxyl-M and Chlorothalonil	Harmful by inhalation. Irritating to eyes, respiratory system and skin. May cause sensitisation by skin contact. Limited evidence of a carcinogenic effect. Very toxic to aquatic organisms, may cause long-term adverse effects in the aquatic environment.
Impulse	Chlorpyrifos or Dursban	Potential for both acute toxicity at larger amounts and neurological effects in fetuses and children even at very small amounts. For acute effects, chlorpyrifos classified as being moderately toxic. Highly toxic to amphibians. Very toxic for aquaculture.

Why are such a variety and intensity of pesticides used in floriculture? Pesticides control fungi, bacteria and other pests. There are a number of reasons why it is considered necessary to use pesticides, be it in high or low doses, in floriculture. Pesticides ensure that flowers can grow to a commercial standard without falling prey to parasites, which can occasion unsightly phenomena such as mildew, black spots and holes in leaves. Flowers lose their value if they are not attractive. Western consumers are accustomed to buying perfect-seeming flower stems, and producers seek to meet this demand.⁵³ Anti-pesticide pressure has been successfully exerted on a large number of fruit and vegetable providers, and this has filtered back to growers. However, fruits and vegetables are consumed goods, and a large part of this movement has stemmed from consumers' personal health concerns, rather than concern for those working for suppliers. To a large extent, therefore, the flower industry has escaped much of the anti-pesticide pressure that has begun to reform fruit and vegetable farming.⁵⁴

Another key factor is that flowers are often grown in countries where there is little or poor pesticide regulation and enforcement. Where strong, effective, but dangerous chemicals are legal, they can be used to very effectively and cheaply control pests. Moreover, when their health impacts are poorly understood, there is little incentive to stop using them. DDT, for example, has still not been banned in Ugandan

⁵³ War on Want, 2007 (n.26) p. 6.

⁵⁴ *Ibid.*

horticulture despite its widespread prohibition elsewhere in the world. Moreover, methyl bromide and endosulfan also continue to be used on some farms, despite being banned in many industrialised countries⁵⁵ and prohibited by international conventions.

Why don't farms provide protective gear for workers? Farms usually do provide personal protective equipment (PPE) for workers. However, the PPE provided by farms may not always be of the right quantity or quality needed to avert risk. Inadequate or worn-out boots, gloves and face-masks render workers vulnerable to chemical penetration through the skin and physical injury from thorns and nails. Sometimes workers report not wearing the PPE that they have been provided due to it being too uncomfortable, too old, dirty or the incorrect size.⁵⁶ Workers should always therefore be well trained in how to use PPE and why. However, protective gear itself is often not enough. Certain chemicals require windows of, for example, 24 hours between spraying and re-entering greenhouses. At busy times of year, such as during the lead up to Valentines Day, studies have found that these windows are less likely to be respected, as production is intensified to meet high orders.

What are the physical impacts of strenuous work? Flower farm workers can suffer from aches, joint problems and injuries to the spinal cord as a result of the work postures they may need to adopt. This includes crouching to cut flowers, and bending and standing for long periods. They may need to perform repetitive tasks such as cutting or trimming, leading to repetitive strain injuries. One Ethiopian flower farm study found that 93% of workers were required to stay in one position throughout the day, leading to varicose veins and back pain.⁵⁷

What can farms do to ensure the health and safety of their workers? Farms should carry out a risk assessment and take the necessary steps to protect workers from risk of harm. For example, flower farms should not use pesticides that are restricted in certain countries or conventions, regardless of whether they are technically legal in-country. Timeframes dictated by specific chemicals should always be observed, for example leaving 24 hours between spraying and re-entering greenhouses, and adequate PPE and training on its use should always be provided.⁵⁸ Workers' should be well educated about how certain tools can impact on their health and safety.

This is an area within which Western importers and supermarkets have substantial leverage. If flower farms cannot export products that have been treated with certain chemicals due to supermarket or importer requirements, they will be forced to align their practices. Many supermarkets request internationally recognised standards from their suppliers, including Fairtrade, Rainforest Alliance or Global Gap, in addition to their own auditing standards. Supermarkets and importers should always ensure that they support farms to realise these standards, and pay a purchasing price that reflects the increased costs farms face when implementing higher standards.

Case Study: Good practices from flower farms in Uganda

Field research was conducted by IPIS in 2013 at three flower farms around the Entebbe area. All three farms had health clinics. One of these was considered exceptional in offering affordable services to the surrounding area. For example, the clinic delivered an average of two babies a week at cost price. Two of the farms offered crèches for young children, where mothers could breastfeed during their breaks.

55 Pat, T., *Behind the Label: cut flowers*, The Ecologist, 18 August 2009, available at: www.theecologist.org/green_green_living/behind_the_label/302429/behind_the_label_cut_flowers.html.

56 Women Working Worldwide, "Poor conditions for women working in African horticulture", African horticulture Pesticides News 80, June 2008, available at: www.pan-uk.org/pestnews/Issue/pn80/pn80p20-22.pdf, p. 20.

57 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14), p. 33.

58 Gudeta, D. T., Teherani-Kronner, P., *Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia*, University of Gent, 2011-2012, available at: lib.ugent.be/fulltxt/RUG01/001/894/550/RUG01-001894550_2012_0001_AC.pdf, p. 30.

The environment

The flower industry can adversely impact both its immediate and the wider environment. Such environmental damage largely stems from the use of pesticides and fertilisers, high levels of water consumption, and the impact of air freighting flowers to international markets.

Key sources of relevant human rights

- | | |
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| <ul style="list-style-type: none">• ACHPR, Article 24• UN Draft Declaration of Principles on Human Rights and the Environment (1994)• Human Rights Council Resolutions 19/10 and 25/21 on Human Rights and the Environment | <ul style="list-style-type: none">• UN Secretary-General Report on the Relationship Between Human Rights and the Environment (2005)• Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, (1998) (The Aarhus Convention) |
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How do flower farms impact on the environment? Because flower growing is a water intensive process, it can put a strain on local water resources.⁵⁹ The need to grow flowers to very specific aesthetic standards means that they also tend to be treated with many pesticides and fertilisers, in order to prevent aesthetic damage. Such repeated and intensive chemical treatment can lead to chemical changes in and even poisoning of, the water, soil and air in the immediate environment. This can likewise prove damaging to local ecology, such as bees.⁶⁰ Environmentally sensitive or even protected areas, such as wetlands can often provide fertile ground for flower farming due to the ideal growth conditions they have cultivated. Moreover, the establishment and expansion of flower farms can often attract migration to the vicinity of the farm to meet labour needs. If not managed properly such migration can have significant environmental consequences. For example, poor waste and sanitation infrastructure can see pollution of local habitats of a scale capable of affecting human health.⁶¹ On the other hand, East Africa's temperate climate has also seen it compared favourably over flower production in Europe regarding environmental footprint, even despite the carbon emissions occasioned by the need to airfreight African goods to western consumer markets.⁶²

Why does growing flowers industrially contaminate water resources? Industrial flower-growing doesn't necessarily have to entail water contamination. Some farms adopt organic standards, or manage their water very carefully. However, these measures are often perceived as expensive (though in reality, careful water management may save costs), and fully organic industrial flower farming is relatively rare. Most farms opt for the cheaper, more economically predictable model of managing flowers with pesticides. However, these pesticides can often run off into the ground and contaminate local water resources. Indeed, when pesticides are sprayed, their mist or vapour can be transported by air, especially on windy days, which if spraying near open water, poses serious risks of contamination. Sometimes carelessness or accidents cause pesticides to leach into the soil. This can be occasioned by spillage when mixing or loading machines, leakage from containers, poor disposal facilities, and rinsing or washing spray equipment.⁶³ Managing such risks can be challenging, even where the will is present. For example, in one study, cuttings producers reported long government delays in approving more environmentally friendly bio-chemicals that are currently used in Kenya but not yet Uganda.⁶⁴

⁵⁹ Pat, 2009 (n.55).

⁶⁰ NAPE, *The Impacts of the Flower Industry on Environment and Peoples Livelihoods in Uganda*, June 2012, available at: nape.or.ug/what-is-the-flower-industry-doing-to-the-people-and-the-environment-of-uganda/, p. 26.

⁶¹ Pat, 2009 (n.55).

⁶² Leipold, B. & Roels E., 2013, (n.15), p. 7.

⁶³ Jamieson, A., Pesticide Contamination of Farm Water Supplies, OMAFRA Factsheet, December 2010, (www.omafra.gov.on.ca/english/engineer/facts/10-097.htm).

⁶⁴ Evers et al., 2014, (n.7), p.19.

Why is protecting local ecosystems, particularly bees, so important? Bees are a vital part of our earth's ecosystem and reduction in their populations can have dramatic knock on effects. The South African National Biodiversity Institute explains that "animal pollination is required for approximately one third of human food consumed on the planet (many fruits and vegetables), and for the production of many fodder, seed, flower and oilseed crops... Honeybees are a pivotal species in Africa as the most important generalist pollinator on the continent."⁶⁵ A decline in bee populations can therefore lead to reduced pollination, thereby affecting biodiversity and food security (e.g. due to lower yields in farmers' crops in the surrounding area).⁶⁶ Even where pesticides have low acute toxicity, population-level effects on honeybees can still occur. For example, certain pesticides interfere with honeybee reproduction, their ability to navigate and their temperature regulation, any of which can have an effect on the long-term survival of honeybee colonies.⁶⁷

Infobox: The Human Right to Water

Although no international treaty codifies the human right to water, it has nevertheless been recognised at the highest level. In July 2010, the United Nations General Assembly passed Resolution 64/292 on the Right to Water and Sanitation, officially acknowledging it as a human right. This right had already been elucidated in 2002, when the Committee on Economic, Social and Cultural Rights adopted **General Comment No. 15 on the Right to Water**, stating:

"The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights".⁶⁸

Water is integral to both a healthy environment and human dignity. Given the centrality of water to meeting the most basic human needs and also its scarcity in many areas of East Africa, many question the morality of its intensive use in the production of an inedible luxury crop, instead of for the irrigation of food crops, drinking water or sanitation.

In a 2007 report, War on Want quoted the head of the Kenyan Water Authority in stating:

"The flower companies are exporting our water... A flower is 90% water. We are one of the driest countries in the world and we are exporting water to one of the wettest."⁶⁹

Others have argued that, provided flower farms source and recycle water responsibly, the benefits of providing local employment outweigh the costs of such water strain. However, issues such as water pollution and therefore reduced water quality; the blocking of access to water resources by farms; and the impact of farms on driving up water costs for local users, regardless remain serious issues that have to be dealt with.

How does environmental damage effect human rights? Contamination of air, soil and water often leads to people suffering ill health or disease, thus infringing upon the right to health. Indeed, contaminated soil and water can occasion food and drink contamination. Moreover, other rights such as the rights to work and to food and water can be infringed upon by environmental damage where, for example, pollution impedes the ability of fishermen to continue practicing their livelihoods and sustaining their communities.

65 South African National Biodiversity Institute, *Global Pollination Project and Honeybee Forage Project Results*, Accessed 12 March 2015,, available at: www.sanbi.org/biodiversity-science/state-biodiversity/applied-biodiversity-research/global-pollination-honeybee-fo.

66 Women Working Worldwide, 2008, (n.57), p. 3.

67 PAN, Pesticides Database – Chemicals, available at: www.pesticideinfo.org/Detail_Chemical.jsp?Rec_Id=PC35080.

68 UN Department of Economic and Social Affairs, The human right to water and sanitation, available at: www.un.org/waterforlifedecade/human_right_to_water.shtml.

69 War on Want, 2007 (n.26), p. 5.

How can flower farms better safeguard the environment? Farms can meet international standards and best practices to ensure that they are responsible environmental citizens. This may mean going over and above local environmental regulations and expectations. Steps to meet best practices include proper waste management, recycling water, using ecologically friendly pesticides, ensuring that pesticides are applied no more than necessary, ensuring pesticides are properly disposed of, and setting farms up a safe distance from water resources. It should be noted that some farms do go out of their way to safeguard their surrounding environment: according to a 2013 report on Kenyan flower farms, 10 out of 11 farms interviewed claimed that they engaged in tree planting and/or preserving forests in the surrounding areas.⁷⁰

Case Study: Good practices from Bilashaka Flowers, Naivsha, Kenya

According to a 2013 report by People Planet Profit, Bilashaka Flowers in Kenya has been using solar panels to warm the water which is pumped to heat their greenhouses during the night. These measures reduce the need for pesticides as the heat keeps fungus at bay. Rainwater is also collected in large basins and used water is recycled. These measures are particularly important in the vulnerable area around Lake Naivasha, the country's largest fresh water resource. Lake Naivasha has been under immense strain and has greatly reduced in size over previous decades.⁷¹

Case Study: Ugandan wetlands under stress from flower farms

Lutembe bay on Lake Victoria, Uganda, is a Ramsar Site – protected by the Ramsar Convention, an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. However, the area's productivity has reduced dramatically in recent years, and now fishermen are often unable to catch the types of fish upon which they have based their livelihood. A number of flower companies operate in the area, one of which – Rosebud – has been criticised in numerous local media reports for pollution and extending its operations too close to the lake. Investigations by Uganda's Environmental Authority and Rosebud itself were ongoing at time of writing.⁷²

Regular employment

Many flower farms hire at least some of their workers on temporary or casual contracts. Whilst there appears to be a downward trend in the proportion of farm workers employed on such a basis, un-contracted workers remain an extremely vulnerable group amongst flower farm workers.

Key sources of relevant human rights

- | | |
|---|--|
| <ul style="list-style-type: none"> • UDHR, Articles 23 and 24 • ICESCR, Article 7 | <ul style="list-style-type: none"> • ILO Employment Relationship Recommendation No. 198 • ILO Declaration on Fundamental Principles and Rights at Work |
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⁷⁰ Leipold, B. & Roels E., 2013, (n.15), p. 20.

⁷¹ Hivos, *Fair Flowers - The Journey of the rose*, People Planet Profit, Special 2013, available at: www.p-plus.nl/resources/article-files/PHIVOSroses.pdf, p. 5.

⁷² New Vision, *Flower farms drive fish away from Lutembe*, 23 April 2015, available at: www.newvision.co.ug/news/641936-flower-farms-drive-fish-away-from-lutembe.html.

What does regular employment mean? Regular employment means that workers are provided with a legally recognised employment relationship and that every effort is made to ensure that employment is continuous. Under provision 8 of the Ethical Trading Initiative “to every extent possible work performed must be on the basis of a recognised employment relationship established through national law and practice”.⁷³ Non-regular employment includes working on short-term contracts or with no contract at all – situations in which the workers cannot know or guarantee the continuity of their employment, leaving them in a situation of employment insecurity.

What are the figures on regular and non-regular employment? In 2007, Women Working Worldwide conducted in depth research on this issue at horticulture farms. In their sample, they found that:

Interventions in the form of codes of conduct in Kenya and Tanzania and enactment of tougher legislative control in Tanzania have led to the conversion of many workers onto permanent contracts. In Tanzania for example, the use of casual labour has reduced significantly. During the 1990s the use of casual labour averaged at around 85.8%, it is now thought to make up between 20-40% of the workforce depending on the time of year. In Kenya all of the large companies have eliminated the use of casual workers. However, in Uganda and Zambia, the problem remains serious. In Uganda 50% of respondents were temporary employees with a further 17% on contract employment. Only 33% of respondents were permanently employed. Lack of access to the farm has made it hard to ascertain a figure for the industry as a whole. In Zambia 48% of workers were casual and a further 26% were seasonal employees.⁷⁴

2011 research by UWEA found that casual labour in Uganda at that time hovered at around 24%.⁷⁵ The National Federation of Farm, Plantation, Fishery and Agro-Industry Trade Unions of Ethiopia reported that the majority of workers on flower farms covered by the federation in 2010 were employed as daily labourers or as fixed-term employees. Managers claimed that this was due to the seasonality of production.⁷⁶

Why do employers refrain from giving workers contracts? The flower market can be unpredictable and subject to notable seasonal variation.⁷⁷ Many farmers claim that in order to maintain continuous profitability it is necessary to employ a core set of permanent workers, leaving the remainder of their workforce on flexible contracts. This both affords farmers flexibility and ensures that they are not hiring over and above needs. Moreover, it also allows farmers to avoid the additional expense associated with the provision of social or health benefit entitlements bestowed on those in regular employment under national law.⁷⁸ Some farms do seek to ensure that they keep flexible contracts at low levels. However, IPIS’ research found that even where this is the case, workers on flexible contracts may only be told that they will be rehired the day before their short-term contract ends. This causes unnecessary uncertainty for workers. In other cases the spirit of national labour laws can be circumvented by, for example, employing workers continually on one-month contracts until it becomes illegal to do so, and then refusing to reemploy the worker for three months until it is once again possible to hire the worker on a series of one month contracts. IPIS talked with one woman on a Ugandan flower farm who had been employed in this manner for six years. In worst cases, farms simply offer no contracts at all.

What impact does non-regular employment have on workers? Short or non-existent contracts prevent workers from being able to engage in financial planning, contributing to their entrapment in a poverty trap. Indeed, without being able to invest, pay for rent in advance or pay for food in bulk, workers cannot enjoy economies of scale, living only hand to mouth. Non-permanent workers are also generally denied benefits, such as paid sick leave, maternity leave, allowances for funeral grants, housing, transport, pension contributions and health care.⁷⁹

73 Ethical Trading Initiative, Regular employment is provided, accessed on 5 August 2014, available at: www.ethicaltrade.org/eti-base-code/regular-employment.

74 Women Working Worldwide, 2007 (n.24), p. 15

75 Evers et al., 2014, (n.7). p. 13.

76 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14), p. 5

77 Taylor, B., Labour Patterns in Export Floriculture: The Case of the Ethiopian Flower Industry, School of International Development, University of East Anglia, Norwich, Prepared for the “Working for Export Markets: Labour and Livelihoods in Global Production Networks” conference, 1-2 July 2010, (www.academia.edu/342666/Labour_Patterns_in_Export_Floriculture_The_Case_of_the_Ethiopian_Flower_Industry) p. 10

78 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14) p. 5.

79 SOAS, Fairtrade, *Employment and Poverty Reduction in Ethiopia and Uganda*, April 2014, (ftepr.org/wp-content/uploads/FTEPR-Final-Report-19-May-2014-FINAL.pdf), p. 87.

What can flower farms do to meet their responsibility to offer regular employment to their workers? Very few farms will ever offer permanent contracts to all of their workers, due to the seasonality of demand for flowers. However farms should always ensure that they permanently hire a high and justifiable level of core workers, and offer all workers the social benefits that they have a right to according to national law and international best practice. Farms should also sharply question whether they are obeying the spirit of national law, or seeking to exploit it by continually hiring temporary workers. Lastly, female workers should not bear the brunt of temporary work, as they often do.

Case Study: Casual labour on Kenyan flower farms

The Kenya Human Rights Commission (KHRC) undertook a study on Kenya's cut flower sector in 2012, interviewing 738 workers. This qualitative survey found workers on a number of farms to be employed as 'short-term employees', but also found that there was often a policy of automatically transitioning these workers onto permanent contracts. Nevertheless, workers at some companies were found to have worked for over three years as casual labourers without benefits such as leave. One farm offered no contracts whatsoever; another did not issue long-serving monthly paid workers with payslips and did not pay workers for overtime worked.⁸⁰

Right to a living wage

A frequent complaint on the part of flower farm workers is that their wages are not enough to live on. This can sometimes be due to flower farms paying under the national minimum wage. However, even when the national minimum wage is met, it can sometimes be set so low that it fails to meet a worker's basic subsistence costs. Sub-living wages impact on a whole host of other rights.

Key sources of relevant human rights

- | | |
|---|--|
| <ul style="list-style-type: none"> • UDHR, Articles 23 and 24 • ICESCR, Article 7 | <ul style="list-style-type: none"> • ILO C131 – Minimum Wage Fixing Convention (1970) |
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How much do people working in the flower industry get paid? A 2013 study on living wages by Women Working Worldwide surveyed workers' monthly wages in comparison to their estimated monthly expenses for basic needs. These were as follows:⁸¹

Kenya⁸²

- Lowest monthly wage – 3,800 KES, plus 2,000 KES for housing allowance (approx. 59USD)
- Highest monthly wage – 7,200 KES, plus 2,000 KES for housing allowance (approx. 94USD)
- Estimated monthly expenses for basic needs – 21,545 shillings (approx. 220USD)

Uganda⁸³

- Monthly wages – 82,000 – 150,000 UGX (approx. 33-60USD)
- Estimated monthly expenses for basic needs – 110,000 - 720,000 UGX (approx. 44-228USD)

80 *Op.cit.* Kenya Human Rights Commission, 2012, (n.27), p. 59.

81 Women Working Worldwide, Achieving a Living Wage for African Flower Workers, Spring 2013, available at: www.women-ww.org/documents/livingWage.pdf, p. 3. Note: these included expenses on housing, services such as water and electricity, food, transport, education and medical costs, except in the case of Ethiopia (see below).

82 In Kenyan shillings.

83 In Ugandan shillings.

Tanzania⁸⁴

- Monthly wages – 70,000 - 140 000 TZS (approx. 42-84USD)
- Estimated monthly expenses for basic needs – 70,000 - 170,000 TZS (approx. 42-102USD)

Ethiopia⁸⁵

- Monthly wages – 488-800 ETB (approx. 38-46USD)
- Estimated monthly expenses for basic needs – 750-960 ETB (approx. 43- 55USD)

According to a 2008 report on **Zambia** the highest daily rate was ZMK 10,000 (USD 2.50) and the lowest was ZMK 7,000 (USD 1.80). The workers interviewed in this study stated that this was not enough to cover expenses for basic needs.⁸⁶

Are these salaries below the legal minimum? In Tanzania, the minimum wage for the agricultural sector was increased in mid-2013 to 100,000 TZS per month.⁸⁷ Kenya's minimum wage rate depends on location, age and skill level: the lowest urban minimum wage is 7,578 KES per month, and the lowest agricultural minimum wage for unskilled employees is 2,536 KES per month, excluding housing allowance.⁸⁸ Uganda's current minimum wage law was adopted in 1984 at 6,000 UGX per month; being over 30 years old, this standard is clearly in need of review.⁸⁹ Ethiopia has no set minimum wage.⁹⁰ In Zambia, the minimum wage for workers has generally been 700,000 ZMK per month since mid-2012.⁹¹ Some wages recorded in 2013 therefore appear to be below current minimum wage levels, though even where the minimum wage is met it may not constitute a living wage.

What is the difference between a minimum wage and a living wage? A number of factors are taken into account when a government sets a minimum wage. These include considerations regarding the welfare of those receiving it, what the economy can support, what influential businesses expect, what countries think will attract foreign investors, and so on. Governments can often set a minimum wage below a living wage to help domestic businesses flourish, and to attract foreign investment. By contrast, a living wage is calculated at the level of the individual and their dependants: what that individual needs to ensure that they and their dependants are sheltered, clothed, fed, can maintain their health and education, and have a discretionary amount left over to help them save for covering unforeseen costs.⁹² According to the living wage methodology commissioned by Fairtrade International, costs are estimated based on three "baskets": nutritious food, decent housing, and other essential needs.⁹³

What is the impact of earning under a living wage? Not having enough money to live affects the underlying conditions necessary to enjoy a range of fundamental rights, such as the right to food, housing and health. This is particularly so where the State lacks the necessary resources to provide a welfare safety net for those who are financially vulnerable. Women Working Worldwide have found that in all countries it has surveyed workers who do not earn a living wage are forced to restrict the amount or quality of food they consume. In Uganda and Ethiopia some workers interviewed were surviving on only two meals a day, normally consisting of maize, cassava, beans and other staple foods. Other workers tried to make ends meet by living in poor quality and overcrowded housing, not buying essential items such as clothing and proper medicines, using credit provided by local shops, or taking loans from family or local

84 In Tanzanian shillings.

85 In Ethiopian Birr. These expenses included costs for food and rent only.

86 KundaMutebele Friedrich Ebert Stiftung, *Cutflower report*, Nupaaw Zambia, 28 April 2008, available at: www.fes-sambia.org/media/publications/Report_CUT_FLOWER_FINAL_FES_2.pdf, p. 4.

87 Africa Pay, *Tanzania*, Accessed 18 April 2015 available at: www.africapay.org/tanzania/home/salary/minimum-wages.

88 Minimum-Wage.org, Kenya Minimum Wage, accessed on 5 August 2014, available at: www.minimum-wage.org/international/en/Kenya.

89 Sekanjeko, H., Uganda to have a minimum wage by July 2015, New Vision, 9 June 2014, available at: www.newvision.co.ug/news/656406-uganda-to-have-a-minimum-wage-by-july-2015.html.

90 The Reporter, *Ethiopia: Minimum Wage Across the Board*, 8 November 2014, available at: allafrica.com/stories/201411100627.html.

91 The Government of Zambia, *The Minimum Wages and Conditions of Employment Act*, 6 July 2012, (Laws, Volume 15, Cap. 276).

92 Women Working Worldwide, 2013 (n.16), p. 2.

93 Fairtrade International, *Journey Towards a Living Wage*, 14 April 2014, available at: www.fairtrade.net/single-view+M5e-839c395a1.html.

lenders.⁹⁴ The need to constantly borrow pulls workers into a poverty trap, from which it can be hard to escape or ever build a better quality of life.

Why is the issue of living wages particularly relevant to women? The flower sector employs a high number of single mothers who generally have more dependents than single men. As such, these women need to meet not only their own needs but also those of their dependents. Indeed, it is common for women workers in particular to be engaged in petty trade to supplement their incomes so that they can pay school fees and cover debts.⁹⁵

What can flower farms and supermarkets do to offer a living wage? Flower farms should review the wage that the sector pays as an industry and engage in industry level bargaining to collectively negotiate living wages in the horticulture and floriculture sector. Flower farms often argue that they cannot be profitable unless they pay low wages. However, it is not clear that this is always the case, and there is an urgent need for flower purchasers to assess whether their purchasing practice are price-squeezing farms, who in turn pass lower margins onto workers. Western retailers can take some of the burden of the unpredictability of the industry upon themselves. For example, supermarket buying practices (i.e. predictability of orders, last minute cancellations, and high volumes of rejections) are a major barrier to the payment of living wages by flower farms.⁹⁶ Flower purchasers and farms should therefore require greater transparency on price calculations, which would help farms in their price negotiations with buyers. This would include information on pricing, calculations of risk, losses, income, volume orders and costs of rejections and non-payments by buyers.⁹⁷ It is also essential that workers be allowed to adequately organise, forming unions and worker groups, so that they can adequately articulate and show what they need as a basic living wage.

Case Study: Flower farm workers protest against working conditions, Ruiru, Kenya

In May 2014, *The Star* newspaper (Nairobi) reported a 600-person strike over poor working conditions and low wages at Red Land Roses in Ruiru. Workers reported that they were protesting because most of them were paid only 6300 KES a month (68 USD) a month and had to commute such a long distance that they required travel allowance, which was not provided for.⁹⁸

Freedom of association

Freedom of association in flower farms can be violated both directly and indirectly. Many farms state that they allow or even encourage unionisation, yet may discriminate against unionised employees. Some openly refuse to allow workers to unionise. Unionisation is a fundamental right of flower workers precisely because it allows them to defend their other right by facilitating their ability to negotiate fair wages and benefits, receive backup, and learn about their rights.

Key sources of relevant human rights

- | | |
|--|--|
| <ul style="list-style-type: none"> • UDHR, Articles 20 and 23 • ICCPR, Article 22 • ICESCR, Article 8 | <ul style="list-style-type: none"> • ACHPR, Article 10 • ILO Conventions No. 87 and No. 98 |
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94 Women Working Worldwide, 2013 (n.16), p. 4

95 Evers et al., 2014, (n.7). p. 28

96 Women Working Worldwide, 2013 (n.16), p. 4.

97 Fair Wear Foundation, *Climbing the Ladder to Living Wages*, August 2012, available at: www.fairwear.org/ul/cms/fck-up-loaded/documents/policydocs/ClimbingtheLadderReport.pdf, p. 20.

98 Nyakundi, A., "Kenya: Ruiru Flower Farm Workers Go on Strike", *The Star*, 7 May 2014, available at: allafrica.com/stories/201405071290.html.

What are the advantages for workers of joining a union? Bargaining as a group rather than as an individual means that workers have the power to make themselves heard. Leverage such as threatening a strike can sometimes be the only way in which groups of workers can ask for changes that they deem reasonable, such as increases in wages. Unionisation also ensures that workers are in charge of their own lives, rather than depending on external intervention. Unions can provide training to workers, or be the mouthpiece through which workers can express and settle grievances with their employers. Unions therefore allow workers to empower themselves and one another.⁹⁹

Are flower farm workers unionised? Levels of unionisation differ greatly between farms and countries, and fluctuate year by year. In 2007 Women Working Worldwide reported that 77% of flower workers were not union members and that 'in general the right of workers of freedom to organise has been greatly abused'.¹⁰⁰ The National Federation of Farm, Plantation, Fishery and Agro-Industry Trade Unions of Ethiopia reported in 2011 that union membership is highly prevalent in Ethiopia and about 75% of worker respondents are subscribed members of the basic trade union.¹⁰¹

If unionisation rates are low, is this because workers have been prevented from unionising? Unions and employers tend to answer this question differently. For example, some employers stress that workers are free to unionise, but that they prefer not to spend their money on unionisation, and rather choose to form their own internal groups and committees. Meanwhile, union leaders may stress that workers are discouraged from unionising or not offered adequate information about unionisation. Certainly, at farms visited by IPIS both these assertions seemed to hold true, with some workers expressing little interest in unionising. However, Women Working Worldwide has repeatedly reported workers being threatened with dismissal if they ask to join a union,¹⁰² and in Ethiopia workers have expressed their concern that being a union official or active union promoter would result in threat of dismissal or denial of access to promotion.¹⁰³

Sometimes the discrimination employed against unionised workers is subtle. The Kenya Plantation and Agricultural Workers Union has described unionised workers being denied promotions and discriminated against. They have even reported a farm drafting resignation letters from the union in exchange for company loans.¹⁰⁴ One cross-African study reported a total of 13 union leaders from different farms between 2008 and 2010 being dismissed from their jobs without justifiable reason.¹⁰⁵ A report on Uganda showed that 29.93% of surveyed workers felt intimidated by management on account of their association with the union.¹⁰⁶

How can flower farms ensure freedom of association for their workers? Flower farms should always ensure that they make it commonly known to workers that unionisation is an open and valid choice. This then has to translate into practice, with unionised and non-unionised workers being treated the same and collective bargaining agreements being fully respected.

99 NAPE, *The Impacts of the Flower Industry on Environment and Peoples Livelihoods in Uganda*, June 2012, available at: <http://nape.or.ug/what-is-the-flower-industry-doing-to-the-people-and-the-environment-of-uganda/>, p. 35.

100 Tanzania Plantation and Agriculture Workers Union, Uganda Workers Education Association, Workers Education Association of Zambia, Kenya Women Workers Organisation, Women Working Worldwide, *Promoting Women Workers' Rights in African Horticulture Overview of research into conditions on horticulture farms in Kenya, Zambia, Tanzania and Uganda*, September 2007, available at: http://www.women-ww.org/documents/www_research_overview_final.pdf.

101 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14) p. 6.

102 Women Working Worldwide, 2007, (n.24), p. 17.

103 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, (n.14), p.6.

104 Research Project on Kenya Flower Farms, *Limited freedom of association, and the interaction of KPAWU and accreditation bodies*, Accessed 12 April 2015, available at: kenyaflowerfarms.wordpress.com/freedom-of-association/.

105 UWEA in Collaboration with WWW, *Developing Strategies for Change for Workers in African horticulture - The case of Uganda*, 2011, available at: www.women-ww.org/documents/UWEA-final-research-report.pdf, p. 28.

106 Women Working Worldwide, 2011 (n.39), p. 17.

Case Study: Flower companies agree to raise wages, Uganda

In April 2013, the Ugandan Daily Monitor reported that 23 horticultural companies, all members of the Uganda Flower Exporters Association (UFEA), signed a collective bargaining agreement to increase workers' salaries. UFEA, represented by Mr Jacques Schrier, stated, "This is a major achievement on our part and we are optimistic that workers in the flower industry are going to start earning between Shs100,000 and Shs200,000 from the current Shs60,000 and Shs108,000."¹⁰⁷

Children's rights

Children's rights can be both directly and indirectly affected by the practices of the flower farming sector. When children work in conditions that are dangerous to their health and development or are prevented from receiving an education as a consequence of their work on flower farms their rights are directly affected by the industry. Moreover, where an adequate standard of living or access health care or education is rendered unattainable by children due to poverty wages paid to their parents, their rights are also affected.

Key sources of relevant human rights

- | | |
|---|--|
| <ul style="list-style-type: none">• UDHR, Articles 23, 24, 25 and 26• ICCPR, Article 24• ILO Conventions No. 182 and No. 10• ICESCR, Articles 7, 13 and 14• CRC, Articles 32 and 28• CEDAW, Article 10 | <ul style="list-style-type: none">• ACHPR, Article 17• CESCR General Comment No. 16• CRC General comment No. 16• CRC General Comment No. 13• CCPR General Comment No. 17 |
|---|--|

How are children's rights affected on flower farms? Although child labour exists on some East African flower farms it is not clear that this is a widespread phenomenon. Flower farms can, however, frequently impact on other areas of child rights. For example, low wages often force parents to leave children in unsafe childcare facilities and children may also have to miss school when parents cannot consistently earn enough.¹⁰⁸ One African flower farm study relayed reports of children suffering from poor nutrition and regularly falling ill as a result of poverty wages.¹⁰⁹

How prevalent is child labour on flower farms? A 2012 report on flower farm labourers in Uganda cited reports of children between 10 and 15 years old working on some flower farms. Researchers were prevented from verifying these reports because they were denied access to the relevant farms.¹¹⁰ A 2014 study from Ethiopia interviewed flower farm labourers then aged over 14 years. Many of these interviewees stated that they had been working since the age of 10, or even earlier. Whilst a small percentage of this work was carried out in school holidays, most was carried out by children who did not attend school and who were often bringing in a crucial income for the rest of the family.¹¹¹

¹⁰⁷ Ssebuyira, M., *Horticulture firms sign pact to increase workers' salaries*, in: Monitor, 23 April 2013, available at: www.monitor.co.ug/News/National/Horticulture-firms-sign-pact-to-increase-workers--salaries/-/688334/1755560/-/110n4q7z/-/index.html.

¹⁰⁸ Women Working Worldwide, 2013 (n.16), p. 4.

¹⁰⁹ *Ibid.*

¹¹⁰ NAPE, *The Impacts of the Flower Industry on Environment and Peoples Livelihoods in Uganda*, June 2012, available at: <http://nape.or.ug/what-is-the-flower-industry-doing-to-the-people-and-the-environment-of-uganda/>, p. 33.

¹¹¹ SOAS, Fairtrade, *Employment and Poverty Reduction in Ethiopia and Uganda*, April 2014, available at: <http://ftepr.org/wp-content/uploads/FTEPR-Final-Report-19-May-2014-FINAL.pdf>, p. 104.

It is hard for workers to find adequate childcare facilities for their children when they are working. In Tanzania, farm workers reported that it was common to employ domestic workers to look after their children. However, they were unable to pay wages to domestic workers at minimum wage levels, and as a result employed young girls on extremely low wages. In Kenya, a number of women workers relied on day centres, which they considered to be unhygienic.¹¹² Many Ugandan farms provided a day-care centre for workers but in focus group discussion, workers also reported leaving their children at home under the care of friends in the village.¹¹³ During IPIS' field research, an allegation was recorded of an infant dying of hypothermia because she was left unattended, wrapped in a blanket in the very early hours of the morning, as it took her mother an hour and a half to get to work. Another report on Uganda found that childcare facilities were only available in work to 15.96% of workers.¹¹⁴ Few Ethiopian farms have day care centres for the non-school going children, nor are workers provided with school fee assistance for school-going children.¹¹⁵

What should the flower farms do to ensure protection of the rights of the child? Flower farms should eradicate the use of child labour in their operations. They should also recognise that the conditions of employment offered to parents directly impact upon their children. Offering childcare facilities for infants, or schooling scholarships for older children facilitates the ability of children to enjoy their right to a safe environment and education.

Case Study: Fairtrade flowers

In February 2015, the Guardian reported the benefits of Fairtrade flower farming in a report entitled, "Say 'I love you' with Fairtrade flowers".¹¹⁶ The Guardian explained,

Workers have elected to invest a portion of the Fairtrade Premium in education and 50% of harvest workers have already benefitted from bursaries to help pay secondary school fees. "This is the most important, sending your kids to school. Our future will be better, my children will be educated. Then they get a good life," says Agnes Mulwa, a 34-year old flower harvester whose first born son now attends secondary school. "I hope things go on like now, and then my two girls can study as well. Without Fairtrade on the farm, I have no hope to give my children education."

Land grabbing

Land-grabbing is where large swathes of land are bought up by private investors, usually in developing economies. It has become an increasingly contentious issue and is linked to a number of potential rights violations, including the displacement of local populations from their customary land.

Key sources of relevant human rights

- ICESCR, Article 11

- CESCR General Comment Nr. 12
- CESCR General Comment 7, Para 13

112 Women Working Worldwide, 2013 (n.16), p. 4.

113 Evers et al., 2014, (n.7). p. 31.

114 Women Working Worldwide, 2011, (n.39), p. 5.

115 The National Federation of Farm, Plantation, Fishery and agro-industry trade unions of Ethiopia, 2010, (n.14), p. 6.

116 The Guardian, *Say 'I love you' with Fairtrade flowers*, Accessed January 2015, available at: www.theguardian.com/sustainable-business/fairtrade-partner-zone/2015/feb/12/say-i-love-you-with-fairtrade-flowers.

What is 'land grabbing'? Land grabbing is the buying or leasing of large pieces of land in developing countries, by domestic and transnational companies, governments, and individuals.¹¹⁷ The term 'land grabbing' re-emerged on the international stage in the context of a spike in global food prices in 2007-2008. The media spotlight was initially focused on new players like Saudi Arabia and South Korea potentially acquiring vast areas of land in developing nations like Ethiopia to grow food for their own people. The concept of land grabbing has since broadened to encompass all cases where large pieces of land are taken from customary owners, or bought / leased from governments for often low prices that fail to reflect the worth of the land or its natural resources.

How are people and communities affected by land grabbing? Land grabs often occur on land whose ownership has not been formally recognised by the relevant State, but which is nonetheless subject to the rules of "customary" land rights. The World Bank has pointed out the importance of international bodies helping African governments to develop land registry systems.¹¹⁸ Land grabs generally lead to the, often poorly managed, eviction of existing residents. According to FIAN International, "Land grabbing is a breach of international human rights law. Forced evictions, the foreclosure of vast stretches of land and related resources, the introduction of models of land use and agriculture that destroy natural environments, the blatant denial of information, and the prevention of meaningful local participation in political decisions that affect people's lives are all human rights violations."¹¹⁹

To what extent are flower farms in East Africa implicated in land grabbing? There is currently no definitive data on this as many flower farms have been around for long periods of time. However, there are certainly reports of flower farms being implicated in land grabs both directly and indirectly. Indeed, whilst the amount of land needed by flower farms may not be as much as that required for other agricultural crops, such as coffee, their intensive water use requirements mean that when farms are newly established they are more often likely to be prospected on land already in use by local communities dependent on the locality's local water sources.

What can flower farms do to avoid being implicated in land grabbing? Farms should always check local land registries for ownership. However, they must also recognise that the State will generally favour the interests of investors over those of local populations and that it is necessary to look further into registry entries and state provided information through local enquiries, including proper surveys and consultation with a broad cross-section of the local population. This will enable them to gain a realistic picture of ownership. Having done so, consent should be sought from local communities for the establishment of flower farming operations at the locality. In seeking this consent communities should be given the fullest picture of the implications of having a flower farm in terms of community and environmental impacts, as well as employment opportunities. Where relocation is necessary, this should be done by a reputable organisation, in consultation with local populations and experts, with grievance mechanisms in place. It is inadequate for companies to outsource the process of relocation and take no responsibility for its consequences.

117 Dadian, D., What is Land Grabbing?, Stop African Land Grab, accessed on 6 August 2014, available at: www.stopafricaland-grab.com/what-is-land-grabbing/.

118 The East African, *Ethiopians displaced in flower firm land grab*, accessed on 9 July 2014, available at: www.theeastafrican.co.ke/news/Ethiopians+displaced++in+flower+firm+land+grab+/-/2558/1316042/-/view/printVersion/-/14usupoz/-.

119 FIAN Nederland, Land grabbing breaches international human rights law, available at: www.fian-nederland.nl/home/208-land-grabbing-breaches-international-human-rights-law.html.

Case Study: Karuturi flower firm in the Gambella region, Ethiopia

In 2012, Human Rights Watch reported that an Indian rose-growing company - Karuturi Global Ltd – had leased land in the Gambella region of Ethiopia. Human Rights Watch reported widespread “villagization” in the area – a process of relocating local populations, further described as follows:

“The government asserts the purpose of the program is to enhance access to government services and infrastructure, although this has been slow to materialize. There is evidence to suggest that an additional underlying motive may be to facilitate agricultural investment in those recently vacated areas... We found that in Gambella the villagization process is not voluntary, and is accompanied by serious human rights violations. Government soldiers frequently beat or arrest individuals who question the motives of the program or refuse to move to the new villages. Community leaders and young men are targeted, and beatings and arrests serve as a warning to others as to what will happen to those who oppose government programs. The interviewees also provided credible allegations of rape and sexual assault by government soldiers.”¹²⁰

Karuturi replied to HRW, emphasising that they lived peacefully alongside the local population, and sought to positively contribute to the area.¹²¹

Tax justice

The Gross Domestic Product (GDPs) of East African flower producing countries is dwarfed by that of consumer countries and countries that are the home state for flower companies. For example, the GDP of the Netherlands is around 17 times that of Ethiopia, despite the fact that its population is around five times smaller. Tax income and local employment are therefore crucial to weaker producing states such as Ethiopia. The use of tax structures to limit the tax paid to producing states deprives them of much needed resources, preventing the industry from benefitting the country more generally.

What is “tax justice”? Tax justice refers to the need to ensure the establishment of fair tax systems. Taxes enable democracies to function – they are used by states to pay for public services such as education, health and infrastructure. Some companies invest significant resources into avoiding or reducing the payment of taxes to producer countries.¹²² Aggressive tax avoidance, whilst technically legal, can have a notable impact on state resources in ensuring development and fulfilling human rights.

Tax avoidance and tax evasion are different. Tax avoidance applies to the use of legal loopholes and clever accounting techniques to pay less tax. Tax evasion, on the other hand, is the avoidance of taxes by illegal means such as false accounting and failure to declare assets or income.¹²³

How do companies employ tax evasion techniques? Tax evasion employs a wide range of accounting techniques, including transfer mispricing and the creation of complex corporate structures. Transfer mispricing means that different subsidiaries of the same corporation sell goods and services to each other at manipulated prices. Moreover, the establishment of complex corporate structures, especially subsidiaries in “tax havens”, enables companies to evade taxation that might otherwise be due to producing states. Tax havens offer foreign investors low or zero rates of tax, and their laws enable high levels of financial secrecy.¹²⁴ Tax havens make it possible for multi-national companies to “keep their wealth away from the prying eyes of national tax authorities.”¹²⁵

120 Human Rights Watch, *Waiting Here for Death, Displacement and Viligization in Ethiopia's Gambella Region*, January 2012, available at: www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf, p.111.

121 *Ibid.* p.119.

122 Shah, A., *Tax Avoidance and Tax Havens; Undermining Democracy*, Global Issues, 7 January 2013, available at: <http://www.globalissues.org/print/article/54>.

123 *Ibid.*

124 Tax Havens Guide, *What is a tax haven?* Available at: <http://www.taxhavensguide.com/tax-haven.php>.

125 Christian Aid, *The Shirts Off Their Backs; How tax policies fleece the poor*, September 2005, available at: http://www.christianaid.org.uk/images/the_shirts_off_their_backs.pdf, p. 10.

Host countries themselves also offer low tax rates to companies. Many African tax scholars have lamented a “race to the bottom” with regards to how their countries bid to attract foreign direct investment through the use of tax incentives. Recorded incentives for flower companies to invest in East Africa have included 10-year corporate income tax holidays; perpetual exemptions from VAT and customs import duties on inputs, capital equipment and other resources; perpetual exemptions from payment of stamp duty; and subsidised financing loans.¹²⁶ Countries compete with one another to offer the most welcoming investment climate, encouraging other countries to lower barriers.

What can flower companies do to ensure that they are not contributing to tax injustice? It makes no sense for companies to pay above the tax rate. However they can ensure that they are operating within the realms of tax fairness by being transparent about their internal structures, and following the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010.¹²⁷ Companies should never exert pressure on host governments to push down taxes and payments imposed upon them.

Case Study: Tax justice in flower farming in Kenya

A 2011 investigation by the Guardian expressed notable concern about the tactics employed by flower companies operating around Lake Naivasha, Kenya, in seeking to avoid paying tax in Kenya. Although firms had agreed in 2010 to pay tax due to a desperate local need for services, the Kenya Revenue Authority announced that it would investigate flower growers, including the three largest multinationals, on suspicion that they were routing their profits elsewhere, and so failing to pay their fair share in Kenya.¹²⁸

The former Commissioner of Domestic Taxes highlighted that the investigation indicated that companies were shifting the profits around their subsidiary companies in other countries, in some cases offshore, so that there would be less to tax in Kenya.

126 Mosioma, A., *Tax Competition: The role of Tax incentives in encouraging harmful tax competition in the East African Flower Industry*, Tax Justice Network for Africa, 2008, available at: <http://www.taxjusticeafrica.net/sites/default/files/Role%20of%20Tax%20Incentives.pdf>, p. 2.

127 OECD Transfer Pricing Guidelines for Multinational Enterprises and Administrations 2010, 16 August 2010, OECD iLibrary, available at: www.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2010_tpg-2010-en.

128 The Guardian, *The True Cost of Mothers' Day Flowers*, 1 April 2011, available at: www.theguardian.com/global-development/video/2011/apr/01/true-cost-mothers-day-flowers-video.

Conclusion

The flower-growing sector in East Africa provides employment for hundreds of thousands of local people, many of whom experience the additional benefits of improved local infrastructure, or company-provided healthcare. Flowers are a treasured product on many markets, and East African flowers provide an affordable, sometimes more environmentally friendly option to home-grown flowers.

Despite good practices on many farms, a number of preventable negative impacts on human rights occur across the region. Some of these stem from the nature of the flower sector – a farm-centred, seasonal process, that employs a relatively low skilled workforce. This can translate into high levels of female workers, with little or no ability to speak out for their rights, and who can easily be exploited. The result can be wages that do not allow for a decent standard of living, unpredictable or un-contracted work, sexual harassment, and difficulties supporting families, particularly infants.

The flower sector also requires the intensive use of water and artificial inputs such as pesticides. The surrounding environment can be compromised, harming the long term health of both people and ecosystems. Many reports of workers' and communities being poorly protected from the harmful effects of pesticides continue to emerge to this day.

Western retailers have a profound responsibility to understand the kinds of impacts outlined in this report, and to actively take measures to ensure that their decisions do no harm to the rights of workers at and communities around the flower farms they source from. These steps include taking up best-practices such as the ETI base code, and raising standards by, for example, offering Fairtrade flowers.

The first step for any major retailer serious about committing to human rights should be to explore how they are implementing the UN Guiding Principles on Business and Human Rights. This includes putting in place a human rights policy, and undertaking human rights due diligence, starting with a human rights impact assessment. This should be a genuinely authentic process that involves going to farms and conducting in-depth interviews with a representative sample of workers.

The changes that retailers need to make, based on this assessment, must go to the core of what will actually help their suppliers. The ETI describes some of these as follows:

- Working closely with suppliers to explain why workers' rights are important and to help them change their labour practices;
- Making sure the price they pay to suppliers for their flowers allows the suppliers to pay their workers a wage they can live on;
- Making sure lead times for farmers reduce the pressure on workers to work unreasonably long hours, particularly at times of peak demand, e.g. Valentine's Day and Mothers Day.

Of course, it is consumers who can drive this action by demanding from their retailers that they provide evidence of such practices, through selective buying, or actively asking businesses for evidence of their efforts. As the UNGPs stress, public reporting is an important way for businesses to prove that they respect human rights.

Not all flowers pass through major retailers of course. Some pass through auctions. Here, it is the responsibility of states, both in flower-growing countries and consumer markets, to raise the bar for human rights standards.

In countries such as Holland, local laws can ensure that Dutch companies have to meet higher standards abroad. For example, large Dutch flower import companies who source from East Africa could be obliged to conduct mandatory human rights due diligence. European legislation could also ensure that companies have to publically report on the steps they have taken to ensure that the farms they source from do not use internationally banned pesticides, regardless of whether their produce ends up on the European market.

Governments in East Africa have a duty to protect their citizens from the adverse impact of business activity. This means passing protective laws and ensuring adequate enforcement. Minimum wage laws should reflect living wages, for example, and collaboration on such issues across the region is a first step towards prevent a race to the bottom in standards that see countries like Ethiopia becoming hot-spot for cheap labour exploitation.

Raising the minimum wage, protecting unions, promoting women's rights, banning certain pesticides and actively promoting environmental laws, can only work if they are adequately enforced. Collusion with local or state officials to gain a permit to build a farm on a protected area, requests for the turning of a blind eye by authorities regarding labour abuses and other attempts to undermine enforcement where standards and procedures do exist erode or stifle a state's governance apparatus and justice infrastructure, feeding corruption and human rights abuse.

Indeed, the acceptance, or even encouragement, of land-grabbing, or enabling loopholes for tax-evasion, rob citizens of East African countries of justice and fairness both within their own societies and on the international plane. It denies them access to land and resources that should rightfully be theirs. Western governments and companies alike have a pivotal role to play in turning such practices around.

Unions and Labour Rights NGOs who are members of GHOWERN that have brought about many positive changes on flower farms. These include wage rises, a decreased culture of sexual harassment and greater protection from pesticides. The ability of workers to understand their rights and play an effective role in defining the terms on which they are engaged is crucial to their ability to secure their rights, as well as to ensuring that companies, consumers and investors are engaged in business practices that are sustainable and equitable.