TRACKING WORKING CONDITIONS OF WOMEN LABOURERS AND THE SOCIO-ECONOMIC STATUS OF WOMEN IN THE KERICHO TEA ZONES

A Baseline Report Commissioned by the Federation of Women Lawyers of Kenya (FIDA-Kenya)

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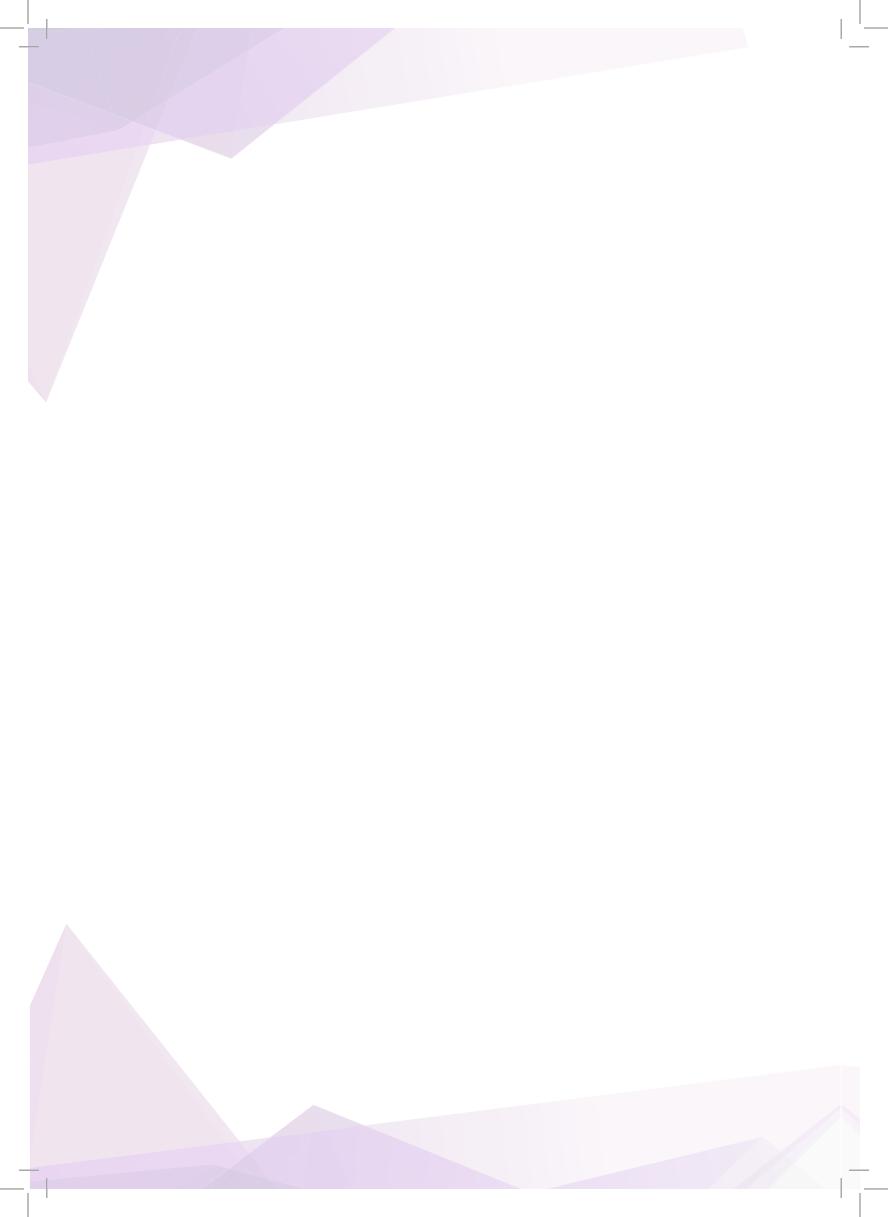
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TABLE OF CONTENTS

1.0	Abbreviations	v
2.0	Definitions	vii
3.0	Executive Summary	ix
4.0	Introduction	1
4.1	Study Background and Objectives	1
4.2	Scope of the Study	2
4.3	Methodology and Study Sample	4
4.4	The Tea Sector of Kenya	6
5.0	Regulatory Framework and Good Practices on Socio-Economic Inclusion in	the Tea
	Sector	8
5.1	International Normative Framework for Women's Socio-Economic Inclusion	8
5.2	National Legal and Policy Framework for Women's Socio-Economic Inclusion	11
5.3	Good Practices for Women's Socio-Economic Inclusion	41
6.0	Findings of the Study and Recommendations	22
6.1	Social and Economic Inclusion of Women in the Kericho Tea Zones	24
6.2	Remuneration, Wages and Benefits	37
6.3	Representation of Workers	43
6.4	Selected Aspects of Gender Based Discrimination at the Work-place	48
6.5	Job Security and Contracts at the Work-place	54
6.6	Health and Safety at the Work-place	55
6.7	Participation of Workers in Decision-making at the Work-place	57
6.8	Advocacy Initiated to Promote Women's Labour and Economic Rights	61
7.0	Conclusions	64
8.0	Bibliography	66



ABBREVIATIONS

AGM –Annual General Meeting

AGPO – Access to Government Procurement Opportunities Programme

AG – Attorney General

BNB – Basic Needs Basket

CBA – Collective Bargaining Agreement

CEDAW - United Nations Convention on the Elimination of All Forms of Discrimination

Against Women

CERD – United Nations Convention on the Elimination of All Forms of Racial Discrimination

CFSC – Centre for Social Concern

COTU – Central Organization of Trade UnionsCPDA – Christian Partners Development Agency

CRC - United Nations Convention on the Rights of the Child

CSE – Comprehensive Sexuality Education

CSO – Civil Society Organization

CSR – Corporate Social ResponsibilityDEC – Dignity Enhancement Committee

ETI – Ethical Trading Initiative
 ETP – Ethical Tea Partnership
 FGD – Focus Group Discussion
 FGM – Female Genital Mutilation

FIDA K - Federation of Women Lawyers, Kenya

FI – Financial InclusionFTA – Fairtrade Africa

GAPs – Good Agricultural Practices

GBV – Gender Based Violence

GIZ – German Development Agency
 GLWC – Global Living Wage Coalition
 GVRC – Gender Violence Recovery Centre

HACCP – Hazard Analysis and Critical Control Points

HIV – Human Immunodeficiency VirusHRBA – Human Rights Based Approach

ICCPR – United Nations International Covenant on Civil and Political Rights

ICESCR – United Nations International Covenant on Economic, Social and Cultural Rights

IDH – Sustainable Trade Initiative

ILO – International Labour Organization

KCPE – Kenya Certificate of Primary Education
 KCSE – Kenya Certificate of Secondary Education

KES – Kenya Shillings

KHRC – Kenya Human Rights Commission

KIIs – Key Informant Interviews

KNCHR – Kenya National Commission on Human Rights
 KPAWU – Kenya Plantation and Agricultural Workers Union

KTDA – Kenya Tea Development AgencyKWFT – Kenya Women Micro Finance Bank

LT – Leadership Team

MCA – Member of County Assembly

MP – Member of ParliamentNAP – National Action Plan

NGAAF – National Government Affirmative Action Fund
 NGEC – National Gender and Equality Commission

NGO – Non Governmental OrganizationNHIF – National Hospital Insurance Fund

NPGD – National Policy on Gender and Development (Kenya)

NSSF – National Social Security Fund

OECD – Organization for Economic Cooperation and Development

PPE – Personal Protective Equipment
 PRA – Parental Responsibility Agreement

PWD – Persons With Disability

RFA – Rainforest Alliance

SACCO -Savings and Credit Co-operative Society

SCDA —Special Crops Development Agency
 SDG — Sustainable Development Goals
 SGBV — Sexual and Gender Based Violence

SOMO – Stichting Onderzoek Multinationale Ondernemingen

STD – Sexually Transmitted DiseaseTAML – Tea Association of Malawi

- Tea Collection Centre

TCC

TRFK – Tea Research Foundation of KenyaUDHR – Universal Declaration of Human Rights

UHC – Universal Health Coverage

UNGPBHR - United Nations Guiding Principles on Business and Human Rights

VAW – Violence Against Women

WBL – Women, Business and the Law

WEF – Women Enterprise Fund
 WIBA – Work Injuries Benefit Act
 WRW – Workers Rights Watch

DEFINITIONS

Best Practice: A procedure that has been shown by research and experience to produce optimal results and that is established or proposed as a standard suitable for widespread adoption.

A "Chama" is an informal co-operative society that is normally used by group members for the purpose of making savings, investments and obtaining loans on easy terms.

Collective Bargaining Agreement: A contract on hiring, working conditions and dispute resolution between an employer and a union.

Corporate Social Responsibility: The continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.¹

Discrimination against women: Any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.

Forced or Compulsory Labour: Any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service.

Human Rights Based Approach: A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.²

Large Farms: Expansive private tea farms and factories in Kericho, which are not owned or controlled under the KTDA framework. They cover more than 50 acres of land under the tea crop.

Living Wage: Remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs, including provision for unexpected events.

¹ Definition by the World Business Council for Sustainable Development

¹ Alon Meidan, Main Approaches in Development, SID Israel and Pears Foundation, March 2018

Piece work: Any work the pay for which is ascertained by the amount of work performe irrespective of the time occupied in its performance.

Small-holder farms or set-up- Tea farms and tea factories which operate through the KTDA framework. The amount of land under the tea crop is not more than 50 acres.

Violence against women- All acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm. These include the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflict and war.

EXECUTIVE SUMMARY

3.1 About the Baseline Study

In 2018, FIDA-Kenya commissioned a study on, "The Status of Women's Labour and Economic Rights in the Kericho Tea Zones," in order to establish baseline information, crucial for the development of a new project, 'Protecting Women's Labour and Economic Rights in the Tea Estates in Kenya.'

The objectives of this study are to:

- (i). Assess the current situation in regards to violations of women's labor and economic rights in the tea zone in Kericho.
- (ii). Assess the barriers to accessing women's labor and economic rights in the tea zone in Kericho.
- (iii). Map the stakeholders that can be crucial in advocacy efforts for the safeguarding of women's labor and economic rights in the tea industry.
- (iv). Identify the number of women and girls actively advocating for economic participation and rights in the target population.
- (v). Identify the roles women and girls play or have in household decision making processes in the target population.
- (vi). Identify the roles women and girls play or have in decision making processes at all levels in the target population.
- (vii). Identify number of members from the public (including policy and decision makers, traditional and religious leaders, celebrities, men, boys, service providers, general public, etc.) engaged in advocacy for girls and women's economic independence and agency in the tea industry.
- (viii). Make recommendations on how to actualize the enjoyment of girls and women's labor and economic rights in the tea industry.

The study focus area is the Kericho zones, disaggregated into: the tea farms and factories; the labour catchment households and community; and, the schools within the tea farms. The study focuses both on the small holder tea setting and the large farms setting.

The study relied upon primary and secondary data. Primary data was obtained through: administration of questionnaires (195 respondents); Focus Group Discussions (70 respondents); and Key Informant Interviews (10 respondents). Literature review covered a wide spectrum of media: reports on labour and economic rights, institutional policies; national legal and policy framework; global legal instruments; among others.

3.2 The Beneficial Socio-Economic Impact of Tea Production in Kericho

Tea production has a significant place in Kenya's socio-economic space. It is the second highest earner of foreign exchange to the country, after diaspora remittances.³ In 2017, tea accounted for

up to 129 billion Shillings in export earnings. The total output was 439 million kilogrammes. The tea sector of Kenya is integral to the livelihood of many people. Approximately 500,000 people eke out their livelihood through employment in the tea farms, factories or other work that is related to tea production and distribution. Many others make their living as producers, processors or sundry traders across the tea value chain. Tea production is the economic back-bone of Kericho County, which is also the country's leading producer of tea.

Tea production is, thus, a crucial driver of livelihoods for many workers,—mostly women—producers and their families. The tea farms in Kericho have absorbed significant numbers of employees, mainly unskilled workers and provided them with a source of income and work experience. A number of tea sector farms have adopted progressive Corporate Social Responsibility (CSR), putting up beneficial social amenities including: schools; hospitals; houses; and, transport facilities, for the benefit of workers and their immediate community. They have also established work-place frameworks and schools programmes for promoting contextual social justice question, including: gender issues; HIV and AIDS; supplementing access to foods for employees; and, environmental stewardship, among others.

Tea farming in Kenya is practised by small-holder farmers and by large farms. Small holder farmers rely on tea farming for their livelihood. With the bulk of tea production under small holder farming, tea sales and bonuses are the lifeblood of the Kericho economy. Tea production has spawned a number of other cottage industries in Kericho, supporting such persons as: suppliers of industrial goods and parts; service providers; contractors; transporters; tea traders; agricultural and industrial experts; among others. Earnings from tea farming or from employment in the tea zones further provide capital for other enterprises. It is not uncommon for workers or producers in the tea sector to dabble in: the sale of groceries, dairy farming, chicken keeping, keeping shop, or in the *boda boda* businesses.

Overall, the tea zones of Kericho provide a work-place community setting of peers, bringing a sense of unity of purpose and common understanding amongst workers and their families. On a larger plane, it is a potpourri of diverse Kenyan tribes, including the native Kipsigis community, Luo, Abagusii, Abaluhyia, Maasai, Kikuyu and Nandi, among others. The sum contribution of tea farming to the social fabric of Kericho is, therefore, considerable.

3.3 Women in the Tea Zones of Kericho

The tea farms of Kericho draw a majority of their work-force from the women-folk, mostly undertaking the task of tea picking in the farms. Tea pickers are among the lowest pay-grades in the farms. The archetypical worker in the tea farm is a woman of between the ages of 20 and 30 years. It is most likely that such a woman is a single-parent, with at least one child and living in company housing (in the case of workers of multi-national farms) or in rented accommodation (in the case of small holder farms). Curiously, the large numbers of women are concentrated in the lower ranks of the work-force; men still dominate managerial positions in the tea farms.

A number of reasons have been fronted in explanation for why women workers are a consistent majority in the tea farms. This has been attributed to, among others, their perseverance and capacity to complete routine tasks over long stretches of time. Apparently, women also handle delicate tasks as tea picking much better than men. Their work attendance record is better than men's; male workers have been said to absent themselves from work or abscond altogether, at the chance of a better job, elsewhere. However, it is also clear that gender discrimination in the tea zones, just as in broader society, has contributed to the high concentration of women in the lowest paying jobs in the farms. Because of direct and indirect discrimination at the work-place, women are less able to compete with men for skilled positions at the tea farms. Women's comparatively lower levels of education and the financial pressures they face on account of raising families, which leaves them little scope to take economic risks.

3.4 Findings of the Study

While progress has been made towards promoting women's labour and economic rights in the tea zones⁴ a number of challenges persist. The study found that, over the last 10 years, and upon the impetus of a series of labour and gender protection legislation passed in 2006 and 2007, employers have taken significant steps to address gender based discrimination and violence at the work-place. In the large farms, work-place policies exist to guide the integration of gender into management systems. Awareness levels of workers and management on gender equality have increased and women workers are more empowered to stand up for their rights, in the large farms. Qualitatively, women's rights at the work-place are better protected through: engendered policies and practices on maternal and reproductive health; affirmative action for representation; and, structures for preventing and redressing gender based violence. In a handful of front-runner farms, Corporate Social Responsibility (CSR) has been leveraged to promote workers' rights and welfare.

However, significant challenges in comprehensively addressing women's labour rights at the work-place exist. The formulation of work-place policies has not been conclusively backed up with effective implementation of the policies. In a few cases, gender neutral work-place policies have had the effect of indirectly compounding discrimination of women. Enforcement of labour rights by government is tepid, in the case of the small-holder set-up, altogether non-existent. Root causes

This position is based on comparative analysis of findings of previous reports (See Bibliography Numbers 1,2 and 3) on the subject, observation and analysis of trends by respondents.

of gender discrimination and violence have, in the main, not been addressed effectively. In the small holder set-up, employers have largely operated with little formality and structure. Many workers in this sector do not have a contract, or crucial contractual protections against labour rights violations. The last ten years have also seen a steady rise in awareness of the need for economic inclusion of women. A number of government stimulus programmes and social innovation by micro-finance companies have boosted women's access to finance. Discriminatory cultural practices, policies that restrict women's access to services, low literacy levels among women in the tea zones and

logistical and bureaucratic inefficiency, have slowed down the quest towards economic inclusion.

3.4.1 What are the Violations of women's labor and economic rights in the tea zone in Kericho? 3.4.1.1 Low Wages

Whereas many tea farms pay wages that are equivalent or equal to the national statutory minimum wage, a number of employers are still paying below the statutory threshold, thereby exposing workers to want and indignity. Studies in the tea sector have revealed that the statutory minimum wage as applicable to the various cadres of Agriculture Sector workers is short of the Constitutional stipulation on the "right to fair remuneration." It does not afford workers a living wage, capable of covering their basic needs and affording them and their families a dignified livelihood.

3.4.1.2 Discriminatory work place policies

In a number of tea farms surveyed, there are institutional policies which have the effect of blocking equal access to work-place opportunities and benefits for women workers. By policy and practice, in most tea farms and factories, a number of tasks are reserved for male workers. These are often those that require the operation of machinery, working at heights and heavy lifting. It has been established that many of these tasks - which also pay better than the unskilled jobs taken up by women - are capable of being undertaken by women. In a few farms, housing policies have been applied to restrain workers from living with spouses or family members, thereby straining familial cohesion. In other cases, families have been crammed together under cramped housing conditions, thereby compromising their privacy and dignity.

3.4.1.3 Workers' Representation

A vast majority of small-holder sector workers, most of whom are women, are not registered with trade unions. Thus, they do not benefit from collective bargaining processes and representation by the trade union, to improve their terms and working conditions. Secondly, trade unions have been found to lack the requisite capacity in terms of governance and technical know-how and knowledge for organizing, thereby limiting their capacity for effectively representing workers. Moreover, they are mostly unresponsive to the needs of workers, operating in an opaque manner and without adequately consulting workers. Women are thinly represented in the trade unions, both at branch and national levels, thereby limiting their voice in decision making. As a result,

women's interests are not prioritized through a structured gender integration framework in the union's programmes. Employers, on the other hand, continue to frustrate collective bargaining and workers' representation, both on the shop floor and at union branch level. A long running standoff between the large farms and the union has resulted in the suspension of the collective bargaining process for more than two years. It has also resulted in a series of strikes by workers and their representatives, followed by brutalization by police and dismissals of workers all perceived as a systematic scheme to intimidate workers' representatives. Workers are not allowed adequate time and space to organize on the shop floor.

3.4.1.4 Sexual Harassment

The large scale farms have developed anti-sexual harassment policies to address sexual harassment, though the resultant preventive and redress structures have proved inadequate in tackling sexual harassment. As a result, workers hardly report cases of sexual harassment through these structures. In the small holder set up, anti-sexual harassment systems are largely, absent, partly because the law does not require work-places with less than 20 workers to formulate anti-sexual harassment policies. As a result, workers in these farms are vulnerable to violation without recourse to any preventive or redress structures. One major challenge to addressing sexual harassment in the tea zones is the pervasive community culture and practices that promote male hegemony and patriarchal values.

3.4.1.5 Participation in Decision-making at the Work-Place

Women are consistently under-represented in managerial and supervisory positions at the workplace, mainly because most farms and factories peg qualification to such positions on the level of education and experience. Historically, many communities across Kenya favoured the education and personal development of the boy-child as opposed to the girl-child, thereby contributing to the current disparity in education levels between the sexes. Additionally, and because of direct discrimination in the society, women are reluctant to take up positions of authority, for fear of gender instigated intimidation. Many women also fear the perceived risks of added responsibility, including the fear of losing their jobs. As such, many women are locked out of decision making positions in the tea sector. The study found that most farms in the sector do not ascribe to participatory management processes that incorporate the appropriate consultation and feedback with workers. While a few large farms have made steps towards integrating gender into their management systems and operations, the small holder farms continue to operate without deliberate structures for gender equality and equity.

3.4.1.6 Maternal Health and Childcare Facilities at the Work-place

Women in the sector face discrimination owing to their maternal and reproductive health functions. While women in a number of the large farms have access to maternity leave and to flexible working conditions and hours to accommodate their child-care functions, many of the small holder farms

are yet to embrace these protections. Whereas the larger tea farms have established breast-feeding breaks for mothers, many farms are yet to allow breast-feeding breaks or suitable facilities for feeding, changing, cleaning or bonding with the babies. Across the sector, there are inadequate child care facilities to cater for nursing mothers and their infants at the work-place. In many farms, there is little provision for status-appropriate tasks and flexible working schedules for mothers. It has also been found that nursing mothers who claim special conditions of work owing to their status stand the risk of losing out on career growth prospects, on account of their diminished productivity during childcare.

3.4.1.7 Health and Safety at the Work-place

Many workers have reported that prolonged and protracted pressure on the spine over many years often occasioned by carrying heavy weights has resulted in chronic back pains and long term deformity for workers. Additionally, in a cross-section of farms, workers are not provided with adequate protective gear as appropriate for their work, leading to adverse health consequences. While the farms routinely provide gloves and aprons among other Personal Protective Equipment (PPE) to workers, most employers do not provide footwear or sufficiently warm clothing that is appropriate for working under the usual cold conditions in the farms, more so, where night duty is concerned. Tea farms have roundly adopted practices that accord workers maternity and paternity leave as required. While some farms have made efforts to allocate status-appropriate tasks to expectant women and child nursing mothers, a significant number of farms – mostly in the small scale sector – are yet to allocate status-appropriate to expectant and nursing mothers. In certain instances, workers have stated that the allocation of light duties, including, the exemption from hauling heavy machines and from working with hazardous chemicals, has ironically had adverse consequences on the promotion prospects or job security of expectant or nursing mothers.

3.4.1.8 Ownership, Use and Control of Productive Assets

Because of traditional beliefs and practices that are discriminatory towards women, women in Kericho tea zones own significantly less productive assets, including land and cattle. The dominant practice in Kericho frowns upon women inheriting land or holding title to land. This also means that, invariably, men control the proceeds that accrue from these assets, while women provide most of the labour.

3.4.1.9 Access to Finance

Because women have lower earning power or own little property that might otherwise be used as collateral security in seeking financing, they are less likely to access credit facilities, relative to the men. This has the effect of restricting their scope for engaging in business. The government and a number of banks and micro-finance institutions have established schemes that facilitate easy access to finance for women. However, many rural women who would most benefit from these schemes lack the requisite financial literacy and information about these schemes, thereby limiting their scope to benefit from the same.

3.4.1.10 Access to Entrepreneurship Skilling

Women do not have equal access as men to technical training for entrepreneurship. Access to agricultural extension services or training on Good Agricultural Practices (GAP) is often determined by the ownership of land or productive resources, thereby locking out many women.

3.4.1.11 Growing Cases of Single-Motherhood

Casual relationships are a common phenomenon in the tea zone of Kericho. They often result in expectant women or nursing mothers being abandoned by their partners, thereby forcing the women to raise the children on their own. As such, single-motherhood has become commonplace in the tea zones, further straining the economic resilience of women in the community.

3.4.2 What are the Barriers to accessing women's labor and economic rights in the tea zone in Kericho? 3.4.2.1 Patriarchal Cultural Values

The dominant cultural norms and practices in the Kericho Tea Zone are patriarchal, thereby promoting the socio-economic position of men, while conversely subduing women's socio-economic position in the society. These values guide views and practices on community, workplace and household leadership, decision-making, ownership of resources, access to opportunities for personal development, and entrepreneurial autonomy.

3.4.2.3 Structural Gender based Discrimination at work and in the community

Systemic and policy positions that are discriminatory exist both at community and work-place levels to restrict the labour rights and economic development of women in the Kericho Tea Zones. These structural issues include: workplace policies that require levels of education and experience that exclude a big portion of women from certain positions; banking regulations and rules requiring ownership of capital assets as prerequisites for obtaining loans; access to skilling and up-skilling programmes that rely on ownership of productive resources; and, access to decision-making positions at the KTDA, where eligibility is pegged on net shares. Under this bracket, may also be included: work-place housing, transfer, promotion and disciplinary policies or procedures that abet sexual harassment, for their lack of transparency. These parameters have the effect of indirectly discriminating against women.

3.4.2.4 Low literacy and awareness levels amongst workers and community members

The low levels of education of women, relative to men's, contributes to the power imbalance at the expense of women in the tea zone of Kericho. Many women do not understand the protective provisions of labour laws that apply to them in the work-place. The low literacy levels among women have been exploited by employers to retain women workers in the lowest cadres for many years. At community and household levels, low levels of enlightenment among women have

contributed to women's acceptance of cultural values that discriminate against them.

3.4.2.5 Capacity Gaps by Employers and Workers' Representatives

Employers in the tea sector have not invested sufficiently in technical expertise aimed at promoting inclusion and labour rights at the work-place. As a result, structures and committees aimed at redressing exclusion in the work-place are ineffective in meeting their mandates and lack credibility amongst women workers. Gender Committees, in a number of farms have been found to lack sufficient technical capacity and know-how for addressing cases of gender based violations. Similarly, workers' representatives at shop floor and union branch levels are deficient in organizing and governance skills, thereby compromising their institutional resilience and sustainability, as well as their delivery upon their mandate.

3.4.2.6 Poor Enforcement of Laws by Government

To a large extent, Kenya has adopted progressive laws on labour rights and gender protection. The Government, however, has not enforced these laws effectively, living room for violation by employers and in some instances, non-performance, by trade unions. Enforcing labour laws requires, among others, periodic labour inspections and reporting. However, the meager numbers of government labour officers cannot cover the many farms in Kericho. As a result, labour inspectors rarely ever conduct inspection of small holder farms. Even in the case of large farms, inspectors only manage to cover a sample of farms. Besides inadequate resources for inspection, government has often been perceived to prioritize corporate interests above labour rights, ostensibly to boost the creation of jobs. As a result, government is often slow to act or altogether unwilling to rein in employers who violate workers' rights. The study found that, poor enforcement of the law contributed to the grave situation where a large majority of workers in the small holder tea setting are not unionized and some employers do not pay the statutory minimum wage.

3.4.2.7 Non-responsive laws and policies

Although the Kenyan legal framework on labour and gender protection is largely responsive to the needs of women workers, a number of legal loop-holes have led to harmful consequences for women workers. A vast majority of small holder farms have no framework for containing or redressing gender based violence, including sexual harassment. This is mainly because the law only requires enterprises with 20 or more employees to promulgate anti-sexual harassment policies. This study found that work-place settings with less than 20 employees are just as likely to experience sexual harassment as those with a larger work-force.

3.4.2.8 Non-inclusion of women in Decision making

Decision making on important matters at the work-place is normally the domain of the firm's management. Many farms in Kericho tea zones have not provided for structures that support participatory decision making across the work-place. Workers of the lowest cadres – mostly women – are rarely consulted or briefed over positions taken by management. It does not help matters that most management staff are, invariably, men, thereby weakening the quantitative representation of

women's voices. Where committees are tasked with roles in the chain of decision-making, many cases have been advanced where such committees lacked true decisional independence, informed participation and space and time for executing their tasks effectively.

3.4.3 Who are the Stakeholders in Advocacy for the Safeguarding of Women's Labour and Economic Rights in the Tea Industry?

Because the tea value chain is an international value chain, it draws advocacy stakeholders from both within the country and externally. Successful advocacy for labour and economic rights relies on the input of key stakeholders across the board. The primary stakeholders in the tea zones are: governments (both the government hosting tea production and those at the market end as well as national and subnational governments in the host country); trade unions and workers; employers; consumers; tea traders; the KTDA; social certification bodies; host community groups (including Councils of Elders); political leaders; religious leaders; civil society organizations; and, microfinance institutions, among others.

Whereas other actors have from time to time participated in interventions for promoting gender equality in Kericho, many of these interventions are *ad hoc* and devoid of a definite strategy or plan. Community members listed the Kericho County Governor and the Member of Parliament for Belgut Constituency as among actors who may potentially be tapped into structured interventions for gender protection. A number of churches in Kericho have also been known to exhort their congregations to support the economic empowerment of women in the society, though without any sustained messaging or elaborate programme.

3.4.4 How Many Women and Girls are Actively Advocating for Economic Participation and Rights in the Target Population?

Most of the structured advocacy interventions for women's economic participation in Kericho involve programmes in the tea farms, schools in the large tea farms and the host community. Unilever Tea Kenya Limited has established the Dignity Enhancement Committees (DEC), whose role is to promote gender equality and inclusion in the farms, schools and host community. Under this framework, there are 21 women out of the 49 members of the DEC. Unilever has also set up a Kings and Queens Club at Tagabi Primary School. The club, whose role is to monitor and promote gender equality in the schools, has a total of 11 girls out of a total of 26 members. At James Finlays Kenya Limited, there are 2 managers charged specifically with the task of promoting gender equality and inclusion: The Gender and Empowerment Manager and the Human Resources Manager, both women. Additionally, there are a total of 16 members of the Central Gender Committee, a team of managers whose role is to coordinate gender mainstreaming into the company's operations, and whose composition is pegged at at least one-third of each gender. This proportion of representation

runs through the sectional representation of gender committee members, across the farm.

3.4.5 What are the Roles Women and Girls Play or Have in Household Decision Making Processes in the Target Population?

The study found that, at household level, men dominate decision-making on the more consequential matters. The sheer fact that in a household men are more likely to have legal ownership of the prominent family assets, has given them leeway to make weighty decisions without adequate consultation of their spouses. Men are more likely to make decisions on family expenditure, investments and use or sale of land or other assets, while women make decisions on day-to-day house chores. It was also found that men often have the final word on certain matters that directly relate to, or that are of a personal nature to their spouses. These include, decisions relating to when the family is to have children and how many or whether or not to use birth control mechanisms. The society still largely frowns upon women asserting decisional independence and bodily autonomy, regarding this issue. Similarly, it is not uncommon for the man to regulate the entrepreneurship ambition of his wife.

3.4.6 How Many Members of the public (including policy and decision makers, traditional and religious leaders, celebrities, men, boys, service providers, general public, etc.) engaged in advocacy for girls and women's economic independence and agency in the tea industry?

Community champions are emerging in Kericho to promote innovative ways of supporting women's access to agricultural resources. In Kabng'etuny, 500 men and 200 women, under the banner of Kapng'etuny Farmers' Co-operative, led by a Mr. Samson Koskei, has broken the mould by allocating their spouses or women coffee bushes, thereby allowing them to control production and reap the proceeds.⁵ This is aimed at closing the gender gap as regards property ownership and control in the coffee sector. Consequently, Kapng'etuny Women in Coffee (WIC) Project was formed in 2012, with 191 women benefitting from the initiative.

The Kipsigis Council of Elders has, similarly, promoted situations where men allot a given number of tea supply lines to their spouses, to achieve the same effect as in Kabng'etuny. On the composition of the Council of Elders, the number remains an approximation. There is a high turnover and change in representation. The following are approximations from 3 main units of the Council. The sittings of the Kipsigis Council of Elders are open to different groups of elders:

- (i) **Kipsigis Council of Elders** Amounts to approximately 200 elders (160 men and 40 women).
- (ii) **Kipsigis Community Clan Organization** (1 chair for each of the 198 clans) = 198 men (Note: This figure relates to Chairpersons of the Clans, who are almost all men. However, sometimes, the clan is represented by Secretaries and Treasurers, among whom are a significantly higher number of women).
- (iii) Myoot Elders In Kericho there are 200 and in Bomet, 200. Women comprise approximately 1/3 of all the Myoot Council of elders.

⁵ Fanny Rolander (2015)

	Group of Elders (Kipsigis)	Men	Women	Total
1	Kipsigis Council of Elders	160	40	200
2	Kipsigis Community Clan Organization (Chairpersons)	198	-	198
3	Myoot Council of Elders (Bomet and Kericho)	267	133	400
	TOTAL	625	173	798

Among politicians and policy makers, the Governor of Kericho County, the Member of the National Assembly for Belgut Constituency and the Women Representative for Kericho County, have been identified as being instrumental in advancing conversations and practices on gender inclusion in Kericho. Through the Kings and Queens Clubs at Tagabi Primary School, a total of 15 boys and 11 girls have taken up the role of gender protection champions within their school and host community.

3.4.7 Recommendations on how to actualize the enjoyment of girls and women's labor and economic rights in the tea industry

3.4.7.1 Economic and Financial Inclusion of Women

The host community in the Kericho Tea Zone should be sensitized on gender equality to influence their knowledge, attitudes and practices relating to ownership of property by women, equal decision-making roles between spouses, and financial inclusion and autonomy for women. Government, banks, micro-finance institutions and non-state actors should sensitize women at community level on available avenues for women to access micro-finance and entrepreneurship financing facilities. Financial literacy and entrepreneurship skilling programmes should be developed and targeted at women in the community to boost their capacities to set up and operate businesses.

3.4.7.2 Reproductive Health Rights

Men and women in the tea catchment community should be sensitized on reproductive health and family planning with the aim of enhancing informed joint or personal decision-making on reproductive health and family planning. Government should enhance access to affordable birth control methods for men and women in the tea zones.

3.4.7.3 Decision-Making by Women at Household Level

Men and women, at household level, should be sensitized on the need for and the benefits of joint decision-making or equality in decision making at the household level, especially on: family investments and business; family expenditure; family planning and reproductive health matters; and child-care matters. Decision making at the local KTDA factory level should factor in the interests of both men and women. Equitable mechanisms should be put in place to ensure that, among small holder producers and workers, at least two thirds of either gender participate in electing KTDA directors at factory level and that at least a third of either gender is represented on the KTDA local

level factory directorates.

3.4.7.4 Promotion of Women Leadership

In order to boost the numbers of women in management and supervisorial positions in the work-place, employers should facilitate continuous training, coaching and mentoring for women workers on leadership and management. Additionally, affirmative action measures should be taken, ensuring that not more than two thirds of the respective leadership and management positions at the work-place are held by one gender. Social barriers to women's ascent to leadership positions should be addressed through, among others: formulating policies and practices that promote women leadership; and, sensitization of workers to enhance appreciation of women leaders in the work-place.

3.4.7.5 Child Maintenance

To address the problem of non-provision of maintenance support and child-care support by fathers in the tea zones, men and women should be sensitized on parental responsibility and the legal implications of defaulting in child support. In addition, mediation services should be provided to parents for the execution of Parental Responsibility Agreements (PRA) and, where appropriate, legal aid be provided to single mothers in order to enforce the PRAs, in the eventuality of default by the fathers.

3.4.7.6 The Living Wage

The national minimum wage setting process should be participatory, informed by a clearly defined and open raft of factors, and based on the application of up-to date empirical information and trends towards the achievement of a living wage.

3.4.7.7 Representation of Workers

The Government should ensure that all workers - permanent and temporary, in small-holder farms and in the large farms – are able to gain registration by trade unions of their choices, in order to benefit from representation and union support in industrial matters. Allied to this, the KPAWU should commence the process of sensitizing workers from small holder farms on the benefits of registration with a trade union, enter into recognition agreements with small-holder farmers and register workers into the union. Employers in the tea sector should ensure that workers have access to representation by trade unions in the event of industrial disputes or in labour rights matters, allowing workers' representatives adequate space and time, during working hours, to engage in organization. Employers should also avoid from practices which may amount or be perceived to amount to intimidation and victimization of workers, on account of their organizing mandate.

3.4.7.8 Anti-Sexual Harassment Policies

The Employment Act should be amended to require all employers in the agricultural sector to develop and adopt anti-sexual harassment policies at the work-place, regardless of the numbers of their employees. Section 6(2) of the Employment Act requires only employers who have employed 20 or more workers to issue a policy statement against sexual harassment). This recommendation is in line with findings that workers in farms with less than 20 employees are also likely to suffer

from sexual harassment as those in farms with 20 or more workers.

3.4.7.9 Maternal and Reproductive Health Rights

All employers should ensure that expectant or child nursing women employees have access to statutory maternity leave and access to health-care and medical facilities. Expectant mothers at the work-place should be entitled to: flexible work-schedules; and, lighter duties, commensurate to their state of health and well-being. Where nursing mothers of infants are required to attend work, the employer should provide child-care facilities for the babies and allow the mothers adequate time off for breast-feeding, in addition to other regulation breaks.

3.4.7.10 Personal Protective Equipment

Employers in the tea farms and factories should ensure that adequate Personal Protective Equipment (PPEs) is provided to all workers. These include, but are not limited to: gloves; boots; overalls; and, masks. Additionally, workers working in the night or in cold weather should, accordingly, be provided with weather appropriate clothing.

3.4.7.11 Equitable Participation of Women in the Work-place

To foster equitable participation of women in the work-place, tea farms should adopt equitable representation of women among the farm management staff, with neither gender taking up more than two-thirds of the senior management positions.

3.4.7.12 Advocacy for Labour and Economic Rights

To ease and facilitate adoption of Gender Equality ideals in the patriarchal society, male champions, at community, school and work-place levels should be identified and supported to complement outreach for attitude change. These champions should include members of the Councils of Elders, who are counselors and custodians of community cultural norms. Conversely, to provide women in the community with inspirational, human examples of female success stories in the context of socio-economic success, female champions should be identified and fronted in campaigns to enhance Gender Equality in the community. Labour and Socio-Economic Rights advocacy in the tea sector should be a multi-stakeholder partnership, rather than a "lone-ranger" errand. The intricate and international nature of the tea value chain requires cooperation among actors to magnify the call to action as well as for mutual capacity building, learning and knowledge development and complementarity in competencies and resources.

The study findings point to significant differences in the operational context and social performance of small holder farms on the one hand, and of the larger farms on the other hand. Citing, mostly, limited resources, the small-holder tea sector – unlike the large tea farms - operates with limited formal structures or defined systems of management. Less formality means less developed systems for regulating labour practices in these farms. The results show that women working in small

holder farms are more susceptible to gender based discrimination and exclusion.

INTRODUCTION

4.1 Study Background and Objectives

In October, 2018, FIDA-Kenya commissioned a baseline study on, "The Status of Women's Labour and Economic Rights in the Kericho Tea Zones."

FIDA is planning to implement a two year project entitled 'Protecting Women's Labor and Economic Rights in the Tea Estates in Kenya'. The project's overall objective is to safeguard the rights of women in the tea industry towards recognition and full realization of their employment and other economic rights through advocacy, sensitization and empowerment.

The key deliverable for this project is to use evidence based information in highlighting violations of women rights in the Kericho tea zone so as to persuade policy and regulations reforms; increase awareness and empower women workers in the tea estates to identify violation of their labour, social and economic rights; seek redress and participate in decision making at all levels; set judicial precedent that would protect women's employment rights in the tea industry sector.

The overall purpose of the baseline survey is to examine the status of women's labor and economic rights in the Kericho tea zone in Kenya and determine their level of participation in decision making processes at all levels.

The objectives of the study are to:

- i. Assess the current situation in regards to violations of women's labor and economic rights in the tea zone in Kericho.
- ii. Assess the barriers to accessing women's labor and economic rights in the tea zone in Kericho.
- iii. Map the stakeholders that can be key in advocacy efforts for the safeguarding of women's labor and economic rights in the tea industry.
- iv. Identify the number of women and girls actively advocating for economic participation and rights in the target population.
- v. Identify the roles women and girls play or have in household decision making processes in the target population.
- vi. Identify the roles women and girls play or have in decision making processes at all levels in the target population.
- vii. Identify number of members from the public (including policy and decision makers, traditional and religious leaders, celebrities, men, boys, service providers, general public, etc.) engaged in advocacy for girls and women's economic independence and agency in the tea industry.
- viii. Make recommendations on how to actualize the enjoyment of girls and women's labor and economic rights in the tea industry.

4.2 Scope of the Study

This report is an analysis of two self-reinforcing and sometimes, technically subsuming concepts, in Economic Rights and Labour Rights. It specifically interrogates the socio-economic status and labour rights of women in the tea zones of Kericho.

Economic freedoms relate to the rights of individuals to work, to enter into contracts, and to possess, use, and inherit property while not violating the rights of other.⁶ The different aspects of these rights include the right to:⁷

- i. Acquire, own, use, and inherit property protected by the rule of law,
- ii. Exchange goods and services in open markets, at home and internationally. Establish or work for a business and engage in economic activity free of undue governmental interference and of corrupt officials;
- iii. Have recourse to legal enforcement of contractual obligations;
- iv. Be provided a reliable medium of exchange in currency (money) and instruments of credit;
- v. Form or join a labor union and engage in collective bargaining;
- vi. Form, join, or invest in a corporation or private professional organization;
- vii. Enjoy legal protection against monopolies and collusions in restraint of free trade and discouraging of competition.

Socio-economic rights are concerned with enabling people to have access to certain basic needs for the purpose of achieving a life of dignity and freedom. They are particularly crucial for persons and groups who have suffered an element of historical or systemic marginalization or discrimination, or those who have suffered from disaster. Socio-economic rights, therefore, has the sense of enhancing equity in society.

Socio-Economic Rights are governed under a host of international consensus frameworks and legal instruments, including: the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC); the Vienna World Conference on Human Rights Declaration and Plan of Action; the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the various conventions of the International Labor Organization (ILO); the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Africa Charter on Human and Peoples' Rights (the Banjul Charter); and, the Protocol to the African Charter on Human and Peoples' Rights (the Maputo Protocol).

Governments are charged with ensuring that they undertake steps for progressively ensuring that

Freedom Matters! What Are Economic Rights? The Freedom Collection - http://www.freedomcollection.org/ news/wp-content/uploads/2015/03/U2L3_Complete_v2.pdf

⁶ Ibid.

these rights are enjoyed, promoted and protected. As such, Kenya, among many countries across the globe, has domesticated provisions of these international legal instruments with the aim of achieving local implementation and enforcement. Beyond government, private entities, companies and individuals are, in certain circumstances, charged with ensuring that these rights are respected, protected, promoted.

Labour Rights relate to the variety of rights addressing labour relations between workers and their employers as well as working conditions for workers. Technically, these rights are subsumed under Economic Rights. Labour Rights are governed under many of the aforementioned legal instruments. The International Labour Organization (ILO), a United Nations agency, sets international labour standards and promotes social protection and working conditions. Specifically, the right to work guarantees the worker an opportunity to have fulfilling and dignified work under safe and healthy conditions, with fair wages affording a decent living for oneself and one's family. It further provides for the right to organize. Additionally, the United Nations Guiding Principles on Business and Human Rights (UNGPBHR) provides a framework for enhancing human rights – including labour rights – in the context of business.

Global statistics on the Socio-Economic status of women paint a picture that is common among women across various countries and relevant to understanding the situation of women's economic and labour rights in the Kericho tea zones. A selection of universal statistics on the socio-economic inclusion of women is captured, below:⁸

- i. In 18 countries, husbands can legally prevent their wives from working; in 39 countries, daughters and sons do not have equal inheritance rights; and 49 countries lack laws protecting women from domestic violence.
- ii. One in five women and girls, including 19 per cent of women and girls aged 15 to 49, have experienced physical and/or sexual violence by an intimate partner within the last 12 months. Yet, 49 countries have no laws that specifically protect women from such violence.
- iii. While women have made important inroads into political office across the world, their representation in national parliaments at 23.7 per cent is still far from parity.
- iv. Only 52 per cent of women married or in a union freely make their own decisions about sexual relations, contraceptive use and health care.
- v. Globally, women are just 13 per cent of agricultural land holders.
- vi. More than 100 countries have taken action to track budget allocations for gender equality.
- vii. The rates of girls aged between 15 and 19 who are subjected to FGM (female genital mutilation) in the 30 countries where the practice is concentrated have dropped from 1 in 2 girls in 2000 to 1 in 3 girls by 2017.

3

The United Nations, Sustainable Development Goals, Goal 5 - https://www.un.org/sustainabledevelopment/gender-equality/

Most of the labour in the tea sector of Kenya is provided by women, either working in the tea farms or in tea factories. They, mostly, perform unskilled work, often, within the lower cadres as general workers, while men dominate the supervisory and managerial positions, especially in large tea farms. A clear majority of small holder farms are owned by men, with women, again, providing the bulk of the labour. Compared to men, women in the tea zones do not have much access, control or ownership of productive resources. Neither is their voice in decision making within the household, at the work-place or within the broader community, accorded an equal hearing, within the society. Women's economic development in the tea zones is hampered by inequalities driven by structural and cultural norms that perpetrate patriarchy.

This report, therefore, seeks to chart out a baseline on the socio-economic benefits of the tea sector to women – both as workers and as enterprising members of the community, in light of the social norms and prevailing labour conditions. The geographic focus area is Kericho, focusing on large private tea farms and small-holder farms as well as tea factories and the labour catchment communities.

4.3 Methodology and Study Sample

The study employs a mix of qualitative and quantitative approaches to data collection and analysis. The qualitative approach has established an understanding of the trends and overall outlook of women and girls' labour and socio-economic rights in the tea zones. It has served to complement and rationalize the quantitative data and information. Participatory methodologies were deployed for this purpose, including, Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs). Appropriate data collection tools, including questionnaires, FGD and interview guides were utilized for this purpose, alongside documentary review.

Quantitative approaches have been applied to establish statistics, trends and positions, mainly through the use of questionnaires, guided questions and documentary review.

4.3.1 Sample Selection

For sample selection, regard has been paid to the broad as well as the overall study objectives. The proposed sampling framework is broken into 2 main heads: workplace (tea farms and tea factory employers); the Kericho tea zone community (broader population of the Kericho Tea Zones – members of the host community):

(a) The workplace – The major tea workplaces in Kericho revolve around tea plantations and tea factories, and their respective local value chains. The second consideration is that tea is produced both by large scale producers as well as small holders. Lastly, there is a crucial differentiation in tea that is produced by private entities as opposed to that that is produced by or with the local facilitation of government, as is the case of the Kenya Tea Development Agency (KTDA). Sam-

pling has also been disaggregated across sexes - men and women - as key informants, in order to achieve unique engendered data and information. At the workplace level, the sampling of workers cuts across the different cadres to capture: skilled and non-skilled labourers; general workers and supervisors/managers; shop-stewards to ordinary workers. External actors with a bearing on tea production and labour rights have also been engaged in the study. These include the Ethical Tea Partnership (ETP), trade unions, relevant Civil Society Organizations (CSOs) and local and government officials.

(b) The tea zone community – In the wider community context, sampling has been contrived to capture the perspectives of different clusters of informants: women (married and unmarried; women and men disaggregated by age and by positions in the society, as well as community leaders, practitioners from civil society organizations, political leaders, among others.

4.3.2 Summary of Key Respondents

Total Summary of they hesponaetts	
RESPONDENT GROUP	NUMBERS
FOCUS GROUP DISCUSSIONS	
Workers from Large Farms	16
Workers from Small Holder Farms	40
Community Leaders	8
Shop Stewards	3
Gender Committee Members	3
Sub Total	70

1. QUESTIONNAIRE RESPONDENTS	
Workers from Large Farms	140
Workers from Small Holder Farms	15
Community members	40
Sub Total	195

2. KEY INFORMANTS	
KPAWU, KTDA, Ministry of Labour and Social Services, Farm Africa, Ethical Tea Partnership, Finlays Tea, Unilever Tea, Nyeri Chai Farmers Association, Traidcraft Exchange, Highlands Tea.	10
Sub Total	10

Grand Total 275

Among the workers interviewed from the large farms, most women are in the bracket of 30 to 35 years of age (31.5%), with 28.8% falling between 35 and 40 years and 21.9% being between 25 and 30 years. This illustrates the youthful demographic of women in the workplace. Most of the women workers from the large farms who were interviewed, are married (69.9%), with 17.8% being either single or divorced. In comparison, 74% of male respondents from the large farms were married and 10.4% were either single or divorced. When questioned about their levels of education, 43.8% of women had dropped out of school before attaining KCPE compared to 26.7% of men. 35.6% of women workers had attained KCPE certification while a paltry 8.3% had managed KCSE certification. Comparatively, 28.4% of men attained KCPE certification and 34.4%, KCSE certification. The findings illustrate the clear differences in levels of education between men and women in the sector.

4.4 The Tea Sector of Kenya

Tea was not produced in Kenya until 1903 when it was first introduced from India by a colonial settler G.W. Caine⁹. Even with this introduction, indigenous Kenyans were not allowed by the colonial law to produce tea. Tea production remained; for a long time, the preserve of white settlers with commercialisation of tea being introduced in 1924 by Malcolm Fyers Bells. Fyers was sent out by Brooke Bond to start the first commercial estates in Kenya.

However, a shift was experienced in 1960 when the colonial government created the Special Crops Development Agency (SCDA) to promote growing of tea by Africans. In 1964, through Legal Notice Number 42, the Kenya Tea Development Authority (KTDA) was formed and it effectively took over the liabilities and functions of the SCDA. The formation of the KTDA was geared towards promoting and fostering growing of tea in small farms, which were previously deemed unviable in view of the expertise and costs required. The review of the law to allow small-holder farmers to engage in tea farming has no doubt contributed a great deal to the massive growth of the tea industry.

In 2000, the KTDA was incorporated as a private company known as the, "Kenya Tea Development Agency," becoming one of the largest private tea management agencies. The agency currently manages 68 factories in the small scale tea sub sector in Kenya. The 68 factories serve over 500,000 smallholder tea farmers cultivating over 100,000 hectares of land. These small-holder tea farmers produce over 60% of all tea produced in Kenya¹¹ while the rest is produced by large scale companies. With this production, Kenya is the third largest producer of tea in the world after India

- 9 Kenya Human Rights Commission (2008), A Comparative Study of the Tea Sector in Kenya: A Case Study of Large Scale Tea Estates.
- 10 https://www.ktdateas.com/index.php/about-us/our-background.html
- BSR HERproject, 2015 "Empowering Women in Kenya's Tea Sector: Adapting HERproject to the Smallholder Farm Context" Working Paper, 2015
- 12 The Star "Tea retains top spot as leading Forex earner" May 6, 2016

and Sri Lanka while tea is Kenya's leading foreign exchange earner, bringing in over KES 100 billion annually in earnings. ¹² Kenya's tea factories are certified by globally acclaimed standards including, ISO 22000, HACCP, Rain Forest Alliance (RFA) and Fairtrade.

Tea production in Kenya not only earns the country significant amounts in revenues, but it also boosts local economies, most notably: tea farmers; workers in tea plantations and factories; sector service providers; among others. Tea production owes its success to three main developments. First, after independence, the government prioritised the integration of small scale growers into the heart of tea farming. Today, small-holder farmers account for up to 60% of total tea production in Kenya. They farm tea via the KTDA. This framework has provided small-holder farmers with a viable structure for production, processing and marketing of tea produce. Large private or multinational farms account for 40% of tea production in Kenya. The take-off of tea production and trade in Kenya was also boosted by the establishment of an efficient estate sector under the British tea companies. The improvement in estate and factory management resulted in a five-fold increase in output. The third fillip to tea farming was the identification and adoption of high yielding tea varieties by the Tea Research Foundation of Kenya (TRFK), coupled with superior crop husbandry. Among some of the interventions are: the selective application of herbicides and improved planting and cultivation methods. The result was a significant improvement of crop yield and quality.

In Kenya, tea is mainly grown in Kericho, Bomet, Nandi, Kiambu, Thika, Maragua, Murang'a, Sotik, Kisii, Nyamira, Nyambene, Meru, Nyeri, Kirinyaga, Embu, Kakamega, Nakuru and Trans-Nzoia. Kericho is the main town in Kericho County, set on the highlands west of the Kenyan Rift Valley and on the edge of the Mau Forest. With a population of 752,396, Kericho County covers an area of 2,111 square kilometres. It is mainly inhabited by the Kipsigis, a sub-tribe of the Kalenjin people. Other tribes who are to be found in significant numbers in Kericho County are: the Luos, Abagusii, Abaluhya, Kikuyu, Nandi, Maasai and the Ogiek. Kericho boasts some of the country's largest and most prominent tea producers. James Finlays Limited, Unilever Tea Kenya and Wiliamson Tea, are among the large multinational companies in Kericho. Kaisugu Tea is also a dominant tea producer in the area. The KTDA, the main management agency for small holder farmers, also keeps large swathes of land under tea production while at the same time, feeding off a large supply of tea produce from small-holder farmers.

The tea sector is a major employer in the Kenyan private sector. It employs more than 80,000 people, in the estate and in tea factories. It has been estimated that more than 3 million people earn their livelihood from the sector. Labour in the small-holder farms is characterized by much less

R.M. Gesimba, M.C. Langat , G. Liu and J.N. Wolukau , 2005. The Tea Industry in Kenya; The Challenges and Positive Developments. Journal of Applied Sciences, 5: 334-336. DOI: 10.3923/jas.2005.334.336. URL: https://scialert.net/abstract/?doi=jas.2005.334.336

¹⁴ Ibio

^{15 2009,} Kenya National Population and Housing Census

¹⁶ Ibid 10.

formality than in the large farms. Small-holder producers rely on a mix of hired labour and family labour. As such, the small holder farms are not as well-regulated as the larger private farms.

Across the country, women constitute the bulk of the work-force in the tea sector. The paradox is that men continue to dominate the more influential positions – managerial and supervisory – at the workplace, with most women being general workers. The ownership of the small-holder farms, too, is heavily dominated by men, owing mainly to long standing traditional beliefs and practices that marginalized women. Beyond culture, systemic factors in the tea sector have compounded the marginalization of women. The effect is that women not only suffer gender based discrimination at the work place, but the prospects of their economic development are significantly dimmed by the social construct in the tea zones. The archetypical worker in the tea sector is a single mother, aged between 20 and 30 years, working on a small-holder farm. With a KCPE certificate and little to no special skills, she mainly works as a general worker, a tea picker, with remote chances of rising up the professional ladder. She works and lives within a male dominated culture.

5.0 Regulatory Framework and Good Practices on Socio-Economic Inclusion in the Tea Sector

5.1 International Normative Framework for Women's Socio-Economic Inclusion

There are a number of global and national frameworks that enable women's access to socio-economic rights. These frameworks are a mix of both voluntary and non-voluntary instruments and development blueprints. Some of the relevant frameworks are discussed here below.

5.1.2 Sustainable Development Goals (SDGs)

The 2030 Agenda for Sustainable Development was adopted by all United Nations (UN) member states in 2015, thereby signaling a universal commitment to achieving peace and prosperity. The SDGs is a consensus document on the interconnectedness and interdependence between ending poverty and safeguarding civil, social and economic rights and freedoms. For women's socioeconomic rights, the SDGs framework not only spells out the priority areas to be addressed, it also gives way to a framework for charting and monitoring progress towards the achievement of these goals by the various UN member states.

5.2.2 Goal Number 1 - End poverty in all its forms everywhere

Extreme poverty has declined considerably since the turn of the century. However, pockets of the worst forms of poverty persist, in the face of an exponential growth in the wealth of the wealthiest bracket of global citizens. The eradication of poverty requires strong social protection systems aimed at safeguarding all individuals, with special emphasis on those living under the poverty line. It also requires targeted measures to reduce vulnerability to disasters and to address specific underserved geographic areas within each country. The proportion of the world's workers living with their families on less than \$1.90 per person a day declined significantly over the past two

decades, falling from 26.9 per cent in 2000 to 9.2 per cent in 2017.¹⁷ Based on 2016 estimates, only 45 per cent of the world's population were effectively covered by at least one social protection cash benefit.¹⁸

Labour conditions for workers, access to productive resources for both men and women and socio-political inclusion are crucial in achieving the main target under SDG 1 - By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions. The other targets are to: Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable; By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance; By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; Ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries, in particular least developed countries, to implement programmes and policies to end poverty in all its dimensions; and, Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions.

5.1.2.2 Goal 5 - Achieve gender equality and empower all women and girls

Gender inequality continues to deny women and girls opportunities to participate optimally in the society and to contribute on the socio-economic sphere. Addressing inequality calls for an overhaul of attitudes and systems and the development of human capacities for advancing diversity in society. The targets under Goal 5 aim to: End all forms of discrimination against all women and girls everywhere; Eliminate all forms of violence against all women and girls in the public and private spheres; Recognize and value unpaid care and domestic work and shared responsibility within the household and the family as nationally appropriate; Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life; Ensure universal access to sexual and reproductive health and reproductive rights; Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

5.1.2.3 Goal 8 Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

The place of human capital and labour as a tool for achieving socio-economic development cannot be overstated. The centrality of business and enterprise in driving economic growth is clear, what with governments tapping the economic participation of big business and small entrepreneurs to Source: Report of the Secretary-General, The Sustainable Development Goals Report 2018

¹⁸ Ibio

create jobs and boost earnings. There is, however, a need to improve working conditions at the work-places to enhance productive labour and livelihoods. The targets under Goal 5 include: By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value; and, protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

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

The normative framework and content on economic and social rights for women was originally framed in a number of international legal instruments, including the Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa commonly referred to as the Maputo Protocol,- is a commitment by African states parties to the protocol, to observe and uphold the respect of women's rights. The Maputo Protocol not only adopts the main provisions of the ICESCR, it also gives these provisions an African protective perspective and provides a mechanism by which states parties to the protocol may be held to account. It is, "an acknowledgement of the crucial role of women in the preservation of African values, based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy." 19

The Maputo Protocol contains a number of well elaborated provisions aimed at ensuring that states parties take appropriate action to: the elimination of discrimination against women, ²⁰ protection of the right to dignity, ²¹ the right to participate in the political and decision making process, ²² the right to education and training, ²³ the right to economic and social welfare rights ²⁴ and the right to health and reproductive rights, ²⁵ among others.

In addressing the challenges of the pervasive patriarchal culture, the Maputo Protocol provides thus: "States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men."²⁶

5.1.3 The United Nations Guiding Principles on Business and Human Rights (UNGBHR)

The United Nations Guiding Principles on Business and Human Rights (herein The Guiding

- 19 Preamble to the, Maputo Protocol.
- 20 Ibid Article 2
- 21 Ibid Article 3
- 22 Ibid Article 9
- 23 Ibid Article 12
- 24 Ibid Article 13
- 25 Ibid Article 14
- 26 Ibid Article 2(2)

Principles') were developed by Professor John Ruggie, then special rapporteur on the issue of human rights and transnational corporations and other business enterprises. The Guiding Principles were endorsed by consensus by the Human Rights Council in June 2011. The Guiding Principles; also known as the "Ruggie Framework," are based on the "Protect, Respect and Remedy Framework," which outlines the role of the State to protect against human rights abuses by actors including businesses, business role to respect human rights in all their activities including supply chains and avenues for greater access to remedy in the event of human rights abuses. The Ruggie Framework is based on the International Bill of Human Rights and the International Labour Organisation's (ILO's) Declaration on Fundamental Principles and Rights at Work. They apply to all States and business regardless of size, sector, location, ownership, or structure and regardless of State's ability or willingness to fulfil their own human rights obligations.

Although the Guiding Principles are voluntary and, therefore, do not attract any legal implications *per se*, they provide invaluable guidance to; especially businesses, on their conduct with regard to human rights. The significance of the Guiding Principles is further buttressed by their endorsement by the government of Kenya through a public commitment by then Attorney General, (AG) Githu Muigai, in 2015, to develop a National Action Plan (NAP) on Business and Human Rights to guide in the implementation of the Guiding Principles. The process of developing Kenya's has been on-going since the commitment by the former AG and a draft NAP is currently out. With this milestone, Kenya is set to be the first country in Africa to develop a NAP on business and human rights.

Noteworthy, Unilever; the world's largest tea company and the largest producer of tea in Kenya, worked closely with Professor Ruggie in his follow-up research on companies' implementation of the Global Compact (research which led to the development of the Guiding Principles on Business and Human Rights), and has since partnered with the Danish Institute for Human Rights to develop guidelines for corporations seeking to integrate human rights into their business strategies.²⁷

5.2 National Legal And Policy Framework For Women's Socio-Economic Inclusion 5.2.1 The Constitution of Kenya

The Bill of Rights under the *Constitution of Kenya 2010*, spells out a number of freedoms and rights that are crucial for the advancement of women's socio-economic rights. Paced by progressive provisions from international legal instruments and International Labour Organization (ILO) Conventions, the Constitution provides ample guidance on the protection of labour rights. To wit, it follows the lead of the ILO Convention 100, of 1951 on Equal Remuneration for Men and Women Workers for Work of Equal Value; the ILO Convention 111, of 1958 on Discrimination in Respect of Employment and Occupation; and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which outlaws discrimination against women across a range of spheres.

Libby Abbott (2012), "Allegations of sexual harassment and abuse in Unilever's Kericho plantation, Kenya: A case study of due diligence and certification processes" 2012.

Article 27(5) of the *Constitution of Kenya 2010* forbids direct or indirect discrimination. Direct discrimination occurs when one is treated worse or differently from another person or other people owing to certain factors. The person facing unfavourable differential treatment may be having a protected characteristic; or a perceived protected characteristic, or she may be connected to someone with such a protected characteristic. On the other hand, indirect discrimination relates to a situation where there is a policy that, though uniformly applicable for everybody, the policy has the effect of placing a person or a group of people who share a protected characteristic, at a disadvantage. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.²⁸ The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.²⁹ Social-economic rights of women and workers are based on the need to protect human dignity, which is provided for under Article 28.

Labour rights are specifically protected under a range of provisions. Article 36 guarantees the freedom of association, including the right to form, join or participate in the activities of an association, while Article 37 safeguards the allied freedoms of assembly, demonstration, picketing and petition. In addition, fair remuneration, reasonable working conditions, the freedom to join or participate in the activities and programmes of a trade union, and, to go on strike, are specifically spelt out.³⁰

Economic rights are variously provided for through, among others, the protection of the right to property.³¹ However, since 2010, the Constitution explicitly makes reference to the protection of, "Economic and Social Rights."³² They include the respective rights to: the highest attainable standard of health, which includes the right to health care services, including reproductive health care; accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security; and, to education.

On cue, a number of municipal legislations have been enacted to provide a more elaborate framework for promoting these rights. Labour laws are variously covered under: the Employment Act; the Labour Relations Act; the Labour Institutions Act; the Work Injury Benefits Act; the Occupational Safety; and, the Health Act. The government has, through a number of legislations, set out the framework for promoting social security and social protection, including, through: the National Social Security Act and the National Hospital Insurance Act. In addition, the push to promote entrepreneurship by marginalized groups, including women, has found anchorage in statute.

- 28 Article 27(3), the Constitution of Kenya 2010
- 29 Ibid Article 27(4)
- 30 Article 41
- 31 Ibid Article 40
- 32 Ibid Article 43

The Public Procurement and Asset Disposal Act,³³ provides a practical legal framework to give effect to the affirmative action exhortations found under Article 55 of the Constitution of Kenya. As such, the Public Procurement and Asset Disposal Act establishes the Access to Government Procurement Opportunities (AGPO) programme, which provides the legal basis for women, youth and Persons With Disabilities (PWD) to access 30% of government procurement opportunities. Through Legal Notice No. 21 under the Public Finance Management Act, the Uwezo fund, which aims to provide capital and entrepreneurship skills to women, youth and PWDs, at constituency level, was established. The SACCO Societies Act,³⁴ also exists to provide easier access to financial services to the general population through deposit taking Savings and Credit Cooperative Societies (SACCOs).

There is also a raft of laws that regulates gender based violence, thereby benefiting women and girls, who disproportionately bear the brunt of gender based violence. Foremost among these laws are: the Sexual Offences Act,³⁵ which spells out a number of sexual offences, introduces new offences and imposes, mainly, minimum sentences against offenders of sexual offences; and the Penal Code.³⁶ The Government has developed a number of policies which have the effect of advancing the socioeconomic development of women and girls, including the National Gender Policy, the National Adolescent Sexual Reproductive Health policy 2015, and the National Guidelines for Provision of Adolescent and Youth Friendly Services 2016 and the National Adolescent Sexual Reproductive Health Policy Implementation Framework 2017 to 2021 to improve Sexual and Reproductive Health Rights (SRHR) status of young people in Kenya.

5.2.2 The Employment Act

The Employment Act³⁷ stipulates the rights of employees and provides basic conditions of employment. The Act defines, "Forced or compulsory labour," and proceeds to prohibit³⁸ the same. Forced labour has been defined to include any of the following: means any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service. The Act expressly forbids discrimination in employment on a wide set of grounds that include: "race; colour; sex; language; religion; political or other opinion; nationality; ethnic or social origin; disability; pregnancy; marital status; or HIV status." Both, "direct" and "indirect" discrimination are forbidden.

The Employment Act places the onus on employers to eliminate discrimination and promote equality in employment. An employer is required to take all lawful action, including through affirmative

³³ Act Number 33 of 2015, the Laws of Kenya

³⁴ Act Number 14 of 2008, the Laws of Kenya

³⁵ Act Number 3 of 2006, the Laws of Kenya

³⁶ Chapter 63, the Laws of Kenya

³⁷ Act Number 11 of 2007

³⁸ Ibid Section 4

³⁹ Ibid Section 5(3)(a)

action measurers aimed at redressing the discriminatory practices or policies at the work-place. The Act also enjoins the Government through the Minister and labour officers and the industrial court to promote equality at the work-place and eliminate discrimination.

To address the historical gender pay-gap, the Act provides that an employer shall pay his employees equal remuneration for work of equal value. Equal pay is made in reference to the range of payments and benefits, payable to workers: the basic wage, non-salary payments, bonuses and allowances. Sexual Harassment is similarly proscribed. Employers who have 20 or more employees are legally obligated to develop a policy statement on sexual harassment. This study has found the protective provisions of this clause limiting for the reason that workplaces with less than 20 employees are just as vulnerable to sexual harassment, thereby requiring a policy framework to address the same. Moreover, in light of emerging agricultural sector best practices in developing and implementing anti-sexual harassment policies, this study finds that there is need for the Minister to promulgate subsidiary legislation prescribing the minimum normative framework of the anti-sexual harassment policy.

The Employment Act also makes it a requirement for all employees to be provided with contracts, going far enough to prescribe the minimum stipulations and content of a contract. A range of benefits are similarly guaranteed to the employees, including: annual leave of not less than 21 days;⁴² 3 months' maternity leave for expectant and nursing mothers;⁴³ 14 days of paternity leave; and sick leave;⁴⁴ the provision of housing facilities or a housing allowance;⁴⁵ and medical attention for workers.⁴⁶ Protective provisions relating to how employees may be terminated are covered under the Act. Summary dismissal⁴⁷ may only be done upon "lawful" and "fair" terms, more so where the employee fundamentally breaches her obligations.

5.2.3 The Labour Relations Act

The Labour Relations Act⁴⁸ regulates industrial relations between workers and employers. Thus, it safeguards both the employees' and employers' freedoms of association, for the purposes of collective bargaining. Employees are guaranteed the freedom to participate in forming, joining or leaving a trade union. The practice by trade unions relating to the coerced requisition of union dues from workers who are non-members of the trade union, offends these guarantees. The unions have previously levied the said agency fees on such workers, upon the strength of a recognition agreement with the worker's employer, and on the pretext that such a worker benefits from the union's services through the collective bargaining process.

Members of trade unions may participate adequately in the union's lawful activities, without fetter.

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40 Ibid Section 5(5)
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⁴¹ Ibid Section 6

⁴² Ibid Section 28

⁴³ Ibid Section 29

⁴⁴ Ibid Section 30

⁴⁵ Ibid Section 31

⁴⁶ Ibid Section 3447 Ibid Section 44

⁴⁸ Act Number 14 of 2007, the Laws of Kenya

Incidents of intimidation, victimization or discrimination on account of membership or participation in lawful union activities are forbidden.

Just as employees bear the right to organize, employers also enjoy freedom of association, particularly, to form, join or participate in an employers' organization. An "employers' organization" is a group of employers associated together for the purpose of regulating relations between employers and their employees or the trade unions representing those employees. It is increasingly becoming common-place for employers to come together for this purpose, especially for practicality in negotiating with unions.

Where a recognition agreement between the union and the employer exists, trade unions should be allowed adequate time and access to workers, for the purpose of lawful organizing, during working hours, as appropriate. Union representatives, elected at the shop floor, should, likewise, be allowed space as the link between the trade union and workers. To effectively carry out their mandate, unions and shop stewards should have their capacities developed sufficiently for purposes of negotiating with employers.

5.2.4 The Tea Act

The Tea Act⁴⁹ provides for the regulation and control of the production, of tea, its manufacture and trade and for connected purposes. It further establishes the Tea Board of Kenya whose functions include: licensing of tea growers; regulating, controlling and improving the cultivation and processing of tea; taking measures to ensure control of pests and diseases; regulating all aspects of tea trade; registration of persons dealing in trade; promoting and monitoring the trade of tea in Kenya; promoting research and training in matters that relate to the tea industry; and, taking measures to ensure compliance with the Act.

The Act further provides for the representation of small-holder tea farmers on the Board through nomination of two farmers by tea factories. However, existing literature revealed major hurdles for effective farmers' representation at the factory levels which; resultantly, must impede their representation at the board level. According to a report by the Christian Partners Development Agency (CPDA) titled, "Challenges and Opportunities for Women in the Tea Sector in Fair Cup Project Areas," one of the requirements for smallholder farmers to be elected at the board level was a minimum production volume of 3,500 kilograms of tea. This threshold is unachievable by most women owing to the fact that most of them engage in small scale tea farming in addition to tea bushes being registered in their spouse's names.

5.2.5 The Work Injuries and Benefits Act

The Work Injury Benefits Act⁵⁰ provides for compensation to employees for occupational accidents and diseases arising out of and in the course and scope of an employee's employment resulting to

⁴⁹ Chapter 343, the Laws of Kenya

Act Number 13 of 2007, the Laws of Kenya

personal injury. The Act obligates employers to obtain and maintain an insurance policy in respect of any liability that the employer may incur to any of his employees, failing which, the employer would have committed an offence. However, this Act does not include provisions for compensation for persons engaged in employment on casual basis. This is a serious deficit in the law considering that a majority of employees in the tea sector are engaged on perennial casual contracts.

An employee who is injured, suffers disability or dies in the course of employment is entitled to compensation unless the injury, disability or death is caused by their deliberate or wilful conduct of the employee. In case of fatal injuries suffered in the course of duty, employees are required to make a verbal or written notification to the employer and the same sent to the Director of Occupational Safety and Health within 24 hours of the occurrence.

Employees or their dependents have the right to request the employer to furnish them with a copy of the notice of the accident submitted by the employer to the Director in respect of a claim for compensation by the employee or their dependent.

Given the fact that the work of tea labourers is extremely arduous, especially for tea pickers who have to be on their feet all day with heavy baskets, workplace injuries are commonplace; as are respiratory (resulting from inhalation of tea dust in the factories) and water-borne diseases. Similarly, after mechanization of labour, workers have to bear the weight of tea plucking machines over uneven terrain which predisposes them to muscle-related complications. It is therefore imperative that workers understand the provisions of the WIBA in order to make the necessary compensation claims should the need arise.

5.2.6 National Gender Policy

The Gender Policy was developed through the initiative of the Department of Gender and Social Development within the Ministry of Gender, Children and Social Development. It was developed in order to institutionalise the Kenya National Policy on Gender and Development (NPGD), 2000 within the Ministry. It was further designed to provide a framework for the conceptualization, design, implementation, monitoring and evaluation of the Ministry's programmes. The development of the Policy was informed by the government's realisation that without a coherent and comprehensive overall framework for guiding gender mainstreaming within the different sectors and line ministries involved in development, misplacement of resources in uncoordinated responses would continue. Although the Policy is developed for internal application by the Ministry, and externally with its partners, it broadly elaborates the key concepts and approaches that underpin gender and development issues. It also provides useful guidelines and strategies on gender mainstreaming and women's empowerment. Some of the strategies outlined in the Policy and which can be useful in guiding the strengthening of gender mainstreaming initiatives; and particularly the empowerment of women in the tea estates include: reviewing and enhancing existing strategies for capacity building in gender mainstreaming as part of institutional development programmes with special attention to workers' training on gender analysis skills; formulating measures to ensure that gender-specific vulnerabilities and capacities of men and women are systematically identified and addressed;

strengthening the institutional procedures which ensure that the needs of women and men, girls and boys, are all met equitably with a view to assuring vulnerability reduction; ensuring that reporting and accountability mechanisms for activities and results in gender mainstreaming are put in place; and, performance evaluations, budget allocation analysis and actions to enable the full participation of women and men on an equal and meaningful basis in activities of the tea companies at all levels. Based on the foregoing, the National Gender Policy provides a solid framework for strengthening gender policies at the operational level within the multinationals and tea factories where more than half of the workface is female.

5.3 Good Practices for Women's Socio-Economic Inclusion

5.3.1 The Model Legislative Framework on GBV for County Governments of Kenya

The Model Legislative Framework on GBV for County Governments, was developed by the National Gender and Equality Commission (NGEC) of Kenya, in 2017, to guide county governments on critical elements and considerations for law on Sexual and Gender-Based Violence (SGBV). The Model framework provides a mechanism for coordinating government responses on SGBV within the counties, as well as measures for implementation. It also establishes mechanisms coordinating the county level responses by both the national and county governments.

The NGEC recommends adoption of the framework through the enactment of appropriate laws by county governments. If enacted, the law will broadly seek to: enhance awareness among the public on the causes, impacts, consequences and means of prevention and response to SGBV; provide protection to victims of SGBV in line with other existing laws and policies; address conditions that exacerbate SGBV; support and facilitate the collection of data desegregated by ethnicity, sex, disability and age; and, establish a clear reporting and referral system to enable victims of SGBV and witnesses to understand the channels for reporting. The law will also seek to ensure that training is conducted to healthcare providers within the county on proper information dissemination and education on SGBV especially with regard to confidentiality. The trainings will be extended to communities with focus on where to seek remedy and the attendant processes. The framework also recommends the establishment; by county governments, of safe houses for victims of SGBV.

Although the framework is yet to be formulated into law by the county governments, it provides valuable guidelines on curbing SGBV. It is especially useful in view of the fact that most workers are housed by the employers within 'camps' in the tea estates where rampant cases of sexual and gender based violence are reported as established by this study.

5.3.2 Affirmative Action in the Representation and Economic Inclusion of Women – The KTDA framework

Previously, leadership at the KTDA board levels in tea factories was considered political and hence women shied away from taking up these positions as it would expose them to undue scrutiny. This view was also shared by the Programme Manager and the Programme Coordinator from Traidcraft and Farm Africa respectively, during the key informant interviews. However, according to the

ETP Manager interviewed for this study, the situation has improved. ETP has recently engaged tea producer organizations (factories) to identify solutions to the challenges facing actors in the tea supply chain. Resultantly, at least 75% of tea factories have co-opted women to their boards. There are also at least six (6) women elected board members in the tea factories with two (2) women further elected to chair boards in two tea factories. These numbers were impossible to report five years ago when there were no women in board management positions in the tea factories.

In order to supply green tea leaf to the factories, it is required that smallholder farmers meet a minimum volume; of at least 2000 kilograms annually, as well as have a tea account (a unique number) at the factory. A majority of women find these requirements unachievable since most of the land is registered in their spouses' names. This has for a long time relegated women to toiling while monetary proceeds from tea growing are channeled to the men. However, the situation has changed as women now lease out land for tea farming and deliver their own green tea leaf to the factories. Additionally, the KTDA now allows households to run two accounts for the same tea bushes where one account belongs to the man while the other belongs to the woman. This has improved the economic situation of women in the tea industry through enhanced access to credit.

5.3.3 The Dignity Enhancement Committee (DEC) – Unilever Tea Kenya Limited

Unilever Tea Kenya Limited has established an elaborate system of promoting gender equality and workers' welfare. The Company established the Dignity Enhancement Committee (DEC) 8 years ago, to promote gender equality and equity. In 2013, the terms of reference for the DEC were strengthened and the DEC hearings became part of Leadership Team (LT) meetings, complete with a substantive Code Compliance Officer, to monitor and address workers' welfare and gender based violations. This has given prominence to matters concerning gender and inclusion at Unilever as priority agenda for the company's leadership. The LT provides support, guidance and oversight to the DEC. In monthly meetings, the LT reviews areas of concern and reports breaches of the Code. It helps to design appropriate interventions that address root causes of violations and initiatives for preventing escalation of violations.

The DEC draws its membership from a near equal number of men and women employees. Each section of the farm votes to pick a nominee. The pool of nominees then vote for a 7 member DEC. The DEC holds monthly meetings, within working hours, to review a range of issues at the workplace. Among the functions of the DEC are: sensitization of workers on the Anti-Sexual Harassment Policy and on Sexual and Gender Based Violence (SGBV). It also sensitizes workers on labour rights and child protection, the latter being an emerging concern amongst workers. As part of its social responsibility, Unilever, through the DEC, has advanced outreach on gender and inclusion matters beyond the immediate work-place to the schools within the Unilever Tea Estate. Owing to economic hardships by their families, girls in the schools are, sometimes, lured by unscrupulous men seeking casual or sexual relationships in return for gifts. This has an effect on the education of girls. Boys, on the other hand, have been reported to fall easy prey to the growing

culture of drug use among young persons and the youth. Due to economic pressures, they are also easily lured into the *boda boda* business, at the expense of their education. Unilever has established "Queens and Kings Clubs," in schools within the Unilever tea estates to raise the awareness levels of school-children on gender equality and equity, thereby enhancing protection against gender based violence. The Kings and Queens Clubs provide a channel for reporting and addressing grievances relating to gender based violations and a host of social issues affecting young persons in schools. General support to the Queens and Kings Clubs is provided under the structure of the DEC.

The DEC has registered a number of achievements over the last 8 years. According to Unilever, the school drop-out rate has reduced as a result of the outreach and support. There are reduced cases of pregnancies by school girls. Secondly, workers and children in the labour catchment communities are more knowledgeable on gender equality issues, thus making the case for sustaining advocacy against gender based violations through the emerging generation of young adults. Children, workers and the community are more knowledgeable on SGBV. Indeed, the Queens and Kings Clubs in schools have emerged as strong defenders and monitors of children's welfare.

The DEC also works closely with village elders to address social issues in the catchment community. These are mostly related to cohesion in the households, villages and gender equality. In this way, the company conducts outreach at the community level.

The DEC has contributed to a culture of protecting and promoting the rights and welfare of workers, across the sexes, through sensitization, capacity building and by setting up structures for addressing emerging issues. The company has established an Employee Assistance Programme (EAP), with a phone help-line for the purposes of counseling employees and for addressing mental health and parenting issues. One challenge that abides is the reluctance of some workers to report perceptively sensitive cases of violations, through the DEC framework, for fear of victimization. Workers are equivocal about the capacity of the DEC to address sensitive complaints and to take decisive action, especially where actors in management are alleged to be the culprits. It is, therefore, imperative that, while, the DEC should retain high level support from the Unilever Leadership Team (LT), it should, nonetheless be seen to be autonomous from the management to inspire credibility and participation from the workers.

The DEC ranks as among one of the more elaborate commitments by the tea sector actors to address gender based violence, holistically and systematically. The approach of the DEC, encompassing workplace, community level and schools programming is a sector good practice as it contributes to sustainable dialogue within the social continuum of the tea zones of Kericho.

5.3.4 The Gender Equality and Diversity Policy - James Finlays Kenya (JFK) Limited

The Gender Equality and Diversity Policy of James Finlays Kenya (JFK) contains a policy statement which spells out JFK's commitment to non-discrimination and to respect for the *Constitution of Kenya*. It particularly mentions respect for Articles 27, 41. It also spells out its commitment to

statutes governing labour, including the Employment Act. It is signed by the Managing Director, thereby assuring of top level commitment to the policy.

The policy gives the Managing Director the overall responsibility for providing leadership in the implementation of the policy. Other actors tasked with implementing aspects of the policy are: the Human Resources Department; the Gender Empowerment Manager; and managers at all levels. There is a strong sense, across the work-force about commitment by the company to promoting gender equality, not least because JFK has established the position of a Gender Empowerment Manager as a senior management portfolio, overseeing gender integration and protection matters in the farm.

The JFK Gender Equality and Diversity Policy is mainly operationalized through work-place committees, working alongside farm management. More crucially, there exists a "Central Gender Committee," a committee of managerial staff, whose primary role is to integrate gender considerations into management systems and decisions across all areas of operation. It meets twice a year to deliberate upon the state of gender protection and to render recommendations on policy and practical interventions by management. The Gender Committee's primary role is to coordinate all communication and information sharing on gender equality and women empowerment matters and the mainstreaming of gender into the organization. It mainly comprises managers and a number of "gender champions" from different sections of the farm.

To enhance participation by the workers, the Gender Committee is decentralized across the farm. In this regard, the gender policy has established Group Gender Committees which meet on a quarterly basis, chaired by the Group Manager. Its role is to implement and operationalize the policy, including monitoring gender compliance in the farm. Furthermore, there is the Shop Level Gender Committee, chaired by the Unit Manager. This committee implements gender initiatives at the shop floor. "Gender Champions" are further recognized under the policy, their main role being to build the capacities of staff on gender matters and to catalyze behaviour change in the farm. They work in tandem with all the above-mentioned committees.

JFK's gender protection interventions have resulted in improved social and economic environment for women workers. JFK has established a number of child-care facilities to accommodate nursing mothers and their breastfeeding babies. These facilities are, however, too few to accommodate the large number of women who require child care services. A number of workers who are housed within the JFK Tea Estate are also provided kitchen gardens, which they till to augment their food requirements. In recognition of HIV and AIDS as a contextual social issue that cannot be ignored, even in the tea estates, JFK has put in place a scheme to supplement the special dietary requirements of workers living with HIV and AIDS. Invariably, these policies and practices have benefitted the women work-force significantly.

In spite of the existence of the JFK Gender and Diversity Policy, many workers at JFK still do not understand or know about the policy sufficiently to be able to claim benefits under this scheme. There

is need for sensitization of workers to ensure understanding, ownership and effective participation in the gender protection campaign at JFK. In addition, it is crucial that the committee system be general worker-led to enhance ownership and spur dynamism, while retaining management support.

The JFK Gender and Diversity Committee is a good practice in the tea sector as it signals high level organizational commitment to gender protection and establishes frameworks for gender accountability, dispersed across the farm for increased worker participation. Above all, it provides a mechanism for mainstreaming gender into management systems within JFK.

5.3.5 Councils of Elders in the Kericho Region

There are 5 groups of elders that cater to the residents of the Kericho area. The Myoot is a regional organization of elders for the entire former Rift Valley Province, in which Kericho County is situated. The Myoot has branches in Kericho and Bomet. The branches share a common leadership. The overall leadership of the *Myoot* is based in Eldoret. Every region with a preponderance of members of the Kalenjin community seconds representative elders to the *Myoot*. The Council of Kipsigis Elders, on the other hand, is a local outfit of elders for the Kericho region. Besides the Council of Elders, the Kipsigis have also established the Kipsigis Clan Organization. This organization brings together elders drawn from the 205 Kipsigis clans. The Talai Elders, on the other hand, represents members of the Kipsigis community who, in the colonial era, were uprooted from their homes in the Kericho highlands and settled in Gwassi in South Nyanza. The Ogiek Elders, represent the forest inhabiting community, Ogiek, resident within Kericho and Bomet. The latest outfit of elders is the *Kook* Elders. The *Kook* Elders represent the Kipsigis of Bomet County, which borders Kericho.

The various councils of elders draw a large ratio of their membership from men. However, women also sit on these councils of elders. While each of these groups has a constitution that spells out its functions, they all, broadly undertake a similar function as the authority on cultural practices and related socio-economic practices of the community. Community elders' primary role is advisory. They provide guidance and direction to community members on matters that are pertinent to the society. Some of these are matters of social and economic development. They, however, cater to differentiated demographics. They also play a central role in addressing and providing guidance on emerging challenges and opportunities for the community. These include matters related to: peace and security; drug abuse and use of illicit drinks; child pregnancy, among others. As such, they work hand in hand with government officials, political leaders and civil society, to advance the various community agenda. Increasingly, community members are relying on councils of elders for counsel and direction on matters of gender equality and inclusion, marriage and settlement of disputes.

Elders hold regular meetings. On meetings with a weighty significance, they convene public meetings, symbolically, at Kapkatet Stadium to communicate their resolutions publicly. They also

utilize community vernacular radio broadcasts to convey their counsel to the community.

The Council of Elders' framework has faced its challenges. Often, elders are sidelined in community development matters by political leaders who mainly view the elders as an implicit threat to their own power, authority and future political prospects. This is a threat to the place of community elders in the Kipsigis and Ogiek culture. Although the Councils of Elders are mostly made of men, there is progress on the admission of women into these cultural units, thereby giving them a voice in shaping cultural lore. This is crucial for future community conversations on the socioeconomic and labour rights of women. To enhance the inclusion of women into the region's socioeconomic fabric, it is crucial that women are incorporated in meaningful numbers into this cultural platform, to allow for inclusive cultural dialogue. The Council of Elders framework also runs into the challenge of tribal inclusion. Because Kericho is a metropolitan town with significant numbers of non-Kipsigis speaking persons, the community elders' approach is, at times limited in its reach among the multi-ethnic tea zones community and at times, altogether a segregating factor.

The Council of Elders of the Kipsigis community holds significant sway with the inhabitants of the Kericho Tea Zones, in shaping the community's socio-economic development. As the guardian of the community's culture and traditions and practices, the various councils of elders are handy platforms for advancing far reaching dialogue on gender inclusion in the Kericho region.

6.0 Findings of the Study and Recommendations Charting Progress in Promoting Labour and Economic Rights of Women

The study found that, though progress has been registered in the promotion of women's labour and economic rights in the tea sector, there still exist significant challenges in the sector.

The genesis of progress in the labour sector, has mainly been traced to 2007, which marked a watershed period for labour and gender protection in Kenya. In 2007, a raft of progressive employment legislation was enacted: The Employment Act; Work Injuries Benefits Act; Labour Institutions Act; Labour Relations Act; and, Occupational Safety and Health Act. The Sexual Offences Act had been promulgated in 2006, thereby regulating sexual violence. In sum, these legislations and others contributed to a new normative framework and content for regulating the sector.

Civil society organizations latched onto the policy space to monitor and hold employers to account. They also undertook a series of capacity building and sensitization initiatives which empowered workers, especially women workers. Employers, in turn sought to comply with the legal regime. Indeed, the entire tea value chain took note and joined the quest for a sustainable tea sector, with input from social certification bodies, tea traders and market actors.

As a result, today, there are markedly improved workplace policies protecting gender rights, in the large farms. Workers are allowed a degree of participation in work-place affairs through workplace committees and qualitatively, a number of engendered gains have been registered: Women, in most large farms, have access to maternal and reproductive health facilities and rights, and there

is a trend towards embracing affirmative action for women's representation at different levels. Indeed, the larger multi-national farms have developed elaborate structures for addressing gender matters in the workplace. Additionally, tea farms are increasingly adopting progressive Corporate Social Responsibility (CSR), thereby enabling workers and their families access to social amenities, namely: schools; hospitals; playing and recreational parks; and, company housing. As is discussed later in this report, however, a number of potent barriers to women's access to labour rights prevail. As regards economic inclusion of women in the tea sector, most glaring developments relate to government stimulus initiatives that enable women to access funds for entrepreneurship and for subsistence or access to government contracts, upon preferential terms for women and other special groups. Similarly, banks and micro-finance organizations have taken cue, to aid financial inclusion of women through easy to access loans. The report further analyzes the challenges to women's economic inclusion.

Labour Rights Challenges Relating to Small Holder Farms

The dominant thread running through the information received from all the key informants interviewed was the multi-layered challenges faced by labourers contracted by smallholder farmers and the need, therefore, to focus more on structured interventions to support the labourers. This study confirmed that most of the labourers contracted by small-holder farmers as tea pickers are women.

These labourers are subjected to difficult working conditions and do not adequately enjoy the protection offered by the labour laws. Inspections by labour inspectors and officers are a rarity in this setting. This means that the small holder set-up, which employs the bulk of tea sector workers, mostly operates under the radar of the national legal and policy regulatory frameworks. Not surprisingly, women workers in the small holder setting are particularly vulnerable to labour rights violations. Tea pickers are paid at piece-rate for every kilogram of tea they harvest. This varies across regions and seasons, but within the range of KES 5 to 7 per kilogramme. The dry seasons tend to fetch less for the pickers while the wet seasons fetch slightly higher rates. However, there are many instances when the aggregate wages for workers, especially in the small-holder setting, fall below the statutory minimum wage for unskilled labour as provided in the Minimum Wages Order. This wage is far from adequate and therefore incapable of affording workers a decent livelihood. As a result of the poor wages paid to the labourers, a majority live in deplorable conditions.

Further, there is perpetual casualization of labour at the smallholder level where labourers are engaged for work on a day-to-day basis. This means they are easily dispensed with when their labour is not required, compromising their economic and social resilience. Casualization of labour further locks the tea pickers out of the full range of benefits provided in the labour laws.

Additionally, tea pickers in the small holder sector are not provided with adequate protective equipment, notwithstanding the cold and wet conditions in which they work. To quote one key informant, "Smallholder farmers do not think they have an obligation to provide protective

equipment to their labourers." As a result and as confirmed by the treasurer of Nyeri Chai Farmers Association, tea pickers especially female tea pickers - are constantly being treated for arthritis, asthmatic complications, tuberculosis and never-ending colds and fevers.

The key informant interviews also revealed that tea pickers are subjected to long hours of work, occasioned, especially, by delays in collection of harvested tea. Although there are designated regular schedules for tea collection by factory trucks, sometimes there are inordinate delays. Tea pickers are not compensated for the long hours of waiting, meaning that they shoulder the consequences of gaps in payment or the amounts ordinarily payable to them, for work undertaken over a given period of time. In other areas, tea pickers have to deliver the harvested tea to the tea collection centres (TCCs). Occasional delays by tea factories in collecting the tea exposes women to long waits, sometimes into the night and at deserted collection centres. According to a Manager at Ethical Tea Partnership (ETP) interviewed for this study, there have been reported rape cases mostly targeting girl children sent to deliver tea to the collection centres. In Murang'a County; for instance, teenage pregnancies in the tea zones are on the rise with 4,636 minors aged between 12 and 18 years reported to have had babies from February to October 2018.⁵¹ Although these numbers do not relate to the area of focus in this study, they offer a useful comparative analysis of the situation in tea growing areas within other parts of the country.

The situation of workers at the small-holder level is further compounded by the fact that a significant number are migrant workers. As such, they do not adequately enjoy the 'benefits of belonging.' Their children, for instance, are not always considered for educational bursaries, alongside other children. These benefits are extended to those considered 'locals.' The effects of this discriminatory practice hit women hardest, a plurality of women workers being single mothers.⁵²

6.1 Social and Economic Inclusion of Women in the Kericho Tea Zones 6.1.1 Why is Female Labour Attractive to the Sector?

Women constitute the majority of the workforce in the large and small tea farms of Kericho. They are mainly employed as tea pickers, classified as "general workers" and, in most farms, occupying one of the lowest pay grades. Employers in the sector have attributed the numerical domination of the farm work-force by women to, among others, their "extra-ordinary staying power" and work ethos. Most jobs in the tea farms are characterized by several hours of routine tasks.

It has also been said that women handle repetitive and delicate tasks with much more patience than men. Generally, male employees are known for their inconsistency in attending to work. Male workers have also been said to be unreliable as far as long term commitment to the workplace

⁵¹ Statistics provided by the ETP Manager during the key informant interview.

⁵² Ibid

is concerned. A significant number of men abscond the work-place for a number of reasons: drunkenness; frequent move from one workplace to another in search of better job opportunities; or, even taking unannounced sabbaticals upon being paid their wages. Because of the patriarchal mould of the workplace as a microcosm of the society, men are still better able to attract better paying jobs than women. From interviews with women workers, women workers have cited, among other reasons for their reliability at the workplace, the fact that they are often fending for their children and taking care of households, so that they need to hold down a steady job for sustenance. In contrast, a growing legion of men working in the tea zones, have been known to sire children – mostly based on casual relationships - and abandon them with the new mothers as they venture onto new work opportunities. Furthermore, because women have low bargaining power in the workplace, they often have to put up with direct and indirect discriminatory practices. Thus, many women employed in the lowest cadres of the tea farms of Kericho, have few options or opportunities for an alternative livelihood. Women rarely have the option of resigning from a job to seek another one, especially, because their care demands on them are so immediate and grave.

6.1.2. Single Mother-hood

Many women workers in the large farms are single mothers. The incidence of single motherhood is increasing significantly. Because of the low wages paid to workers in the sector, many workers tend to find themselves in convenience cohabitation. As a result, many workers contract pregnancies out of these casual relationships. Often, expectant women or new mothers are abandoned by their male partners who then avoid paying maintenance and saddling the women with that responsibility. The economic opportunity costs of the dual roles of women – employment and household care work – are significant. Women in employment have to invest significant time in household chores, thereby reducing their scope for dabbling in complementary economic ventures.

6.1.3 Career Growth Prospects for Women

Women labourers are saddled with the least paying and most precarious jobs in the sector, mainly because of the socio-economic and cultural hurdles that they face in their immediate societies, relative to the men. Women workers in the tea zones of Kericho do not have the same career development opportunities as their male colleagues. While women constitute the majority of the tea sector work-force, men still dominate the numbers in senior roles – managers and supervisors. Historically, many families in the Kericho area - as in many parts of Kenya - would invest more in the personal development of their male children, more than in their female children. Thus, there is a generation of men that is better educated or vocationally trained than their women counterparts. The dividends of this age-old preference are apparent in the tea sector, where men have better access to better paying jobs than women, owing to their markedly superior education, skills and experience. As such, women earn less than their male counterparts, thus putting them on a lower economic footing than the men.

The dual role of women as care-providers in the home and labourers at the work-place affects their capacities for exploring opportunities for growth at the work-place. Women workers in the tea sector have also expressed a fear of taking up positions of increased responsibility and leadership. The most common reason given for this is that greater responsibilities at the work place opens up the office holder to a lot more scrutiny, hence, less job security. Some women also feared that taking up positions of leadership would expose them to more gender discrimination owing to resistance from their male counterparts – especially those over whom they would have to superintend. It has also been established a significant number of men in the tea zones would feel threatened in the event that the wife were to hold a more prominent position; married women who rise up the ranks at the work-place have to contend with unhappy husbands, more so where the wife holds a better paying or a more prominent position.

6.1.4 Access to Productive Assets

The obtaining culture of the Kalenjin tribe, the dominant culture in Kericho, is such that men are traditionally, the holders of ancestral property. Title to land is passed down across lineages, almost always through the men who hold it in trust for the family. The Kipsigis sub tribe of the Kalenjin community believes that women ought not to own cattle. However, they may own smaller livestock, including chickens and goats, and small kitchen gardens, where land is concerned. It should be noted, though, that, whereas women may not inherit family land – except fleetingly, in the event that the woman's husband is deceased, courtesy of succession – women may, however, purchase land outside of the ancestral land. However, women are rarely at liberty to gain economic autonomy from their husbands. The Kipsigis Council of Elders explained this situation as, being, "intended to foster social cohesion in the family and the wider society."53 Thus, it is encouraged that where such a woman purchases property out of her own initiative and industry, such property should be jointly owned with her spouse; Kipsigis culture frowns upon women owning more property than their spouses. However, women are increasingly purchasing and holding title to property jointly with other women – group ownership. Where women legally own land, the need for familial cohesion decrees that the said land is deemed, "jointly owned," with the woman's husband, or, "family land." A number of reasons can be advanced on why more men than women own property in the surrounding communities of the expansive tea zones and why men make decisions on all matters including the most mundane of issues. 40 community members (15 male and 25 female) were questioned on their views regarding property ownership. Nearly half (43%) of all community respondents were of the view that all family property should be held by the husband. Out of this number, 35% were men, while 8% are women. However, 38% of respondents believe that married women should have title to their property, including land and housing. All the 38% were women; none of the men interviewed agreed that married women should have title to their own property. On joint property ownership, only 15% of women sampled believed that married women should hold property jointly with their husbands, while only 2.5% of men held this view.

Focus Group Discussion with members of the various councils of elders for the Kipsigis community, in Kericho, November 2018.

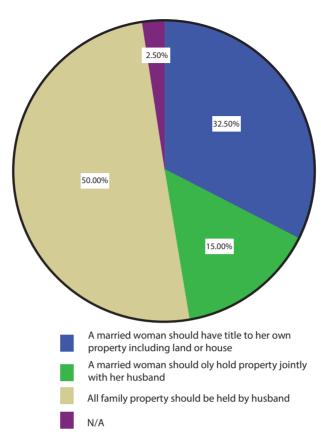


Figure 72: Shows some of the views held by communities around the tea zones in Kericho on property ownership.

Although Kericho is largely a tea growing zone, only 37% of the 40 community members sampled, owned tea farms while 62% did not have ownership of tea farms. The respondents engaged in a number of occupations, which included: operating small businesses (20%), farming (10%), teaching (15%), social work (5%). A majority of the females interviewed were housewives and did not engage in any income generating activities as shown in the chart below.

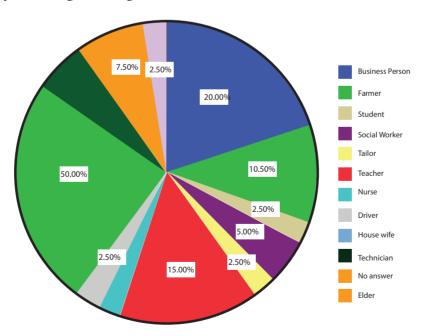


Figure 6.2: This chart shows the different kinds of occupations in which the communities around the Kericho tea zones engage.

Men are also still reluctant to provide their own title deeds as collateral for the purpose of allowing their wives to obtain bank loans and credit. The comparatively low earning power of women, coupled with their limited access, control and ownership of productive assets is a hindrance to women's economic development. This in turn, affects their resilience and that of their immediate families, as it has been shown that increased socio-economic empowerment of women invariably translates to a similar growth in the society. Financial Inclusion of women is critical to eradicating poverty reduction in society. "Financial Inclusion" connotes access to financial services, more so among disadvantaged groups. Women in the community are less likely than men to have formal bank accounts. Studies have shown that, in developing economies, women are 20 per cent less likely than men to have an account at a formal financial institution and 17 per cent less likely to have borrowed money from a formal financial institution in the past year.⁵⁴ Women in the tea zones of Kericho are among the marginalized groups. The level and regularity of income and ownership of assets are crucial determinants of access to credit facilities. Many women in the tea zones find their credit-worthiness to be bleak, for lack of bankable equity, including, title deeds, log-books, or other

substantial assets that are acceptable as collateral in the acquisition of bank loans. Few men are willing to offer their own assets as collateral for the benefit of their wives or sisters. Even in cases where women gain access to credit in their husband's names, they often find that they cannot make crucial decisions regarding the use of the said loan without the consultation and in many cases, concurrence, of the husbands. Decisional independence over the utilization of the loan is certainly not unfettered, thus affecting their planning and the execution of business plans.

Credit facilities for women in the lower economic brackets are crucial to determining whether they and their families survive or succumb to poverty. Credit is vital both for immediate use in the home consumption as well as for utility in production. For large numbers of women to successfully and sustainably benefit from financial services, they need to be able to service the loan. Many women in the Kericho tea catchment community require mentoring and sensitization on how to manage finances effectively.

Apart from financial literacy, women in the community also require technical assistance to boost their entrepreneurship skills. Access to technical capacity development initiatives has been disproportionately in favour of men. Government provision of agricultural extension services or specialized training by private actors on Good Agricultural Practices (GAP), have targeted land owners, farmers, and leaders of farmers' co-operative societies and traders. Access to this level of technical skilling opportunities disproportionately favours men, as the criteria for selecting beneficiaries has relied on ready ownership of land, farms, a track record in agricultural production or entrepreneurship.

6.1.5 Decision-making at Household and Group Levels

Women in the tea catchment zone of Kericho contribute to family labour by providing their services through household chores and farm labour. Decision making on economic matters at household level is largely a factor of the local culture and socialization over the years. Men make most of the decisions relating to land ownership, transfer and use. They also make the major decisions regarding production. Women, mostly, make decisions on less valuable factors of production at household level, including day-to-day supervisory operational level matters in the small-holder farms.

The study established that there were patriarchal tendencies where decisions were made by men on almost all matters. With regard to decisions on children's education; for instance, the school they should attend or the level of education they should attain, 93% of such decisions are made by men while 7% of respondents indicated they made joint decisions. Similarly, 93% of male respondents indicated that they made decisions relating to buying of property for their families while only 7% said these decisions were made jointly with their spouses. However, 44% of the female respondents indicated that decisions on property acquisition were made in consultation with their spouses while only 8% said they made sole decisions on the same. However, 44% of the females who responded to the question on how decisions were made in acquisition of property felt this question was not applicable to them while 4% did not respond to this question. On the same note, men took charge of decisions regarding the sale of family property as confirmed by 60% of the male respondents. Joint decisions on sale of property that belonged to the family were taken by 40% of men. Only 4% of the female respondents indicated they made sole decisions relating to disposal of family property while 36% said they jointly made decisions with their spouses. A majority of the female respondents (56%) found the question not applicable to them while 4% did not provide an answer. This can be explained by the fact that a majority of the respondents both male and female did not own fixed assets /property such as houses. However, 43% of the total number of respondents owned kitchen gardens. Also, 48% indicated they owned cattle. These statistics are useful in informing the kind of income generating activities that host communities would find most feasible in their current positions and means.

Further, information received from both male and female respondents on how decisions were made on income generated from family business indicated that men were the ultimate decision makers. All the male respondents said they made decisions without consulting or involving their wives. On the other hand, only 20% of the female respondents said they were in control of decisions pertaining to the expenditure of the proceeds made from their businesses. However, 44% pointed that they were involved in decision making while 32% did not find the question applicable to them. Another 4% opted not to provide an answer to the question. Those found to be in charge of decision making were mostly single women. The women who were involved in decision making also appeared to have a certain level of economic stability derived from either being in gainful

employment or business engagements.

All the men interviewed (Among randomly sampled members of the tea catchment community) further indicated they were the sole breadwinners for their families. However, 16% of the female respondents indicated that they were the bread winners, 32% indicated that their partners provided for the families while a further 48% said provision for the family was a joint effort between themselves and their partners. A small percentage (4%) said they received support from other spheres that included parents.

Most of the land under tea production by small-holder farmers is owned by men, who are the registered proprietors of land. Land ownership also dictates the preponderance of decision making functions between men and women, in the administration of the tea sector. For instance, only land and crop owners participate in the election of local level directors of the Kenya Tea Development Authority factories (KTDA). Access to training opportunities by government and private actors, in the form of agricultural extension services, Good Agricultural Practices (GAP) and entrepreneurship training, follows a similar groove. Moreover, the study found that persons owning more land or shares in the tea crop have higher chances of being elected into sector leadership under the local and national KTDA structures. Women rarely run for election to the local KTDA board, for the same reasons. In turn, directors of KTDA factories represent farmers' interests in the tea value chain. Hence, whereas women constitute a crucial bulwark in the production of tea, their voice is decidedly faint, where policy decisions are concerned. In recognition of the subdued women's voice in the affairs of the local tea governance, KTDA has embraced affirmative action by setting aside one permanent seat for a woman director at each local factory level directorate. While the allocation of a seat for a woman director is important, this does not adequately address problem relating to the subdued participation of women in the local economy. Women would, instead, benefit from a deliberate qualitative gender equality and inclusion strategy by KTDA to address the gender challenges relating to economic benefits and decision making.

Decision making on social matters, at household level, is similarly skewed towards the men. The decision regarding reproductive health matters, including, the number, spacing and timing of children, in the family, is largely the man's. In theory, it is a joint decision between the man and the wife. However, in a traditionally inclined community such as the Kericho tea zones, men in the community rarely countenance the wife's veto of his decision to have a child. In practice, many couples hardly discuss family planning in a deliberate manner, upon the wisdom that, "The decision as to how many children a family gets is, ultimately, God's." Instructively, women who unilaterally adopt birth control methods risk serious consequences from their husbands.

6.1.6 Promoting Women's Economic Development6.1.6.1 Household and Community Level Interventions

A trend is emerging in Kericho, where, by mutual agreement, progressive men are ceding off

some tea bushes, tea supply lines, or land under tea production to their wives, thus allowing the latter to acquire supply numbers for the tea crop. Whereas this process does not confer permanent legal title land under the tea crop, it allows the women to control production of a given sample of the crop and reap the proceeds of tea sold from the ceded crop or land. Crucially, this is allowing women to gain inroads and experience into tea production and building their respective financial portfolios. Similarly, the structural drive by the KTDA to allot a directorship slot to a woman at each KTDA factory, though inadequate, has broken the mould to kick-start the conversation about equal representation of women's interests in the sector. Separately, of their own initiative, women are increasingly setting up cottage industries within the community. They mostly sell groceries and household goods. Many women have either set up as informal sole traders for this purpose or massed together with other women to form a women's group, *chama*, even formal co-operative societies.

6.1.6.2 Gender Programming in Schools

Many of the larger tea farms have, as part of their CSR, built and supported the running of primary and secondary schools in the tea estates, to cater to the children of workers and of members of the host community. In this way, the farms have been instrumental in complementing government's role in facilitating access to education. Schools in the tea farms not only provide conventional educational instruction as per the national education curriculum; they also educate children on gender protection, thereby influencing an emerging generation of gender responsive young persons. The socio-economic challenges of tea sector workers and of the tea catchment community are, of course, also felt by children in these schools. There is also a link between these challenges and the gender based violence against, mostly, school-going girls. It has been observed that, whenever there is an economic downturn, because of the seasonality of the tea crop, drought, or a dip in tea prices, there is almost always a converse spike in pregnancies among school girls. Languishing from the harsh economic realities, girls in the schools fall easy prey to gifts and promises of gifts by men, who in turn gain sexual favours and relationships from the girls. This phenomenon has previously been a threat to the education of girls in the community. In response, Unilever Tea Kenya and James Finlays Limited have put in place sensitization programmes that address aspects of gender protection: Sexual and Reproductive Health; and, Gender Based Violence. In schools, this programme is being addressed through clubs, with the aim of empowering girls and enlisting boys into this campaign.

The experience of these school-clubs and their role in advocacy - both in the schools and within the tea farms' catchment community – is a boost to local advocacy efforts for promoting gender equality. It is also a progressive attempt to fill the conspicuous void in the national education curriculum, as far as the study of Comprehensive Sexual Education (CSE), has not been implemented.

CSE would equip school-children with knowledge, attitudes, skills and values to make appropriate and healthy sexual and reproductive health choices. This is crucial in preventing them from contracting Sexually Transmitted Diseases (STDs), reducing teenage pregnancies and the incidence of domestic and sexual violence.

CSE would encourage healthy sexual and reproductive lives for the emerging generation of young persons and adolescents. While observing age appropriateness, CSE in schools should cover a wide range of relevant content. It has been found that CSE programs that focus on human rights, gender equality and empowerment, and that encourage active engagement among participants, tend to: improve knowledge and self-confidence; positively change attitudes and gender norms; strengthen decision-making and communication skills and build self-efficacy; and increase contraceptive use among sexually active adolescents.⁵⁵

In 2013, the Government of Kenya committed to adopting a comprehensive rights-based sexuality education beginning in primary school. However, the ensuing debate amongst national stakeholders has slowed down the pace of embracing CSE in schools. A particularly sensitive matter has been the inclusion of approaches that reconcile rights-based approaches that advance reproductive health positions that some segments of the society have perceived as too liberal. The contentious matters include the competing positions, with one pushing for access to condoms and abortion rights under certain circumstances, while the other school of thought fronts abstinence. Introducing CSE in schools also remains a challenge because Life Skills - the subject that subsumes most of the projected topics, is currently, not examinable, thereby offering little incentive for. Thus, there is little incentive for prioritization of CSE in the schools' curriculum.

6.1.6.3 Interventions towards Financial Inclusion for Women – Private Sector and Churches

To facilitate easier access to financial services by women, a number of banks and micro-finance institutions have developed credit facilities and proactive programmes that specifically target women and persons within the lower economic brackets. The more prominent of these institutions that are operating in Kericho are: Kenya Women Microfinance Bank (KWFT); Faulu Kenya; Equity Bank; and, Family Bank. These institutions are fronting facilities that enable women to access financing upon less exacting terms and conditions, in Kericho. It is estimated that the uptake of these funds, by eligible women in Kericho is at approximately 40 percent.⁵⁶

Christianity is the dominant religion in Kericho. Not surprisingly, local churches are among the most influential platforms for community mobilization and conversation, both for spiritual purposes as well as for socio-economic ends. Church leaders have been influential in reconciling groups that are in a state of conflict and for urging and building peaceful co-existence. Churches have also developed standing structures for providing counseling services, including, on spousal disagreements, or on familial matters. Several churches in Kericho have provided the platform for anchoring capacity development for community members on various issues, including on Equality and Gender issues.

6.1.6.4 Interventions towards Financial Inclusion for Women-Government

To enhance financial inclusion and to promote women's participation business, the Government of

⁵⁵ Sidze (2017)

General consensus estimate by a Focus Group Discussion of community and women leaders in Kericho, November, 2018

Kenya has put in place equalization measures and funds, through policy and legislative measures. A number of these initiatives are discussed, below:

The Access to Government Procurement Opportunities (AGPO) program

In recognition of government contracts as enablers of entrepreneurship, the Government of Kenya has established the Access to Government Procurement Opportunities (AGPO) program, under the Public Procurement and Asset Disposal Act, 2015.⁵⁷ The AGPO, provides for fair, equitable, transparent and cost-effective public procurement of goods and services. More crucially, the AGPO provides an affirmative action legal framework aimed at reserving for women, youth and persons with disabilities, access to 30% of government procurement opportunities. This is a significant boost to the entrepreneurial potential of women. However, there is need for a practical framework to assure that the AGPO, not only directly benefits women, but that it also targets the most vulnerable of women and the other marginalized persons in society. National and county governments have also been faulted for delaying in completing payments after the contractor concludes her contractual obligations, potentially putting vulnerable contractors under undue financial strain.

The Uwezo Fund

The *Uwezo* Fund is a government initiative, established under the Public Finance Management Act, and aimed at enabling women, youth and persons with disability access finances to promote businesses and enterprises at the constituency level to boost economic growth.⁵⁸ The Fund seeks to expand access to finances and promote women, youth and persons living with disability led enterprises at the constituency level. It also provides mentorship opportunities to enable the beneficiaries take advantage of the 30% government procurement preference under the AGPO.⁵⁹

(a) The Women Enterprise Fund (WEF)

The Women Enterprise Fund (WEF) is a semi-autonomous government agency established in August 2007, to provide accessible and affordable credit to support women to start or expand business for wealth and employment creation.⁶⁰

The National Government Affirmative Action Fund (NGAAF)

The NGAAF is a semi-autonomous government agency (SAGA) enacted through Legal Notice No.24 of the Public Finance Management Act, 2012. The Fund aims to address the plight of vulnerable groups by reducing poverty and inequality through enhanced access to financial facilities for socio-economic empowerment among women, youth, Persons with Disabilities (PWD), needy children and elderly persons in the country.⁶¹ The Fund also provides an avenue for promotion of

⁵⁷ Act Number 33 of 2015, the Laws of Kenya

⁵⁸ http://uwezo.go.ke/

⁵⁹ Ibid. AGPO

⁶⁰ http://wef.co.ke/

⁶¹ http://www.ngaaf.go.ke/

enterprise and value addition initiatives.

The Youth Enterprise Development Fund

The Youth Enterprise Development Fund is a state corporation.⁶² It hosts a fund whose focus is to create employment opportunities for young people through entrepreneurship and by encouraging them to be job-creators rather than job-seekers. It provides easy and affordable financial and business development support services to youth who are keen on starting or expanding businesses in a number of ways:⁶³

- By providing loans to youth owned enterprises.
- By providing market support to youth enterprises.
- By facilitating youth enterprises to develop linkages with large enterprises.
- By providing trading premises and worksites.
- By providing business development services to youth owned enterprises.
- By facilitating youth to obtain jobs abroad.

There is, clearly, an elaborate effort by Government to stimulate economic development and inclusion of women, through entrepreneurship skills. The challenge to achieving this goal lies mainly in access to the various mechanisms. Women are still not aware or sufficiently sensitized on the availability of these schemes, or on how to utilize these opportunities. Secondly, patriarchal undertones are still influential in discouraging women from venturing into enterprises that would advance their financial independence. Moreover, there is need to co-ordinate and in certain instances, consolidate a number of these frameworks to increase efficiency. To ensure maximum impact from these funds, clear frameworks for ensuring that they are accessed by those who need them most – the most vulnerable persons – should be effected. This includes identifying clear criteria for eligibility and supporting the enterprise preparedness and capacity of women applicants. Lastly, the scheme would also benefit from in-depth evaluation to establish the qualitative and quantitative benefits of these initiatives to the intended beneficiaries.

Recommendations

⁶² http://www.youthfund.go.ke/

⁶³ Ibid

6.1.1 Ownership, Access and Use of Productive Resources

- 6.1.1.1 The host community should be sensitized on gender equality and equity to boost their knowledge, influence their attitudes, and practices in order to promote the ownership, access and use of productive assets by women at household level and decisional autonomy for women on socio-economic matters.
- 6.1.1.2 Dialogue should be initiated within the communities in the tea zones to address the socio-economic benefits of: women inheriting family property on an equal footing with men; economic autonomy and time sovereignty for women, at household level.
- 6.1.1.3 Men in the Kericho tea zones should be encouraged to embrace joint ownership of family land and other productive assets, providing their wives with tea supply lines in order to support the participation of women in tea production.
- 6.1.1.4 Technical capacity development initiatives, including, Agricultural Extension, training on Good Agricultural Practices (GAPs) and on business and entrepreneurship skills, should target the equal participation of women and men to enable them acquire knowledge and know-how for economic development initiatives.

6.1.2 Representation and Decision Making

- 6.1.2.1 Men and women, at household level, should be sensitized on the need for and the benefits of joint decision-making or equality in decision making at the household level, especially on: family investments and business; family expenditure; family planning and reproductive health matters; and child-care matters.
- 6.1.2.2 Decision making at the local KTDA factory level should factor in the interests of both men and women. Equitable mechanisms should be put in place to ensure that, among small holder producers and workers, at least two thirds of either gender participate in electing KTDA directors at factory level and that at least a third of either gender is represented on the KTDA local level factory directorates.

6.1.3 **Financial Inclusion**

- 6.1.3.1— Dialogue should be initiated amongst the Kericho tea zones community members with the aim of improving their understanding of the benefits of women's financial autonomy at the household level.
- 6.1.3.2 Government, private banks and non-state actors should sensitize women at community level on available avenues for women to access micro-finance and entrepreneurship financing facilities.
- 6.1.3.3 Financial literacy and entrepreneurship skilling programmes should be developed and targeted at women in the community to boost their capacities to set up and operate businesses.
- 6.1.3.4 Co-operative societies, the KTDA local level units and community self-help groups, should review their policies and practices on access to technical capacity development including agricultural extension services, and entrepreneurship skilling to ensure that both men and women have equitable access to these services.
- 6.1.3.5 Government should better co-ordinate access to women of financial and enterprise fund facilities and entrepreneurship training, including by consolidating the funds, the management and operations, where appropriate, to improve efficiency in the administration of the programmes. This will redress the confusion caused by multiple branding and operations posed by the proliferation of similar government schemes.

6.1.4 Reproductive Health and Family Planning

- 6.1.4.1 Men and women in the tea catchment community should be sensitized on reproductive health and family planning with the aim of enhancing informed joint or personal decision-making on reproductive health and family planning.
- 6.1.4.2 Government should enhance access to affordable birth control methods for men and women in the tea zones.
- 6.1.4.3 To address the problem of non-provision of maintenance support and child-care support by fathers in the tea zones, men and women should be sensitized on parental responsibility and the legal implications of defaulting in child support. In addition, mediation services should be provided to parents for the execution of Parental Responsibility Agreements (PRA) and, where appropriate, legal aid be provided to single mothers in order to enforce the PRAs, in the eventuality of default by the fathers.

(5.1.5	Career Growth	
		6.1.5 – Government should ensure more str	ringent enforcement of the Universal Primary Education programme
4			atinuous vocation skilling and up-skilling, especially for women, to
		increase their access to employmen	at opportunities and for career growth at the work-place.
		6.1.5.2 – In order to boost the numbers of	women in management and supervisorial positions in the work-
		place, employers should facilitate of	ontinuous training, coaching and mentoring for women workers on
		leadership and management.	
		6.1.5.3 — In order to boost the number of wor	nen in leadership positions, employers should undertake affirmative
		action measures by ensuring that no	t more than two thirds of the respective leadership and management
		positions at the work-place are held	by one gender.
		6.1.5.4 – Periodic human rights due diligence	e – including gender audits - should be conducted by employers and
		the resultant gender integration pr	oposals implemented in the tea farms to ensure that there is both,
		quantitative and qualitative particip	pation of women in the work-place.
		6.1.5.5 – Periodic gender audits should be co	nducted and the resultant gender integration proposals implemented
		by KTDA to ensure both, quantitat	we and qualitative participation of women in tea production.
6.1.6 Deepening Socio-Economic Inclusion		Deepening Socio-Economic Inclusion	
		6.1.6.1 - To ensure deeper economic inclusion	n, the Government should ensure that beneficiaries under the Access
		to Government Procurement Oppo	rtunities (AGPO) Programme are not just women, but women in the
		lowest economic brackets, where	economic stimulus is most needed.
		6.1.6.2 – To enable marginalized women a	nd groups of marginalized women to achieve business-readiness
		and institutional capacities for ap	plying and qualifying for government contracts under the AGPO
		Programme, the Government show	ald develop and implement capacity development programmes for
		women in the lowest economic bra	ackets.
		6.1.6.3 – To cope with socio-economic pro	essures that boil into gender based violence at house-hold level,
		community members, especially s	pouses, should have access to counseling services and motivational
		therapy to enhance purpose and co	hesion in the family.
		6.1.6.4 – To ease and facilitate smooth acco	eptance of Gender Equality ideals in the patriarchal society, male
		champions, at community, school	ol and work-place levels should be identified and supported to
		complement outreach for attitude	change. These champions should include members of the Councils
		of Elders, who are counselors and	custodians of community cultural norms.
		6.1.6.5 – To provide women in the community	with inspirational, human examples of female success stories in the
		context of socio-economic success	, female champions should be identified and fronted in campaigns to
		enhance Gender Equality in the co	mmunity.
		6.1.6.6 – The Council of Elders should origin	nate and lead community-wide dialogue on promoting a community
		culture of protecting women and	girls' socio-economic development and equal participation in the
		affairs society. In order to magnif	y the voice of women in the host community's cultural affairs, the
		Kipsigis Council of Elders should	enlist as part of its membership, an increased proportion of women,
		amounting to not less than one thin	d of the total number of elders.

6.1.7 Gender Programming in Schools 6.1.7.1 Government should introduce the teaching of Comprehensive Sexuality Education (CSE) as an examinable subject in schools to improve awareness of children of reproductive health matters, including age-appropriate instruction on: birth control; family planning; protection from STDs; and, protection from Gender Based Violence (GBV). 6.1.7.2 Advocacy strategies aimed at improving corporate practices on labour protection should target wider, non-traditional value chain actors – including, traders, retailers, consumers and sustainability certification bodies – in order to achieve better intra-value chain accountability. These actors are considered in addition to: producers, governments and workers, who are traditionally targeted in labour rights and

6.1.7.3 Employers should adopt triple-bottom-line reporting as part of its annual report to the Annual General Meeting (AGM) in order to track and document their social and environmental performance, in addition to their financial performance.

6.2 Remuneration, Wages and Benefits

sustainable production campaigns.

The right to fair remuneration is among the most important safeguards towards enhancing social and economic protection for workers. A fair wage contributes to the achievement or attainment of: quality healthcare and access to medication; quality education; adequate food of acceptable dietary value; social security; appropriate housing; and, sanitation, among others. Plantation and factory workers are among the lowest paid.

Generally, workers' wages are paid in time. Respondents from both large farms (75.7%) and small holder set-ups affirm this position. A significant minority, however, cites regular late payment (22.1% of workers in large farms and 26.7% of workers in small farms).

6.2.1 Minimum Wage and the Living Wage

The Labour Institutions Act provides for the establishment of a minimum wage. The statutory minimum wage in Kenya is the lowest threshold remuneration that a worker should receive for work done. The Labour Institutions Act establishes the Wages Council, whose mandate is to consider the wages of workers and render advice on wage levels to the Minister. The Cabinet Secretary, by gazette notice, appoints the Wages Council, of which there are two categories: the Agricultural Wages Council; and, the General Wages Council. These councils are mandated with investigating employment terms and conditions in various sectors as well as the acceptable remunerations. They then report their findings and recommendations to the Cabinet Secretary. The Cabinet Secretary is, ultimately, tasked with establishing and publishing the wage levels and benchmarks in the gazette, through a Wage Order, hence the minimum wage.

Basic Minimum Consolidated Wages, 2017⁶⁴

	OCCUPATION	PER MONTH KES	PER DAY KES
1	Unskilled employee	6,415.55	269.40
2	Stockman, herdsman, watchman	7,409.00	313.75
3	House servant or cook	7,323.65	278.85
4	Farm foreman	11.573.55	489.10
5	Farm clerk	11.573.55	489.10
6	Senior foreman	7,492.40	318.60
7	Farm artisan	7,668.00	326.05
8	Tractor driver	8,131.40	345.40
9	Combine harvester driver	8,957.95	380.10
10	Lorry or car driver	9400.80	398.50

By and large, most employers in large tea farms and factories of Kericho pay above the national minimum wage. The case of the small holder-tea farms is altogether different; the pay levels vary significantly from one farm to another. The effect is that, because of the largely informal nature of contracting labour in the small holder farms, some workers miss out on statutory safeguards, including protections relating to fair remuneration that formal employment would give.

While the minimum wage is instrumental in regulating workers' remuneration, the wage levels under this framework still do not afford workers a living wage. A Living Wage refers to remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs, including provision for unexpected events. Studies have consistently shown that the basic needs of plantation workers and their families outstrip the statutory living wage. An analysis by Richard and Martha Anker set living wage benchmarks between KES 11,937 to KES 22,104, in a 2015 report, depending on the location.

There are a number of multi-actor processes that have since, been established to seek solutions towards achieving a living wage, across various product value chains. One such process is, "The Malawi Tea 2020 Revitalization Programme (Malawi Tea 2020)," which is a response to concerns about low wages and poor living conditions in the Malawi tea sector. Under the Malawi Tea

Regulation of Wages (Agricultural Industry)(Amendment) Order, 2017 of 1ST May, 2017. Legal Notice No. 111 pursuant to the Labour Institutions Act (No. 12 of 2007) by the Cabinet Secretary for East African Community, Labour and Social Protection.

Working definition by the Global Living Wage Coalition (GLWC) members: Fairtrade International, Forest Stewardship Council (FSC), GoodWeave International, Rainforest Alliance, Social Accountability International (SAI), Sustainable Agriculture Network (SAN), and UTZ.

⁶⁶ Anker and Anker (2015 – Updated in 2016)

2020, the Ethical Tea Partnership (ETP), is working with the Tea Association of Malawi (TAML), Oxfam, IDH (the Sustainable Trade Initiative), and GIZ (German Development Agency), through a framework that seeks to achieve the living wage while simultaneously addressing the kindred issues of small-holder farmer productivity, workers' rights and environmental sustainability. Separately, in Malawi, the Centre for Social Concern (CFSC) has developed the Basic Needs Basket (BNB) methodology. Through this system, CFSC carries out research into the cost of living for people living in Malawi's medium and high-density urban areas every month. Data is collected from a sample of markets, retail outlets and from selected households, with both essential food and non-food items required for a family of six to attain the minimum standard of living per month. The BNB is increasingly becoming a useful tool; many Malawian organizations use the BNB as a tool for reviewing wages and salaries of their employees or as a policy advocacy tool.⁶⁷

The wage-setting processes, both through the Wages Order and the Collective Bargaining Agreement need to be more participatory and empirical, to incorporate insights, expertise and progressive wage practices, in order to attain live-able minimum wages in the tea sector of Kenya. Decisions on wages should be driven by long term goals of achieving both, increased productivity and a sustainable living wage. The experience of Malawi, with the early results of the Malawi 2020 Tea Revitalization Programme is illustrative. Under this scheme, producers have raised wages several times since the programme began. More crucially, the project experience is defining the wage levels, rather than rely on the significantly lower Malawi rural minimum wage. An evaluation by independent wage experts showed that, despite the high inflation in Malawi and difficult macroeconomic conditions, the gap between the prevailing wage and living wage has narrowed.⁶⁸

6.2.2 Health Insurance

Most of the large farms in Kericho have institutionalized the provision of health insurance cover for all their employees, through the National Health Insurance Fund (NHIF), covering both permanent and seasonal workers. The situation is different in the small holder farms where workers are mostly not covered by a workplace health insurance scheme.

Workers in the large farms can, thus, access medical and health facilities. In one of the large farms in Kericho, however, the employer has restricted the choice of medical facilities from which workers may seek treatment to the company's hospital in Kericho, rather than access any public hospital of their convenience. This situation has proved impractical for workers who are traveling across the country, especially, those whose families live across counties.

6.2.3 Housing and Transport

The large farms of Kericho provide housing for most workers, unlike the small holder farms. Because of the small scale of investment by small holder farmers, they, generally, do not provide

⁶⁷ http://www.cfscmalawi.org/bnb.html

⁶⁸ Anker, Anker and Chiwaula (2017)

housing or a deliberate house allowance, to workers. By default, however, a number of workers in

small holder set-ups are housed in the family quarters, these workers being part of the family or general helps within the family. 78% of women workers and 73.1% of male workers reached through the survey in the large farms are accommodated in company housing. In the small holder sector, on the other hand, 50% of women workers and 42.9% of male workers are similarly accommodated by their employers.

In the large farms surveyed, the allocation of houses is administered by the Housing Committee, elected by employees. In the event that a vacancy arises, the committee places a notice to workers to apply for the vacant house. Upon receiving applications from workers, the committee sits to make its decision. However, farm management has significant sway over the decisions of the committee. The criteria for filling vacancies are not clear to workers, thereby inviting mistrust of management. James Finlays leads the way in the provision of sufficiently spacious houses, in good condition and with adequate sanitary facilities, to workers and their families. Some farms, however, provide workers with houses which are in bad repair or too small to house the worker and her family. In some cases, these houses are shared by more than one family, living under uncomfortable cramped conditions, thereby stripping the occupants of their privacy and dignity.

Where seasonal workers are provided with company housing, they face the inconvenience of vacating the houses upon the expiry of their short contract. There are cases of seasonal workers being forbidden from bringing their families into company housing, for lack of sufficient space, coupled with the cumbersome arrangement regarding short term occupation of the houses. This is disruptive to family relations and social development and resilience of workers and their families, long term.

The respondents were also asked whether their employer provided them with company transportation to and from work. Most of the workers stated that they live close to the work-station, so that they do not require transport; 53.4% of women and 67.2% of men in the large farms responded thus. In the small holder set-up, 12.5% of women workers and 57.1% of men gave the same response. Those who are not provided with transport but who need it accounted for 42.5% of women workers and 22.4% of male workers in the large farms. In the small holder set up, 87.5% of women workers and 14.3% of male workers reported that they did not have access to company transport.

6.2.4 The Effect of Natural Disasters and Market Forces on the Wage

Although the districts that grow tea receive adequate amounts of rainfall, extended periods of drought, a heavy bout of hail-stones, or crop disease, from time to time, have a significant adverse effect on production. The resultant fluctuations and nosedive in volumes of crop outputs often contribute to the decline – sometimes significantly - in the real earnings from the crop. In mitigation, farmers take up drought-tolerant clones of the tea species, among other measures. However, the

range of natural eventualities is wide and unpredictable. Thus, it is common practice for producers to insure their crops from natural threats.

Where an uninsured crop is decimated, the consequent loss is not only borne by the producer, but also by the workers. For their wages, workers rely on, either meeting their daily output targets at work or on a fixed day rate of payment, for piece-work. This also means that workers are not able to meet their optimal outputs, hence low wages or none at all. Where such disruption persists, workers' wages would be affected for long periods of time, affecting their livelihood significantly.

6.2.5 The Effect of Mechanization on the Wage

Employers have estimated labour costs in tea farming to account for up to 50% of the total cost of production. There is a trend, especially among the large tea farms, of increasingly adopting mechanization in tea production, particularly, tea plucking which has traditionally been done by hand. Whereas the use of machinery increases the amount of tea picked, it has been faulted for its potential to significantly dent the number of workers in tea farms. Employers, however, state that increased automation and mechanization will reduce production costs by cutting down the wage bill, hence, the costs of production. Increased mechanization may be inevitable if Kenyan producers are to remain competitive in the otherwise volatile tea market, especially considering that Kenya's competitors in the tea value chain have adopted mechanization.⁶⁹ It has also been contended that better productivity will result in a significantly smaller, but better paid workforce. 70 Not surprisingly, the introduction of machines for picking tea has been the cause of a standoff between the Kenya Plantation and Agricultural Workers Union (KPAWU) and the large tea farms. For the moment, mechanization of the larger farms is gaining pace, even as stakeholders are avoiding the unavoidable conversation about managing the transition. There is certainly no coherent sector strategy that has been formulated for transitioning the large number of workers who would be rendered redundant, from the tea farms.

The gendered effect of machines is particularly spectacular. Most of the tea pickers in the farms are women. Tea pickers are among the least paid cadre of workers in the tea sector. Increased automation, mechanization and use of machines in production processes will, not only put a large number of women workers out of employment, but, going by current trends, it will also replace the many women with fewer men manning machines and paid better wages. Handling machines in the farms has traditionally been the domain of men, ostensibly for the physicality of the chore. However, women have shown that they are able to perform a number of physically exacting tasks around the farm with as much success.

The future sustainability of tea production requires, not only sustainable labour practices and social conditions at the work-place, but also the adoption of efficient production methods with limited environmental footprints. Just as in many labour intensive value chains, for tea producers in Kenya

Kunyanga, Mechanized Tea Harvesting, the Best Bet, Daily Nation (Online), April 17, 2014 - https://www.nation.co.ke/oped/opinion/Mechanised-tea-harvesting-/440808-3889102-14dupqw/index.html

⁷⁰ Ibid.

to compete favourably in the global market, they will need to straddle the strenuous line between economic and social interests. The implication of enhanced mechanization on labour societies is potentially grave, with the likelihood of massive loss of jobs being the biggest concern. It is, therefore, imperative for workers, employers, government and other labour sector stakeholders and actors to commence earnest discussions to seek best-bet solutions for both workers and employers.

The ILO's Global Commission on the Future of Work, in its recent report,⁷¹ anticipates these concerns. As part of addressing imminent social and economic changes in the global labour sector, the Commission proposes the recognition of a universal entitlement to lifelong learning that enables people to acquire skills, to reskill and up-skill. This would require increased investments in institutions, policies and strategies to support people through transformative transitions at the work-place. Workers will need expanded choices to enable them to remain economically active and support through the increasing number of labour market transitions over the course of their lives. It will, additionally, be crucial to maintain touch with the gendered ramifications of these transitions and to factor these into future solutions.

Recommendations

Recommendations		
6.2.1	Wage Setting Process	
	6.2.1.1- The National Wages Council should have appropriate and credible representation of	
	workers, employers, government, labour sector experts and special interest groups,	
	including women workers to gain credibility and ownership among the labour sector	
	stakeholders.	
	6.2.1.2 – The national minimum wage setting process should be informed by a clearly defined and	
	open raft of factors, and based on the application of up-to date empirical information and	
	trends towards the achievement of a living wage.	
	6.2.1.3 – Employers should adopt a remuneration culture that rewards experience, education and	
	performance. Using annual performance appraisal, workers would be entitled to a pay-	
	grade review. This will not only increase morale but it will also increase productivity.	
6.2.2	The Living Wage	
	6.2.2.1 – A living wage, informed by, both, the imperatives of achieving the basic needs for	
	workers above inflation rates and the need to assure productivity and a living income for	
	tea sector farmers, should be adopted by the Wages Council. The Wages Council should,	
	thus, be well resourced for the purpose of executing its wage-setting mandate adequately.	
	6.2.2.2 – The Government should enforce minimum wages that afford workers and their families	
	the basic needs and a livelihood of dignity, with socio-economic resilience.	
	6.2.2.3 – To kick-start a structured process and dialogue for achieving a Living Wage, a multi-	
	stakeholder platform should be established for the purpose of defining a common	
	Living Wage ambition for the agricultural sector, to incorporate relevant learning and	
	developments from Kenya and other jurisdictions in establishing living wage benchmarks	
	and, to contribute to the national campaign for the promulgation of Living Wage.	

42

⁷¹ Work for a Brighter Future – Global Commission on the Future of Work, International Labour Office – Geneva:

6.2.3	Wage Supplementing Benefits
	6.2.3.1 - Employers in the tea sector should provide all employees – permanent and temporary with
	access to adequate housing and shelter or adequate housing allowance, under conditions
	that assure the employees adequate physical space, sanitation, privacy and dignity.
	6.2.3.2 – The work-place housing policy should provide a framework for encouraging workers to
	live with their families to promote social stability in the tea zones.
	6.2.3.3 -To avoid the perennial problem faced by temporary employees and their families who
	have to vacate company housing every off-peak season, thereby disrupting the family's
	long-term social development, employers and workers should initiate dialogue aimed at
	achieving sustainable solutions, in the interests of both actors.
	6.2.3.4 –Employers in the tea sector should take out insurance policies against natural and unusual
	eventualities, including, adverse weather conditions and drought, crop-damaging
	hailstones and pest attacks, to cushion the livelihood of workers from the economic and
	social effects from these eventualities.
	6.2.3.5 - Employers should provide all employees and their families – permanent and temporary
	with health insurance cover with wide and ready access to health facilities as may be
	practical for employees and their families.
6.2.4	Effects of Innovation, Automation and Mechanization on the Wage
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6.3 Representation of Workers

Most workers in the large tea farms are registered with the sector trade union, Kenya Agricultural and Plantation Workers Union (KPAWU). KPAWU officials are elected by workers, in accordance with the constitution of KPAWU, which allows elected officials to hold office for a term of 5 years. The mandate of the trade union is broadly, to defend the welfare and rights of workers, including by negotiating to regulate workers' remuneration through the collective bargaining process. In the small holder set up, only workers of KTDA factories are registered with KPAWU, unlike those who work in the small holder farms. The practice by KPAWU of levying union dues or agency fees upon all workers in farms with whom KPAWU has entered into recognition agreements has raised concerns among workers. This is the case, whether or not some workers are not registered members of KPAWU. The same position applies to the tea factory setting. Compelling submission of dues

runs befouls the Labour Relations Act,⁷² which makes it discretionary for workers to join or leave trade unions.⁷³

Workers in the tea farms and factories in Kericho co-ordinate their affairs with the local Kericho branch of KPAWU, through, their respective union representatives at farm or factory level, also known as, "Shop Stewards." Shop stewards are elected at farm level to help enhance organizing at the workplace and to serve as a nexus with the trade union. Their functions include: enlightening workers on workers' rights at the work-place; and briefing workers on internal labour policies and relevant provisions of labour laws. They help recruit workers into the trade union and to settle minor labour related disputes at the work-place. Workers' participation in organizing and the collective bargaining process is thus, in an ideal situation, channeled through the shop stewards.

From interviews with workers, shop stewards, government officers and farm management, it is apparent that working relations between a number of the larger tea farms of Kericho and KPAWU has deteriorated significantly. As a resulted, the two parties have not been able to conclude a CBA in the last 2 years. This means that there is no mutually agreed framework for regulating workers' wages or a common understanding on core workers' rights concerns in the farm. Instead, the sector has been embroiled in bitter strike and court action over disagreements over the level of wage increases for workers. Beyond the workers who have no clarity about their remuneration and protections under the CBA, this stalemate also creates uncertainty for employers. Employers have alleged that workers used the cover of industrial action to vandalize the farms and disrupt operations, with resultant high economic costs to the farms. Workers, on the other hand, allege that, employers used the police to brutalize workers in the course of lawful industrial action. Many workers from a number of large farms, including union representatives, suffered summary dismissal in what the trade unions and workers have cited as tactics aimed at intimidating workers into abandoning the quest for better terms of employment. Half the respondents (50%) in large farms stated that there were instances of unfair dismissal at the work-place, with nearly the same number suggesting that the workplace was free of unfair dismissal (49.3%). In the small holder set-up, workers 67% agreed with the proposed statement.

6.3.1 Effectiveness of Trade Unions and Work-place Union Committees

The confidence levels of workers in their representatives – both at shop floor level and at union branch level – are demonstrably low. As to the effectiveness of trade unions in representing workers' rights and welfare, workers in large farms are split in their appraisal. 46.4% of them stated that the unions have been effective, while 45.8 stated that they are not effective. In the small holder set up, only 26% agree with the proposition that trade unions have been effective, with over 72% disagreeing. Workers from small holder farms are very rarely unionized. Those who work in the KTDA factories are registered with the union, though.

⁷² Act Number 14 of 2007

⁷³ Ibid. Section 4(1)

KPAWU is largely seen by workers as failing to represent workers' interests effectively, particularly after the strike action called by KPAWU failed to yield benefits for workers. There is a general sense that the trade union has unilaterally taken positions on behalf of workers, without due consultation or feedback. The union has also been largely absent in the messy aftermath of the workers' strike, and ineffectual in protecting workers from mass terminations. Shop stewards from the large farms and factories, on the other hand, lay the blame on unions for non-consultation on positions taken on behalf of workers. Upon election, shop stewards are not provided with adequate capacity development by the union, to boost their knowledge and knowhow on organizing. From Focus Group Discussions with both workers and shop stewards, it is clear that there exists no clear framework for ensuring participatory worker representation. Workers do not understand the communication channels with the union. Women workers, on the other hand, are not adequately represented on the KPAWU local branch office. Where gender questions are concerned, the trade union counts among its successes, influencing the promulgation of legislative provisions that advance gender equality and equity. These include provisions on: maternity leave; equal pay for work of equal value; and, anti-sexual harassment clauses, among others. There is a sense, however, that a lot more needs to be done to ensure that viable, participatory structures of accountability are established at workplace level to ensure that these provisions and others are implemented by the farms. There is no deliberate framework by either entities to ensure that the unique interests of women workers are addressed, alongside other matters.

Union representation on the shop floor, on the other hand, is seen to be weak. Workers are reluctant to refer labour rights matters to shop stewards as shop stewards are seen to hold little sway with the farm management. Secondly, communication and dissemination of information between shop stewards and workers is ineffectual. For fear of dismissal shop stewards have abdicated their representative function. Farm management, on the other hand is seen as undermining the role of both trade unions and shop stewards, including through willful intimidation of shop stewards, arbitrary transfers to less covetable work-stations, dismissals, and denying union representatives space and time for organizing, during working hours. In addition, the demonstration of police brutality against workers has served to send a message against organizing to workers. Whereas a number of big farms boast near equal representation of men and women, respectively, among the shop stewards, workers still feel that shop stewards have not proactively created working linkages to address current gender issues effectively.

6.3.2 Capacities of Workers' Representatives

The typically low levels of education among general workers are reflected among the shop-stewards, constraining their knowledge and understanding of technical questions or exposure to complex situations. Indeed, when asked about the criteria they used for electing shop-stewards, most workers said they favoured extroverted workers who had the capacity to boldly stand or speak up for workers. Little regard is paid to shop stewards' levels of education.

A study conducted by Hivos to ascertain the capacity gaps of trade unions across Eastern Africa, is illustrative.⁷⁴ First off, challenges relating to organizational governance and management continue to ail workers' representation. Among the areas identified as requiring capacity development are: long term planning; budgeting; organizing; recruitment; strategy for education of workers; industrial relations; workplace dispute handling; and, negotiations towards the Collective Bargaining Agreement.⁷⁵ These shortfalls are disruptive to the union's quest to achieve its day-to-day objectives. They also compromise the long haul sustainability of the organization.

KPAWU has not demonstrated innovation in advancing labour rights through emerging and new frameworks of corporate accountability. This, possibly, points to a deficiency in the union's technical capacities for advocacy and organization. The international nature of the tea value chain, the growing global and national demand for corporate accountability, the growing body of knowledge and knowhow on how to utilize extra-territorial frameworks for accountability; and a progressive municipal legal environment, offer opportunities at advancing workers' rights and welfare beyond traditional forms organizing. KPAWU has also not invested sufficiently in evidence based organizing. Lastly, KPAWU has remained wary of striking complementary partnerships with like-minded civil society organizations, thus limiting the potency of labour rights advocacy and the space for cross-learning.

Recommendations

6.3.1 Access to Trade Unions

- 6.3.1.1– The Government should ensure that all workers permanent and temporary, in small-holder farms and in the large farms are able to gain registration by trade unions of their choices, in order to benefit from representation and union support in industrial matters. Allied to this, the KPAWU should commence the process of sensitizing workers from small holder farms on the benefits of registration with a trade union, enter into recognitions agreements with small-holder farmers and register workers into the union.
 - Employers in the tea sector should ensure that workers have access to representation by trade unions in the event of industrial disputes or in labour rights matters. Employers should, thus, allow for the election of union committee members within the work-place and allow them adequate space and time, during working hours, to engage in organization. Employers should also avoid from practices which may amount or be perceived to amount to intimidation and victimization of workers, on account of their organizing mandate.

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

⁷⁵ Ibid.

6.3.2 Capacity Development for Workers' Representatives

- 6.3.2.1 Trade unions should undergo capacity development in order to boost their institutional and operational capacities, in order to ensure sustainability, efficiency and effectiveness. These enhanced capacities are required towards: strategy development; internal good governance; operational level efficiency; financial sustainability; research and development; and tactical effectiveness. Participatory decision making and collective bargaining Consultation with workers special interests system for ensuring and tracking special interest;
- 6.3.2.2 -Trade unions and shop-floor union committee officials should undergo capacity development in order to develop their technical knowledge and skills for effective organizing, including on: collective bargaining; research and evidence building; understanding and utilizing global value chains; among others.

6.3.3 Enhancing Participation and Inclusion in Organizing

- 6.3.3.1 There is need to ensure that trade union officials and representatives at the shop-floor are elected through a predictable, democratic and fair process, with the participation of all union members, periodically. Frameworks for representation of special interest groups among workers should be put in place. In this regard, there needs to be equal representation of women and male workers in the different levels and branches of the trade union as well as at shop floor level, with specified minimum quotas of representatives reserved for women and other special groups.
- 6.3.3.2 Trade unions should adopt strategies of co-operation with allies and other labour sector stakeholders to widen the capacities and impact in labour rights advocacy and capacity building, including strategic partnerships with relevant civil society organizations, certification bodies, growers' associations and consumers' associations, among others.
- 6.3.3.3 Trade unions should ensure that decisions made on behalf of workers in the course of organizing enlist the adequate input and participation of the workers, through workplace union committees. Trade unions, working hand in hand with union shop floor representatives should, therefore, develop effective structures for effective and regular consultation, communication and feedback between the branch offices of the trade union and the shop floor representatives as well as between shop floor representatives and workers, to enhance timely and effective consultation and participation of workers.
- 6.3.3.4 Trade union officials and shop stewards should develop and publicize their respective work-plans in order to enhance participation of workers.
- 6.3.3.5 Trade unions and workers' representatives should be readily accessible to workers in real time, to ensure timely service provision to workers.
- 6.3.3.6 A participatory and open monitoring, evaluation and learning framework should be implemented by the trade union to ensure that progress towards the objectives of workers' representation is interrogated and that lessons are captured.
- 6.3.3.8 To ensure that relevant gender considerations are addressed effectively by trade unions and union committees, a subcommittee on special interests which covers, among others, gender concerns should be established at both trade union and shop-floor levels, with the mandate of advancing key gender issues and tracking the adoption and implementation of the same.

6.3.4	Government's Role in Labour Relations
	6.3.4.1 – The Government should play its role as the guarantor of the collective bargaining process
	and an impartial arbiter in seeking solutions in the event of industrial disputes between
	employers and workers' representatives. Labour Officers should oversee the enforcement
	of CBAs and the observance of due process in industrial action, and protect against the
	brutalization or victimization of trade union officials or workers' representatives or the
	damage of work-place property by striking workers.

6.4 Selected aspects of Gender-Based Discrimination at the Workplace

6.4.1 Sexual Harassment at the Workplace

Both workers and management concur that cases of sexual harassment against workers have been on the wane, for some time. There is a common view, however, that, though muted, sexual harassment still exists in the shadows. It mainly takes the form of superiors at the workplace – mainly, supervisors and a few managers - luring workers into sexual relations upon the promise of preferential treatment. The preferential treatment includes rewards of lighter duties, or allocation of work at the more coveted work-stations, even positive daily performance reviews.

6.4.1.1 Enablers of Sexual Harassment

Sexual harassment in the farms and factories is fuelled by a number of factors. First, cultural beliefs that normalize aspects of gender-based discrimination have diffused into the work-place, weakening the resolve and position of women – who are, invariably the majority of victims – who may wish to report incidents of sexual harassment. Sexual offences have a fast stigma attached to it that many women survivors cannot wash off, hence the reluctance to report. The fear of ostracization relates not just to the difficulties in navigating through the patriarchal systemic and social construct at the work-place, but also the repercussions back at home and in the community. It is not uncommon for women survivors to suffer double victimization as a result of the condemnation of the community or of her own husband or partner. Women are commonly accused of complicity in the sexual abuse or of visiting shame upon the family by reporting the violation. Secondly, many survivors do not believe that reporting violations can result in decisive remedial action by the company, either because the complainant is often in a presumed weaker social or professional position relative to the culprit, or because of a demonstrable lack of commitment to address the problem, by the farm. Another cause of gender violence in the farms and indeed, in the community setting, is the poor understanding of the various aspects of gender violence and their effect to the victims and the society. The knowledge and understanding of gender violence by gender committee members, who are entrusted with addressing complaints of sexual harassment, has been questioned by workers. In addition, the cumbersome or altogether inefficient structures of accountability that have been set up in a number of tea farms dissuade prompt reporting by victims. These structures have been said to lack a well-defined and user-friendly complaints procedures, including little observance of due process and confidentiality. Structural frailties occasioned by poor workplace conditions, predispose women workers, in particular, to gender based violence. These include: low wages and

little social bargaining power at the work-place or in the community leaving workers desperate. Lastly, the high and unique evidentiary threshold of some acts of sexual harassment, have the effect of dissuading many survivors from reporting or pursuing claims of violation.

6.4.1.2 Anti-Sexual Harassment Policies

Most of the large tea farms and the factories in Kericho have promulgated an institutional antisexual harassment policy, in line with the requirements of the Employment Act, unlike in the small holder farms. It must be noted that the law in Kenya only requires employers who employ 20 or more workers to formulate a policy statement on sexual harassment. Not surprisingly, the small holder farms, which consistently have less than 20 employees apiece, have in the main, not adopted these legal provisions. Nevertheless, the experience of survivors of sexual harassment reveals that sexual harassment is just as likely to be committed in spaces with few people as in spaces with larger numbers of people. It is further contended that, the intimacy and familiarity of settings with fewer workers can predispose workers to sexual abuse. Reporting abuse in such a setting is, arguably, more difficult than in work-places where there is less personal collegial proximity. Thus, it is proposed that structures for preventing and redressing cases of sexual harassment should, similarly, be put in place in small holder farms. Nonetheless, the actions that have been taken by the large farms in the sector – though, inadequate - have contributed to improved protection of workers from sexual harassment.

An assessment of the existing anti-sexual harassment provisions in the large farms and the factories reveals that most of the farms have complied with the requirements to have in place the policy statements and that these statements are conspicuously displayed. Policy statements, however, are not always backed up with strong implementation structures and human capacities for addressing the same.

Whereas the full scale of the incidence of sexual harassment in the tea sector is not known – given the difficulties in unearthing and documenting cases of sexual harassment – workers have continually raised concerns about sexual harassment, stating that it mainly occurs in the shadows, with the bulk of victims being women. Women rarely report instances of violation to the authorities for fear of a social backlash or of reprisals from the often more "powerful" culprit. Indeed, where the choice relates to staying silent and retaining one's job and possibly, marriage, on the one hand, or trying for justice while risking the loss of one's livelihood, or even marriage by reporting, on the other hand, workers have mostly opted to maintain their silence.

6.4.2 Equality of Wages and Access to Work Opportunities

In a large majority of tea farms and factories, women and men are paid equal wages for work of equal value. There is an overlap in the main tasks undertaken by men and women, with tea picking, pruning, and grass trimming, particularly, drawing in significant numbers of workers from both sexes. There are a few tasks, however, that are mostly reserved for men, in a number of farms.

These include, working at heights, turn-boys, drivers, spraying, painting, quarry work and operating heavy machines. In the factories, boiler operations are mostly undertaken by men. It must be noted that women have been able to undertake many of these tasks just as effectively, when given the opportunity. A number of these tasks attract better remuneration than the work that is routinely allocated to women workers. The senior positions, including managerial positions are dominated by men, although the large multinational farms are increasingly putting in place deliberate policies to achieve gender parity.

In the large farms, it was true that men and women are equally remunerated for work of equal value, with 86% of women and 86% of men affirming so. In the small holder sector, women workers affirmed the same statement by 87.5%. Male workers in the small holder sector, on the other hand, stated that men and women were not paid equally for work of equal value.

When asked whether certain jobs or tasks at the work-place were the preserve of men, 36% of women workers answered in the affirmative, with the majority 57% stating that this was not the case. Among the male workers in the large farms, a plurality of 49% indicated that there was no gender bias in the allocation of tasks, while 40% stated that gender influenced the allocation of tasks. In the smaller farms, most workers stated that gender was a key determinant of the workplace tasks, with 62.5% of women workers and 57.1% of male workers affirming so.

A follow up question concerned whether gender discrimination was a feature at the work-place. This elicited a split response in the large farms. Women workers responding in the affirmative were 42%, with another 41% stating that this was not the case. Among the male workers in the large farms, 47% indicated that discrimination on grounds of gender was commonplace, with 41% refuting this position. In the small holder set up, workers were clear that gender based discrimination at the workplace is common. Of those polled, 37.5% of women workers strongly agreed with this statement, with 62.5% agreeing somewhat. According to the male workers in the small holder set-up, 28.6% strongly supported this view, with 42.8% agreeing with the view.

To test workers' perceptions on engendered career growth prospects, they were asked whether both men and women have an equal chance of rising from General Worker to Manager within the workplace. 26% of women workers and 38% of male workers stated that women and men were on an equal footing as regards rising to managerial positions. In the small holder farms, on the other hand, a majority of 87% of women and 42% of men affirmed their belief that both women and men had an equal shot at ascending to managerial positions.

Noting the double roles played by women in the society, workers responded to the impact of household chores on women's career development. 17.8% of women workers and 40.3% of male workers in large farms stated their belief that household duties were a hurdle to the career development of women workers. In the small holder farms, 87.5% of women and 28.6% of male workers felt that household chores were a challenge to women's career growth.

6.4.3 Single Mother hood

The rate of divorce in the tea zones has increased significantly. There is a related trend of men and women contracting casual relationships of convenience, resulting in the birth of children. Thereafter, the men abandon their pregnant or child bearing partners, both factors occasioning a spike in single mother-hood among the workers in the tea sector of Kericho.

Workers have offered varied insights into to the causes of this phenomenon. First, the status of many workers as migrants from distant Kenyan counties, has meant that they live apart from their families. On a smaller scale, the housing policies of a few farms that require workers not to bring their families into company housing, have also contributed to spouses living apart. Many workers, yet, are forced by economic hardship to seek convenient cohabitation of a casual nature. It has also been established that workers are not sufficiently sensitized on birth control and contraception measures, hence the contraction of unplanned pregnancies. Hand in hand with this is the fact that the costs of contraception is beyond the reach of many workers. Even where they can afford or access these facilities or materials, the prevailing culture is such that decision-making on birth control largely favours the men. In discussions with the community leaders in Kericho, it was made clear that, women who unilaterally take steps towards birth control are likely to run afoul of local convention, a factor which has the potential of fatally straining the marriage or prospects for marriage. Whereas the law makes it an offence for a biological father or a person to whom parental responsibility attaches, to fail in providing parental care for his child, ⁷⁶ these women do not often have ready access to affordable, legal aid in order to seek the said maintenance.

Because of their low bargaining power in the society, women often have to take up the onerous responsibility of raising these children without the support of the men. This aggravates their economic situation, in turn leaving them desperate to keep their low paying jobs. It is under these circumstances that women with low socio-economic bargaining power become susceptible to aggravated gender and sexual based violations.

Overall, the pressures of the work-place require sufficient social and professional support mechanisms, namely: counseling services; mentorship; sufficient rest; and, leisure.

6.4.4 Reproductive Health Challenges for Women Workers

Because formal contracts are not widely granted to workers in the small holder farms, accessing maternity leave for these workers is, similarly, not formally documented. Indeed, obtaining leave at the small holder farms is largely, based on informal arrangements between the employer and the employee. In the large farms and the tea factories, on the other hand, maternity leave is granted to permanent workers and, in some cases, to seasonal workers. Most women workers in the large farms have access to paid maternity leave. 91% of women workers and 90% of male workers affirmed this position. In the small holder setting, the situation was different, with only 25% of Sections 6(1) and Section 23, the Children Act, Act Number 8 of 2001, the Laws of Kenya

women workers stating that their employer provided this benefit. 75% on the other hand, stated that they were not entitled to maternity leave at their place of work.

Expectant women working in the farms and factories also need lighter chores and flexible, even reduced, working hours, on account of their status. However, while some large farms have striven to address these concerns, mostly, on a case by case basis, there is no policy framework to guarantee this practice. It, thus, remains discretionary and dependent on the manager.

Mothers who are nursing children are similarly affected by the lack of a clear policy clause on lighter duties and flexi-time, in most of the farms. In addition, the few child-care facilities and crèches at the large farms are significantly outstripped by the demand. Many mothers working at the farm are unable to afford alternative day-care services. Besides, the welfare of the babies requires constant breastfeeding, thus requiring the babies to be within easy reach of the mothers, at the farm. Transport for mothers to access their babies for feeding is not always co-ordinated or assured. A plurality of the workers interviewed from the large companies stated that they have access to breastfeeding breaks. These can amount to up to 2 thirty-minute breaks per day, depending on the age of the child. In the more progressive large farms, mothers who have delivered are encouraged to take up tasks in close geographic proximity to their homes, to allow them easy access to their suckling babies. As such, they are given first priority on "general duties" at the workplace. General duties require less physical intensity and allow for flexibility in terms of working shifts and the amount of time to be worked. This, it must be noted, is not common practice in the large or small farms.

Recommendations

6.4.1 **Sexual Harassment**

- 6.4.1.1– The Employment Act should be amended to require all employers in the agricultural sector to develop and adopt anti-sexual harassment policies at the work-place, regardless of the numbers of their employees. Section 6(2) of the Employment Act requires only employers who have employed 20 or more workers to issue a policy statement against sexual harassment). This recommendation is in line with findings that workers in farms with less than 20 employees are also likely to suffer from sexual harassment as those in farms with 20 or more workers.
- 6.4.1.2– The Cabinet Secretary in charge of Labour matters should, through subsidiary legislation, and through a process that enlists the participation of labour sector stakeholders, promulgate minimum standard anti-sexual harassment policy for the agricultural sector, to provide a template minimum policy for adoption by employers in the agricultural sector.
- 6.4.1.3– The Kericho County Assembly should enact county legislation providing the legal framework on Gender Based Violence (GBV) to make provision for protection against GBV in the county and to co-ordinate and synchronize the interventions of national and county level government on GBV. The Model County Legislation on Gender Based Violence for County Governments developed by the National Gender and Equality Commission (NGEC) provides a template which may be adopted.
- 6.4.1.4—All tea farms should, through participatory internal processes, develop and adopt comprehensive anti-sexual harassment policies at the work-place.
- 6.4.1.5– Employers should undertake periodic sensitization of workers on sexual harassment in order to improve their understanding of sexual harassment, its manifestations, causes, effects and the mechanisms for preventing sexual harassment at the work-place.
- 6.4.1.6— Tea farms should ensure that their employees undergo comprehensive sensitization on sexual harassment at the work-place, upon employment and ensure annual refresher, evaluation and learning sessions with all employees.
- 6.4.1.7– In addition to sensitization of workers, members of the labour catchment community should also be sensitized on sexual harassment so as to enhance their knowledge, attitudes and practices thereby easing the acceptability of corresponding anti-sexual harassment campaigns at the work-place.
- 6.4.1.8– Employers should establish and nurture effective and credible work-place structures for preventing and redressing cases of sexual harassment at the work-place, including through work-place Gender Committees. Work-place committees should be representative of workers of all cadres and work-stations. It should comprise women workers of all cadres to ensure adequate participation of women. The committee members should undergo periodic subject specific training and on relevant committee processes, to enhance their competence in addressing emerging issues, observing due process, confidentiality and documentation.
- 6.4.1.9– Employers should provide Gender Committees with space and adequate time within working hours to address committee business, on a monthly basis.
- 6.4.1.10 The Gender Committee, working closely with farm management, should identify and address root causes of sexual harassment in the work-place, including through policies (Housing, transfer, promotions and human resources policies), processes (disciplinary, promotions, task allocation and recruitment processes). And through capacity development programmes.

6.4.2 Equal Access to Job Opportunities

- 6.4.2.1 –Women and men should have equal access to job opportunities and tasks at the work-place without discrimination on grounds of gender. There should be no tasks that are exclusively reserved for men or women.
- 6.4.2.2– To enable women undertake tasks that have traditionally been viewed as men's roles, women workers should undergo on the job skills-training to allow for transition to their new roles.
- 6.4.2.3– Employers should adopt affirmative action policies and practices to ensure equitable representation of women in the leadership ranks of the farm, including, through allocating women's quotas for managerial and supervisorial positions.
- 6.4.2.3– To enable women workers to successfully take up leadership opportunities, their leadership skills should be enhanced through portfolio-appropriate skilling and leadership training.

6.4.3	Single Motherhood	
	6.4.3 – The employer should address, through policy or operational decisions, factors that predispose women workers to becoming single mothers. These factors include: payment of low wages; housing policies that do not encourage families to live together; poor access to affordable birth control methods and to knowledge on birth-control; and, the subdued voice of women in decision making on birth control and family planning matters.	
6.4.4	Reproductive Health	
	6.4.4.1 – All employers should ensure that expectant or child nursing women employees are entitled to statutory maternity leave and access to health-care and medical facilities.	
	6.4.4.2 – Expectant mothers at the work-place should be entitled to: flexible work-schedules; and, lighter duties, commensurate to their state of health and well-being.	
	6.4.4.3 – Where nursing mothers of infants are required to attend work, the employer should provide child-care facilities for the babies and allow the mothers adequate time off for breast-feeding, in addition to other regulation breaks.	
	6.4.4.4 – Employers should ensure that the maternity status of women does not, in any way, affect their career progression prospects upon their return to work.	

6.5 Job Security and Contracts at the Work Place

Most of the workers in the large tea farms are provided with a written contract of service or a contract for services, unlike in the small holder farms, where labour is still, largely, contracted under informal terms. The majority of workers in the large farms are contracted as permanent employees. There is a significant minority, however, which is retained on temporary terms, either on rolling contracts or on contracts that run for the duration of the peak seasons. All workers – permanent and seasonal –undertake work of the same nature, at the same pay, with all of them covered under the National Health Insurance Fund (NHIF) scheme. In one of the farms, casual or seasonal labourers regularly experience delays of, approximately, one week, on the payment of their wages.

Workers have stated that their contracts of service are written in a language that is not easy to understand, considering the modest levels of education and exposure of the workforce. To manage legitimate expectations, contracts should clearly define the tasks or range of tasks of each worker as well as the work-station, as much as is possible. In certain instances, workers' have been transferred across diametrically different work-stations, at short notice and without due consultation, thus significantly altering their terms of employment. This has repercussions on the continued performance of the transferred worker as well as on the morale. This is especially the case for workers who are interchanged between farm labour and factory labour, without adequate acclimatization to the new role. It is thus important for contracts of employment granted to workers, to be comprehensive and easy to understand. The Employment Act of Kenya prescribes the minimum substantive content that a contract should contain.

For workers in the tea sector, who rely on the instruments of the Collective Bargaining Agreement (CBA) as a legal determinant of remuneration, the CBA is, by necessity, complementary to the contract of employment. As relates to tea pickers, the CBA between the KPAWU, on the one hand and the employers, on the other hand, provide for remuneration based on the mass of tea leaves picked, by hand. However, tea pickers are often assigned to the use tea picking shears or

machines. Use of implements for picking tea fetches lower wages than handpicked tea. Because of an existing standoff between KPAWU and the tea companies on mechanization of tea picking, such mechanization has not been factored into the CBA. The effect is that workers who are forced to use machines to pick tea are paid less amounts than what is in their contracts. Where workers are, at the risk of disciplinary action, compelled to undertake work of any nature, but which is not reasonably foreseen in their contractual arrangements, it may be possible to classify such a situation as "forced or compulsory labour."

Periodically, the larger tea farms procure farm labourers from external companies, rather than use their own employees. This is common practice during peak seasons. In such a situation, the tea farms do not offer direct contracts of employment to regulate their relationship with the labourers. Instead, a contract for services is entered into with the contractor, on behalf of the labourers. Without the direct supervision of the terms of employment and working conditions of these labourers, tea farms are unable to guarantee the protection of their labour rights and welfare. Through FGDs, it emerged that these labourers could be earning exploitatively low wages, as a result of this arrangement, with no benefits relating to medical insurance and housing. The late payment of wages to these workers has also been alleged. Under present contractual arrangements, it is not possible for the tea farms to guarantee their protection from violations. Women working under these conditions are particularly vulnerable.

Recommendations

6.5.1	Contracts		
	6.5.1.2 - All employees – permanent and temporary workers - in the tea sector should be provid-		
	ed with comprehensive contracts, written in simple language that is easy to understand,		
	spelling out contractual obligations, benefits and protections.		
	6.5.1.2 - In the event that a tea farm or factory sub-contracts a different company for the purpos-		
	es of providing labourers to the tea farm or factory, the said tea farm or factory should		
	ensure that such labourers, are contracted upon fair contractual terms that include fair		
	remuneration, protection from discrimination – including gender based discrimination -		
	and working conditions.		

6.6 Health and Safety at the Work Place

The large farms have put in place various mechanisms for regulating health and safety at the work-place, with management functions complemented by workplace committees on health and safety. Most of the small holder farms do not have well defined health and safety committees. Most workers in large farms have access to annual and sick leave with pay, as attested to by 77.1% of respondents. 20.7% state that they do not have access to paid leave. The case of the small-holder set-up is different. 46.7% said they had access to leave, with 53.3% stating the opposite.

42.1% of respondents from large farms stated that their employer provided them with sufficient protective gear at the workplace, with a plurality of 46.4% stating that their employer did not provide them with sufficient protective gear. In the small holder set-up, 40% of respondents stated

that they were equipped with adequate protective gear. 26.7% refuted this position while 33.3% did not provide a definite answer.

Employees are generally provided with Personal Protective Equipment (PPE), mostly, gloves and an apron, for tea pickers. In both the large and small farms, most employers have failed to provide their employees with working boots, the rule being that workers should purchase their own working boots. In the agricultural sector and in factories, wearing the correct type of shoe crucial for the safety of the employee and for the health of all persons involved in production. As such, working boots are so particular and integral to the nature of work in the farms and factories that it qualifies as an item that should be provided to all workers undertaking industrial processes. In several of small holder farms and large farms, PPEs are not kept in a good state of repair nor replaced with sufficient regularity, thus exposing workers to various hazards. Occasionally, when workers pick tea in the night, as happens in some large farms, they are, particularly, exposed to the biting cold weather of Kericho. During most of the seasons in Kericho, night time temperatures are known to drop to very low levels. Workers lamented that night time workers are not provided with sufficiently warm clothing. Instead, the employer provides the same light jacket as is used by daytime tea pickers, thereby exposing workers to the harsh elements. Workers from these farms experience a range of work-related diseases and illnesses, including, arthritis, asthmatic complications, tuberculosis and chronic colds and fevers. In addition, night-time workers have raised issues relating to inadequate lighting in the farms during night duty. This predisposes them to accidents and attacks by wild animals lurking in the dark plantations.

The work in the tea plantations and factories is characterized by routine processes. These repetitive tasks not only require patience and perseverance; it also requires periodic variations or outright graduation from one task to another. This is mostly important in the case of workers who are continuously exposed to strenuous chores over long periods of time. Tea pickers normally strap a basket, locally known as, "nyagucha," to their backs. Many workers have had to pick tea all or most of their working lives, up until they attain retirement. The constant weight of the nyagucha on the aging spine of the labourer contributes to injuries, chronic conditions of the skeletal structure, even permanent deformity. Many labourers have had to retire ahead of schedule in order to nurse their declining physical conditions. Many more who have gone on to work until the statutory retirement age, have contracted spinal and orthopedic conditions. Workers should not be exposed to physical work routines that are potentially harmful, for long spells, without adequate relief. Furthermore, there is need for differentiation in the capacities and allocation of tasks to persons with different conditions at the work-place. The allocation of tasks should thus be informed by, among others: the age of the worker; the pregnancy status; the state of well-being; disability status; and, physical capabilities, among others.

Recommendations

6.6.1	Personal Protective Equipment
	6.6.1.1- Employers in the tea farms and factories should ensure that adequate Personal Protective
	Equipment (PPEs) is provided to all workers. These include, but are not limited to:
	gloves; boots; overalls; and, masks. Additionally, workers working in the night or in
	cold weather should, accordingly, be provided with weather appropriate clothing.
	6.6.1.2— The employer should ensure that all employees are provided with appropriate tools
	and equipment and that are maintained in good repair and replaced where necessary.
	Employees should not be required to provide their own tools and equipment, to ensure
	safety is regulated.
6.6.2	Work-place Conditions
	6.6.2.1— The employer should ensure that tasks assigned to employees at the work-place do not
	inflict or contribute to the immediate or long term injury or harm to employees.
	8.6.2.2- Workers who are exposed to long spells under strenuous or taxing work should be
	monitored and placed in different and lighter roles, over the years to avoid injury and
	harm.
	8.6.2.3— Older workers, persons with disability, expectant and nursing mothers, should be allocated
	status-appropriate or special tasks at the workplace to avoid harm to themselves and
	to others.
	8.6.2.4— Where special tasks or conditions of work are assigned to employees, the employee
	should not bear any penalties relating to the assignment of special duties. The employee
	should not be required to forfeit any employment benefits to which other co-workers
	are entitled. These benefits may include but are not limited to: equal prospects for
	work-place promotion; entitlement to leave, breaks and resting-hours; and, wages.

6.7 Participation of Workers in Decision Making at the Work-Place

6.7.1 Management Systems and Structures

Management systems that advance employee participation in decision-making across the breadth of work-place affairs, enhance cohesion and inclusion, even increased productivity, at the work-place. Policy level decisions at the farms are generally made by directors, sometimes, senior managers, at the large tea companies. In small holder farms, these decisions are made by the proprietors of the farms, though it is not uncommon for the proprietors to make decisions at family level. In the large farms, operational decisions in the large farms are made by managers and supervisors. The management structures in the large farms allow the farms' leadership to identify policy questions, formulate policies as appropriate and to put in place systems for implementing the said policies. The level of involvement of general workers in decision-making at the different levels, varies widely from small farm to another. In the small farms, operational matters are, again, decided upon by the farm owners, though, in a number of farms, a manager or a small team of management staff may be tasked with the day to day running of the farm. In many small-holder farms, however, the management function is consolidated within a person or a few people. Most farms are owned by men as are most managers at the farm. This leaves the most significant decisions in the hands of men. There is a growing legion of women supervisors in the large farms, but their mainstay remains the general work-force.

While the quantitative representation in positions of leadership and on platforms of decision making

is important, more integral is a system of management that feeds off the qualitative input of the various stakeholders at the work-place. There is no deliberate system of management consultation or a feedback mechanism with general workers, in most farms. As a result, most workers in the large farms feel uninvolved and unvalued. Indeed, it is common for general workers to feel aggrieved by some policies and decisions made at their workplace.

When asked whether workplace policies were formulated through a participatory process, only 34% of workers in large farms responded in the affirmative. 57% of workers stated that policy formulation was not participatory. The response of workers from small holder farms was different, with 73% affirming that there was all round participation in policy formulation. Further interrogation through Focus Group Discussions (FGD) found that workers in small farms often have closer proximity with the farms' proprietors. In some cases, they are, themselves, owners of the farm. As such, policy decisions are likely to be made with their participation.

More importantly, designing effective solutions for work-place challenges relies on the aggregation of the knowledge and understanding of different workers, as well as the tempering of decisions with the respective interests at play. The FGD sessions with workers identified the need for open, fair, predictable and participatory processes as lacking in performance appraisal, allocation of housing and the grievance redress process. Studies have found that adequate employee participation at the workplace impacts positively on processes and practices at the workplace.⁷⁷ Employee participation connotes the active involvement of employees of various cadres in workplace matters and processes, including: project or operational planning; executing workplace tasks; evaluating the results and reflecting upon lessons, and in the feedback process.

Beyond operational matters, it is crucial for employees to be involved in planning, developing, implementing and reviewing workplace policies, especially those that directly impact upon their welfare. The study (Karina Nielsen) found that where workers are involved in decision making across the work-place processes, they are more likely to own the policies and practices at the workplace. Similarly, workers' involvement is integral to the design and development of efficient, effective, responsive and acceptable workplace social support structures and systems. Participation of employees in decisions and processes reduces resistance to change in the workplace and advances productivity or achievement of organizational goals.⁷⁸

Although operational decisions regularly turn upon technical considerations, decisions should be as people-centred as possible, to foster inclusion in the work-place. Participation at the work-place should, therefore, factor in disaggregation of legitimate and appropriate stakeholder interests, including gender. Decision-making should, thus, not only factor the technical merits, but also the implications on, not just the majority of workers; they should also consider minority perspectives. Providing open decision-making and feed-back systems and sufficient and safe space for the participation of all actors, is crucial to achieving inclusive decision making. Women and men should be involved equally, in all aspects and phases. Furthermore, to avoid the developing concentric

⁷⁷ Karina Nielsen (2012)

⁷⁸ Lines (2004)

rings of marginalization within an already marginalized group, women of different categories, including: cadres; age groups; levels of education; and, work-stations, among other parameters, should be involved.

Workers in the large farms identified tribalism and nepotism as barriers to participatory management in the work-place. This has been demonstrated in the top level appointments at the farms, with one tribe dominating management positions. The tribal dialect of the dominant tribe is widely used at the work-place, even by some senior staff across the work-place, thereby marginalizing those who do not understand it. Tribalism and nepotism have enabled patronage networks based on tribe and familial relationships to emerge. These could be used in making subjective operational and welfare decisions, including for perpetrating gender based violations.

Lastly, women and men should undergo relevant capacity development to enhance their understanding and skills, thus facilitate effective participation in decision making processes at the workplace.

6.7.2 Participation through Workplace Committees

In the large farms, workplace committees are a useful way of enhancing workers' participation in the affairs of the workplace. Workplace committees made up of workers of different cadres exist in the large multinational farms of Kericho. These committees include: Gender Committees; Union Committees; Health and Safety Committees; Housing Committees; and, Welfare Committees, among others. Small-holder farms, on the other hand, do not have well-developed and effective workplace committees system. A mix of reasons have been offered in explanation of this state of affairs: the low numbers of employees; the informal manner in which they operate; lack of finances for administering elaborate committee systems; and the lack of know-how for developing and supporting the operation of work-place structures. As a result, workers in most small-holder farms often participate in workplace activities and decision making through *ad hoc* formations or without a structured process, altogether.

Even in the larger farms with work-place committees, a number of challenges continue to beset the system. Workers fear victimization by management in the event that committees demonstrate autonomy from management. The current state of dormancy by union committees in the large farms and in the tea factories, illustrates this apprehension. Workers have cited instances of reprisals against union committee members, including summary dismissal, transfers to less coveted stations and other forms of intimidation, especially after leading a well-publicized episode of industrial action. Allied to this point, is the fact that certain committees are not considered by workers to be credible or capable of advancing workers' welfare, because of their explicit or implicit control, by management. Misgivings abound as to whether Gender Committees, for instance, could successfully act upon a sexual harassment complaint by a general worker against a senior manager, to the point of achieving disciplinary action against the manager. Besides the perception that some of the committees lack the requisite space and autonomy, the composition of the more influential

committees further dampen the faith of workers in the committees. While, there is a deliberate effort by a number of large farms to ensure gender equality in the composition of the committees, although, challenges abound as regards, gender representation by cadre. In many cases, management dominates the slots of membership, hence cowing other committee members into passivity. In some cases, the election of members of various committees is, sometimes, subject to supervision and rationalization by the management, thus creating the perception of undue influence from management. This compromises their decisional independence and their capacity to be objective in discharging their mandate.

Another concern to workers is the overlap of functions of certain committees, creating uncertainty of mandate or rendering each other redundant. In one large farm, Workers Committees and Welfare Committees have usurped the role of Gender Committees. The effect is that matters relating to gender are not addressed in a specialized and systematic manner, but through a generalist process. It is difficult to assure that the committee has adequate capacity to address emerging gender questions. This is because, such a committee would address itself to an unusually wide set of issues, thus affecting their capacity for specialization.

Workers have also faulted the low technical capacity of some committees. Members of some committees lack sufficient knowledge or know-how on the subject matter of their respective committees. Low levels of education and lack of sufficient training and subsequent, periodic refresher trainings has affected the effectiveness of, specifically, committees that address complex and technical matters. It has also been reported that crucial workplace committees, namely, the Union Committee and the Gender Committee, are not resourced sufficiently to execute their respective mandates. In one large farm, workers observed that these committees are not allocated time, regularly and during working hours, to undertake their functions. Consequently, workers have become apathetic to certain committees.

Recommendations

6.7.1	Participation through Participatory Management Systems
	6.7.1.1 - To foster equitable participation of women in the work-place tea farms should adopt
	equitable representation of women among the farm management staff, with neither
	gender taking up more than two-thirds of the senior management positions.
	6.7.1.2 - For women to successfully rise to and successfully hold down positions of leadership
	in the farms, employers should undertake leadership and relevant skills-based training,
	coaching and mentoring, for women workers.
	6.7.1.3 - Social barriers to women's ascent to leadership positions should be addressed through,
	among others: formulating policies and practices that promote women leadership; and,
	sensitization of workers to enhance appreciation of women leaders in the work-place.
	6.7.1.4 - For participatory leadership at the work-place, decision-making on different aspects
	of operations should be dispersed across sections and cascaded, to ensure the widest
	possible participation of workers.
	6.7.1.5 – Management practices in the farms should be participatory, allowing for consultation
	and feedback processes of workers across the cadres, mindful of both dominant and
	minority perspectives, and of special interests, including women.
	6.7.1.6 - Tea farms should integrate gender into their management processes and substantive
	outcomes to ensure that actual equitable, quantitative and qualitative gender aspects
	gender participation is registered, but also to enhance ensure that engendered objectives
	and results are achieved.
6.7.2	Participation through Work-place Committees
	6.7.2.1— Tea farms should adopt equitable representation of women and men on work-place
	committees, with neither gender taking up more than two-thirds of the positions, in
	order to foster equitable participation of women in decision making.
	6.7.2.2– There should be adequate representation of general workers on key workplace
	committees.
	6.7.2.3 – Tea farms should allocate work-place committees adequate space and time during
	working hours, to address committee business, on a periodic basis;
	6.7.2.4 — Workers should not be intimidated or victimized for their legitimate contribution or
	participation in work-place committees.

6.8 Advocacy Initiatives to Promote Women's Labour and Economic Rights

The large flower farms have been the focal point for structured interventions for advancing advocacy to promote the labour and socio-economic rights of women in Kericho, with other interventions targeting the host community

6.8.1 Unilever Tea Kenya Limited

At Unilever Tea Kenya Limited, a number of initiatives have been developed, including the Dignity Enhancement Committees (DEC). The DEC draws its membership from all sections of the farm.

Each of the 7 sections nominates 7 representatives to the DEC, disaggregated into 4 men and 3 women per section. The nomination process also ensures that special interests, including Persons with Disabilities (PWDs) are represented. Thus, the DEC has a total of 49 members, with women accounting for 21 members while men take up 28 slots. The role of the DEC is multifarious; mainly to ensure that the welfare of workers is protected. Among the specific interventions by the DEC is to promote gender equality at the work-place and to sensitize children in schools about gender equality and equity.

Unilever runs a specific programme at Tagabi Primary school, in Kericho, aimed at tapping children in the school as gender empowerment intermediaries. Through the Kings and Queens Clubs in Tagabi Primary School, Unilever has tapped into a total population of 26 gender protection champions who are members of the Kings and Queens Clubs (15 boys and 11 girls). In partnership with the Nairobi Women's Hospital-based Gender Violence Recovery Centre (GVRC), the Kings and Queens Clubs undergo exercises to build their capacities and to enlist them as child advocates for the purpose of monitoring, preventing, reporting, redressing and speaking out against gender based violence.

6.8.2 The HER Project by BSR

BSR is a global non-profit organization which works with a network of member companies to promote sustainable production around the world. BSR has undertaken a scoping study in the tea sector of Kenya with the aim of exploring how to adopt the BSR's HER Project work-place based women's empowerment programme for the benefit of small holder farms. The HER Project is a global public private partnership to empower low income workers along global supply chains. It aims to promote socio-economic inclusion in production as well as to support health and wellbeing in the farms.

6.8.3 Kapng'etuny Women in Coffee Association

Kabng'etuny Women in Coffee Association has, in partnership with Fairtrade Africa and Solidaridad gone ahead to build the capacity of 300 women farmers on Good Agricultural Practices (GAPs), with the aim of increasing coffee quality and yield. To circumvent the perennial challenge of women not owning land or coffee bushes, the project has tapped male farmers into being Gender Champions, ceding coffee bushes to their wives, to enable the latter to benefit from coffee farming. As a result of this partnership, in 2017 -2018, a number of women reaped the proceeds of their first harvests, as coffee producers. The experience of the Kabng'etuny is directly relatable to the tea sector, where the Kipsigis Council of Elders – through the local media - is counseling men in Kericho County to allocate segments of tea crop to their spouses as a means of initiating the women into tea farming.

Whereas other actors have from time to time participated in interventions for promoting gender

equality in Kericho, many of these interventions are *ad hoc* and devoid of a definite strategy or plan. Community members listed the Kericho County Governor and the Member of Parliament for Belgut Constituency as among actors who may potentially be tapped into structured interventions for gender protection. A number of churches in Kericho have also been known to exhort their congregations to support the economic empowerment of women in the society, though without any sustained messaging or elaborate programme.

Recommendations

6.8.1.1 Labour and Socio-Economic Rights advocacy in the tea sector should be a multistakeholder partnership, rather than a "lone-ranger" errand. The intricate and international nature of the tea value chain requires cooperation among actors to magnify the call to action as well as for mutual capacity building, learning and knowledge development and

complementarity in competencies and resources.

- 6.8.1.2 Initiatives for effective and sustainable influencing of the tea value chain requires the mapping of wider advocacy targets, be wider audiences than traditional advocacy targets, beyond traditional single-country level targets. It is thus, proposed that advocacy projects should spread their nets wide to reach, rarely-incorporated actors, including: tea consumers, tea traders, retailers, and, sustainability certification bodies. These actors would be incorporated, in addition to traditional in-country actors: host governments, producers, and, workers. This will ensure better intra-value chain value chain accountability and commitment to change. This proposal relies on a mix of in-country and cross-country networking.
- 6.8.1.3 Advocacy initiatives should employ both reactive and proactive approaches. Reactive approaches should be adopted in the case of monitoring, documentation, reporting, industrial action or legal action. Proactive approaches relate to instances solutions which require multi-stakeholder partnerships for implementation or co-creation. Traditionally, advocacy in the sector has dwelt on the former approach, limiting the role of sector influencers to problematizing.
- 6.8.1.4 To ensure increased adoption of progressive change, sector influencers should adopt a mix of standards of accountability. Whereas human rights organizations have previously utilized the Rights Based Approach (RBA) for influencing change, using other relevant models in complementarity, to influence global business-led value chains may prove useful. These include: the Sustainability Approach and the narrower Business Case Approach, thereby bringing more actors to the table, leveraging more advocacy frameworks and opportunities, and in the case of the latter approach, speaking directly to the existential impulse of businesses, a key stakeholder in the value chain.
- 6.8.1.5 For increased impact of advocacy interventions and to promote long term sustainability of advocacy interventions, advocacy initiatives should, as much as possible be led or retain the central participation of beneficiary groups mainly women workers and women in the Kericho tea zones. Beneficiary groups would thus require initial sensitization and capacity development in order to deepen their understanding of the value chain, to adequately define the advocacy issues, and to effectively address these issues within the various platforms. Beneficiary groups bring standing and legitimacy to the cause.
- 6.8.1.5 For faster and more sustainable impact through advocacy, key supply side actors, including progressive men and tea farmers would need to be co-opted as allies, where appropriate. Their utility to an advocacy partnership is integral for demonstrating accessibility of the target actor as well as for showcasing good practices, among target actors.

7.0 Conclusions

The tea zone of Kericho serves an integral function in the livelihoods of hundreds of thousands of tea value chain actors, not least of who are women workers. Women workers are the very bulwark of the labour force in the tea farms, supplying a clear majority of workers. However, the socioeconomic gains which accrue to them exposes a value chain whose benefits-sharing framework is structurally and socially rigged against this crucial group. Because of direct and indirect discrimination, mainly on gender lines, women workers not only eke out the lowest rewards, but they also suffer from violence against women and girls, further aggravating their capacities to optimize their socio-economic potential at work.

The work-place is a microcosm of the wider tea catchment community of Kericho. Women in the household are characterized by a subdued voice in decision-making and restricted opportunities for personal and economic growth, relative to the men. Patriarchal norms have ensured that women's capacities to own, access or deploy productive resources is limited, just as is their capacity for decision making on important questions of socio-economic development.

This study identifies generic breaches of workers' rights, specific violations of the rights of women workers, and structural and systemic shortfalls in protecting the same, painting a picture of a sector that is far from achieving qualitative gender inclusion. It also identifies good practices by corporate entities, progressive interventions by government and by non-state actors, which require building upon.

From the study, it is apparent that a line must be drawn to differentiate the performance of small holder farms and that of the larger farms. The small-holder tea sector operates with limited formal structures of or defined systems of management. This also means that, the small holder set-up, which employs the bulk of tea sector workers, mostly operates under the radar of the national legal and policy regulatory frameworks. Not surprisingly, women workers in the small holder setting are particularly vulnerable to labour rights violations. Though most of the large farms operate upon more structured terms, and notwithstanding their progressive practices in promoting labour rights and CSR, the labour rights and accountability systems in these farms are mostly, not people-centered. They lack sufficient structures for supporting participatory management to ensure inclusion in the work-place. Furthermore, because of the considerable influence, financial might and bargaining power with government and the wider value chain, some of the farms are able to operate while circumventing or frustrating labour rights. The case of the stalled collective bargaining process and the resultant streak of summary dismissals in the sector, is illustrative of how employers have muffled workers' voices. In addition, whereas the systems for addressing and redressing violations of labour and gender rights are largely in place, in the large farms, these systems are, mostly, unsupported, ill-resourced, or altogether neutered. Government response in enforcing the legal framework has been feeble; sufficient resources have not been channeled towards this course.

However, the study also concedes that significant ground has been covered by the large farms towards addressing violations against women and workers' rights. Indeed, in several instances,

tea producers have invested in elaborate schemes aimed at improving the rights and welfare of workers, their families and the host community, with positive initial outcomes.

The study has also unearthed the considerable challenges facing women and girls in the tea catchment community. Cultural beliefs play a significant role in subduing women's participation in the local economy. It also bears consequences for women's social bargaining power, both at the household level and in the community. Nonetheless, private sector actors, government and non-state actors have been instrumental in supporting the entrepreneurial capacities of women and addressing the knowledge and capacity gaps of the community, in order to enhance financial and social inclusion. The international nature of the tea crop requires that producers remain competitive in a highly differentiated, volatile and dynamic value chain. Conversations relating to efficiency in production – including increased mechanization and adaptation support for affected workers – cannot be avoided.

This study calls for the stepping up of joint or complementary efforts by sector stakeholders, at promoting equitable socio-economic participation of all actors in the sector, more so, women workers and women in the community and households. If socio-economic inclusion is to be achieved, a people-centered strategy should inform sector policies and practices. Just as crucial, there should be a drive to dismantle the pervasive edifice of patriarchy that courses through the entire breadth of the Kericho Tea Zones: the work-place; the household and the wider community. Local actors and stakeholders must take the lead role in these efforts.

Lastly, efforts at designing and implementing interventions at the work-place must, for impact, take the dual approach of upholding the rights-based approach while at the same time, exploring and promoting a business-case approach, to ensure pragmatism. This calls for co-creation between stakeholders and actors towards problematizing labour rights systems and designing solutions around a common sector-wide ambition of promoting sustainable tea production. Frameworks for linking and learning across different sectors, organizations, countries, approaches and value chains should be adopted. Traditionally "strange bedfellows" must work in tandem: trade unions and civil society organization; the corporate sector and trade unions; government and civil society organization; men and women.

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