

GLOBALG.A.P. Risk-Assessment on Social Practice (GRASP)

GRASP Module – Interpretation for Kenya

GRASP Module Version 1.3-1-i June 2020

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Mandatory from: 1 February 2021

English Version

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Working Group (KNTWG).
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Control Point	Compliance Criteria	Interpretation for Kenya
Abbreviations: KES – Kenya Shillings		
EMPLOYEES' REPRESENTATIVE(S)		
1	<p>Is there at least one employee or an employees' council to represent the interests of the staff to the management through regular meetings where labour issues are addressed?</p>	<p>Documentation is available which demonstrates that a clearly identified, named employees' representative(s) or an employees' council representing the interests of the employees to the management is elected or in exceptional cases nominated by all employees and recognised by the management. The election or nomination takes place in the ongoing year or production period and is communicated to all employees. The employees' representative(s) shall be aware of his/her/their role and rights and be able to discuss complaints and suggestions with the management. Meetings between employees' representative(s) and the management occur at accurate frequency. The dialogue taking place in such meetings is duly documented.</p> <p>For GRASP compliance, in addition to the local law, the farm shall have a representative or a form of representation when the farm has more than 1 employee (employee concept is defined in section 9.2 of the GRASP General Rules). Any producer with minimum of one (1) employee shall have a form of employees' representation that can be applied to meet the GRASP requirements as indicated in the different control points with respect to the employees' representative (ER). The ER or in alternative scenarios, the person (people) responsible for the system of representation shall be present during the assessment.</p> <p>This form or representation could take any form (could be a person, group of people, several temporally appointed people, etc.) as long as:</p> <ul style="list-style-type: none"> • It is independent from management • It is decided by the employees • It is communicated to the employees • It is recognized by the employees <p>Employees are free to join unions.</p> <p>When a legal Trade Union exists, and a representative of this Trade Union is available, aware and documentation is available of his/her roles as indicated in GRASP CP 1, 2, 3, 4, 10; the auditor shall consider this.</p> <p>If no representative of the trade Union can take the different roles, then a representative must be elected by the workers in a procedure as indicated in the Compliance Criteria of this control points.</p> <p>The employees' representative cannot be any of the persons defined as employee in the Kenyan law: This is: "employer" means any person, public body, firm, corporation or company who or which has</p>

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		<p>entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company. Labour Relations Act No. 14 2007 Revision 2012 Chapter 226, 2</p> <p>The election or appointment must be done solely by the workers without interference of the management.</p> <p>If the workers do not want to participate in the election process or there is no candidates to the post, then an alternative process must be used.</p> <p>If the farm has in place a staff welfare committee and workers different from those defined as employer exist in the committee, then these workers should express their agreement to be appointed by the worker as their GRASP representative. This appointment and acceptance must be documented.</p> <p>Only as a last resource:</p> <ul style="list-style-type: none"> • if the workers do not want to participate in the election process, or in the appointment process, • or there are no candidates, • or the welfare committee workers do not accept the appointment, <p>then the management could appoint a worker (which is not, in any means, related to management, as the GRASP representative. This must be documented and follow the indications and requirements of CP1.</p> <p>The current practice in Kenyan farms both big and small is to have in place a staff welfare where they appoint a chairperson amongst themselves. The staff welfare is used as a channel to represent the interested of the staff to the management.</p> <p>Links:</p>

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		<ul style="list-style-type: none"> • Labour Relations Act No. 14 2007, 12, 13 & 14. • http://www.kenyalaw.org/lex//actview.xql?actid=No.%2014%20of%202007
COMPLAINT PROCEDURE		
2	<p>Is there a complaint and suggestion procedure available and implemented in the company through which employees can make a complaint or suggestion?</p>	<p>A complaint and suggestion procedure appropriate to the size of the company exists. The employees are regularly informed about its existence, complaints and suggestions can be made without being penalized and are discussed in meetings between the employees' representative(s) and the management. The procedure specifies a time frame to answer complaints and suggestions and take corrective actions. Complaints, suggestions and follow-up solutions from the last 24 months are documented.</p>
		<p>Farm management shall indicate clearly the system for complaints according to their needs and the local law. The employees' representative shall inform the auditor about the efficiency of the system and how this is evaluated considered in the meeting with management.</p> <p>There is an industrial court which deals with all matters regarding employer and employees. There is also an Ombudsman Office that deals with public complaints to administer justice to all.</p> <p>The general practice in Kenyan farms is to have a complaint and suggestion box present which can be used by employees to air their grievances or give suggestions.</p> <p>There is normally a committee assigned to open the box, analyse the complaints and handle them. This committee is normally made up of members from HR, staff representative(s) and other members, depending on the company. The complaint and suggestion box is normally opened once a month (or quarterly in some cases) depending on the organisation's procedures. This box is opened in the presence of all members or minimum two member: one from the management and the other from the workers representative.</p> <p>The complaints and suggestions are analyzed by the committee and resolved or handled normally within a set time frame of between a week and a month. The decision is communicated within these set time periods. If the issue needs more time, the same will be communicated so that the complainant or person making the suggestion are aware that it is being handled.</p> <p>It is well communicated to all staff that there will be no one penalized for raising complaints or suggestions.</p> <p>Links:</p>

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			<ul style="list-style-type: none"> • http://www.ombudsman.go.ke • Under the Act title :Employment (no 11 of 2007), part XII talks about disputes settlement procedures:http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part_XII • https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158910/lang--en/index.htm 												
SELF-DECLARATION ON GOOD SOCIAL PRACTICES															
3	Has a self-declaration on good social practice regarding human rights been signed by the management and the employees' representative and has this been communicated to the employees?	The management and the employees' representative(s) have signed, displayed and put in practice a self-declaration assuring good social practice and human rights of all employees. This declaration contains at least commitment to the ILO core labour conventions (ILO Conventions 111 on discrimination, 138 and 182 on minimum age and child labour, 29 and 105 on forced labour, 87 on freedom of association, 98 on the right to organize and collective bargaining, 100 on equal remuneration and 99 on minimum wage) and transparent and non-discriminative hiring procedures and the complaint procedure. The self-declaration states that the employees' representative(s) can file complaints without personal sanctions. The employees have been informed about the self-declaration and it is revised at least every 3 years or whenever necessary.	<p>Subcontracted labor shall be included in the scope of GRASP and its obligations. Verify if there is any national legislation on data protection that does not allow to share documents or to visit premises of the subcontractor.</p> <p>Kenya joined the ILO in 1949. As of 4 June 2004, it had ratified 49 ILO Conventions, of which 43 were in force in the country.</p> <p>The following conventions have been ratified by Kenya, 7 conventions out of the 8 conventions:</p> <table border="1"> <thead> <tr> <th>Convention</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>C029 - Forced Labour Convention, 1930 (No. 29)</td> <td>13 Jan 1964</td> </tr> <tr> <td>C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</td> <td>13 Jan 1964</td> </tr> <tr> <td>C100 - Equal Remuneration Convention, 1951 (No. 100)</td> <td>07 May 2001</td> </tr> <tr> <td>C105 - Abolition of Forced Labour Convention, 1957 (No. 105)</td> <td>13 Jan 1964</td> </tr> <tr> <td>C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</td> <td>07 May 2001</td> </tr> </tbody> </table>	Convention	Date	C029 - Forced Labour Convention, 1930 (No. 29)	13 Jan 1964	C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	13 Jan 1964	C100 - Equal Remuneration Convention, 1951 (No. 100)	07 May 2001	C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	13 Jan 1964	C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	07 May 2001
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		C138 - Minimum Age Convention, 1973 (No. 138) Minimum age specified: 16 years	09 Apr 1979
		C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	07 May 2001
		<p>The only one not ratified is no. 87 on freedom of association.</p> <p>The declarations can be displayed in English, Kiswahili and where there is high illiteracy, a native language should be used, although the constitution of Kenya only allows English and Kiswahili.</p> <p>Links:</p> <ul style="list-style-type: none"> • https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103315 <p>Kenyan law provides for the following:</p> <p>1. No discrimination</p> <p>The Constitution of Kenya prohibits discrimination either directly or indirectly against any person on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Employment Act, with specific reference to employment, states that person's access to any institution, employment or facility, or the enjoyment of any right may not be denied because of person's belief or religion. Anti-union discrimination and discrimination against person with disabilities is also prohibited under the Labour Relations Act and Persons with Disabilities Act 2003 respectively.</p> <p>Source: 27 & 32(3) of the Constitution of Kenya 2010; The Employment Act 2007; 5 of the Labour Relations Act 2007; 12-13 of the Persons with Disabilities Act 2003</p> <p>2. Minimum age</p> <p>The law under the Employment Act, 2007, and the Children Act, defines a child in Kenya as a person below the age of 18 years. The Employment Act, Part VII provides for protection of children including protection from the worst forms of child Labour. Section 56 prohibits</p>	

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			<p>employing a child below 13 years to any form of undertaking. However, it allows employment of children from the ages of 13 to 16 years for light work and defines those of 16 to 18 as employable. In section 58 and 59, the minimum age for employment in an industrial undertaking is 16, unless he/she is an apprentice under the Industrial Training Act (Cap. 237, Laws of Kenya). The law provides for protection from child Labour and armed conflict under The Children Act, No. 8 of 2001.</p> <p>3. Forced Labour Under Employment Act, 2007, forced or compulsory Labour is any work or service that a person does under threat of any penalty, or work that a person does involuntarily. Under section 4 of Employment Act, 2007, no person shall use or assist any other person in recruiting, trafficking or using forced Labour.</p> <p>4. Equal pay The Constitution recognizes the right to fair remuneration. The Employment Act, 2007 requires every employer to ensure that men and women workers are paid equally for work of equal value. It is also a liable offence to discriminate in remuneration matters. Source: 27 & 41 of the Constitution of Kenya 2010; 5(5 & 6) of the Employment Act 2007</p> <p>5. Right to organize and collective bargaining The process of collective bargaining is not specifically provided for in law, but there are prerequisite conditions, which must be fulfilled before parties may proceed with bargaining process. Such conditions are contained in the Labour Relations Act, No. 14 of 2007. In section 54 of the Labour Relations Act, there is a requirement that the trade union must have legal recognition in law that is duly registered by having a constitutional jurisdiction. The process of recognizing a trade union is provided for in sections 2 and 54 (1) of the Labour Relations Act, 2007, Laws of Kenya.</p>
ACCESS TO NATIONAL LABOR REGULATIONS			
4	Do the person responsible for the implementation of	The responsible person for the implementation of GRASP (RGSP) and the employees' representative(s) have knowledge of or access	It shall be guaranteed, that access to the labor regulations is always available when the employees' representative and RGSP are present on the farm.

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	GRASP (RGSP) and the employees' representative(s) have knowledge of or access to recent national labor regulations?	to national regulations such as gross and minimum wages, working hours, trade union membership, anti-discrimination, child labor, labor contracts, holiday and maternity leave. Both the RGSP and the employees' representative(s) know the essential points of working conditions in agriculture as formulated in the applicable GRASP National Interpretation Guidelines.	<p>If the access is electronically provided, the auditor shall check what resources are provided to guarantee access to the information every time that workers are present.</p> <p>In case the workers do not elect an employees' representative, an alternative system shall be in place to provide for the role of the employees' representation in this CP.</p> <p>The representative(s) has knowledge (through training, experience, etc.) or has access to information on gross and minimum wages, working hours, trade union membership, anti-discrimination, child labor, labor contracts, holiday and maternity leave through the Kenya Law website http://www.kenyalaw.org</p> <p>The RGSP has access to all these via the website or, where possible, through controlled hard copies. These are controlled to ensure the latest versions (in case of any changes) are always kept with the RGSP.</p> <p>This NIG is at all times made available on the farm to all concerned employees and management, via www.globalgap.org (updated link to get to approved GRASP guidelines) https://www.globalgap.org/uk_en/documents?fq=gg.standard.ga:(%22grasp%22)&fq=gg.document.type:(%22guidelines%22)</p> <p>Industry association's websites may also provide this NIG including the relevant documents mentioned in this NIG (or links to the same). Hard copies of the same will also be available through these offices.</p>
WORKING CONTRACTS			
5	Can valid copies of working contracts be shown for the employees? Are the working contracts compliant with applicable legislation and/or collective	For every employee, a contract can be shown to the assessor on request (on a sample basis). Both the employees as well as the employer have signed them. Records contain at least full names, nationality, job description, date of birth, the regular working time, wage and the period of employment (e.g. permanent, period or day laborer etc.) and for non-national employees their legal status and working permit. The	<p>All employees shall be informed in writing and with comprehensible data about their employment conditions and its compliance with national legal requirements.</p> <p>The employment ACT Section 10 refers to contracts. Making the contents of the employment contract is section 10 which further highlights that the written contract of service shall state:</p> <ul style="list-style-type: none"> • The name, age, permanent address and sex of the employee

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<p>bargaining agreements and do they indicate at least full names, a job description, date of birth, date of entry, wage and the period of employment? Have they been signed by both the employee and the employer?</p>	<p>contract does not show any contradiction to the self-declaration on good social practices. Records of the employees must be accessible for the last 24 months.</p>	<ul style="list-style-type: none"> • The name of the employer • The job description of the employment • The date of commencement of the employment • The form and duration of the contract; • The place of work; • The hours of work; • The remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits; • The intervals at which remuneration is paid; and • The date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period • Any other prescribed matter • Also, employing a person with an oral contract is also allowed under section 8 of the employment ACT. However, any employment contract for a period of three months or more should be put in writing. <p>If an employee cannot be able to read and understand the terms of this contract, then you are required by the law to explain it to them in a language they can understand. This is to avoid any confusion which in case of any, you shall be held liable as the employer according to clause 4 of section 9.</p> <p>A number of laws have been passed specifically dealing with different aspects of the employer-employee relationship. These laws define the terms and conditions of employment, and consist mainly of the following Acts of Parliament:</p> <ul style="list-style-type: none"> • The Employment Act (2007) and the Regulation of Wages and Conditions of Employment Act (2007) make rules governing wages, leave and rest, health and safety, the special position of children and women and termination of employment. The latter Act, in addition, sets up a process

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		<p>through which wages and conditions of employment can be regulated by the Minister.</p> <p>Section 7 of the Kenyan employment ACT 2007 provides that no one should be employed under any other contract of service except in accordance with the provisions of the Act itself.</p> <p>Assessment dealing with causals hired by agencies will need to check on the conformity of this CP.</p> <p>For non-national employees, the law require the persons to apply for a permit while they are in their country of origin. Once the permit is approved, the person is able to come to Kenya and in normal circumstances will be able to work for a period of 2 years only, after which the permit needs to be renewed.</p> <p>Under part XI of Employment Act - FOREIGN CONTRACTS OF SERVICE states:</p> <ul style="list-style-type: none"> • Form and attestation- A foreign contract of service shall be in the prescribed form, signed by the parties thereto, and shall be attested by a Labour officer. • Requirement before attestation - A foreign contract of service shall not be attested unless the Labour officer is satisfied: <ul style="list-style-type: none"> a) that the consent of the employee to the contract has been obtained; b) of the absence of any fraud, coercion or undue influence, and any mistake of fact, or misrepresentation which might have induced the employee to enter into the contract; c) that the contract is in the prescribed form; d) that the terms and conditions of employment contained in the contract comply with the provisions of this Act and have been understood by the employee; e) that the employee is medically fit for the performance of his duties under the contract; and f) That the employee is not bound to serve under any other contract of service during the period provided in the foreign contract.

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			<p>Links:</p> <ul style="list-style-type: none"> • http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part_XI • http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part_III
PAY SLIPS			
6	Is there documented evidence indicating regular payment of salaries corresponding to the contract clause?	The employer shows adequate documentation of the salary transfer (e.g. employee's signature on pay slip, bank transfer). Employees sign or receive copies of pay slips / pay register that make the payment transparent and comprehensible for them. Regular payment of all employees during the last 24 months is documented.	<p>Pay slips shall consider language or education barrier to potential understanding of evidence of payment. Ensure that all the information requested by the local laws is transparent and comprehensible for workers in the pay slips.</p> <p>An employer should provide itemized pay statements to all workers at or before each pay day except casual employee or an employee engaged on piece-rate or task-rate terms or for any period not exceeding six months. These pay slips should contain certain particulars including the gross amount of the wages or salary of the worker; the amounts of any variable and statutory deductions from that gross amount and the purposes for which they are made; and where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.</p> <p>In Kenya, where there are no pays lips, there is normally a pay register where the employee signs against the amount paid.</p> <p>The Labour Institutions Act, No.12 of 2007 provides for Minimum Wages. Part VI of the Act consists of the wages council and the fixing of wages and terms and conditions of service.</p> <p>Links:</p> <ul style="list-style-type: none"> • 17-21 of the Employment Act 2007. • http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf
WAGES			
7	Do pay slips / pay registers indicate the conformity of	Wages and overtime payment documented on the pay slips / pay registers indicate compliance with legal regulations (minimum wages) and/or	The Minimum wages is dealt with by the regulations of wages and conditions of employment Act and in the regulation of wages order subsidiary to chapter 229. The Labour Institutions Act, No.12 of 2007

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	payment with at least legal regulations and/or collective bargaining agreements?	collective bargaining agreements as specified in the GRASP National Interpretation Guideline. If payment is calculated per unit, employees shall be able to gain at least the legal minimum wage (on average) within regular working hours.	provides for Minimum Wages. Part VI of the Act consists of the wages council and the fixing of wages and terms and conditions of service. Links: <ul style="list-style-type: none"> • https://africapay.org/kenya/salary/minimum-wages/2230-agricultural-industry • https://africapay.org/kenya/labour-laws/work-and-wages/pay-minimum-wage-deductions-in-kenya
NON-EMPLOYMENT OF MINORS			
8	Do records indicate that no minors are employed at the company?	Records indicate compliance with national legislation regarding minimum age of employment. If not covered by national legislation, children below the age of 15 are not employed. If children -as core family members- are working at the company, they are not engaged in work that is dangerous to their health and safety, jeopardizes their development or prevents them from finishing their compulsory school education.	<p>Children or young workers of company management shall be included in the GRASP assessment. For GRASP compliance, no young worker (between 15 and 18) shall work in any activity that is dangerous to their health and safety, jeopardizes their development or prevents them from finishing their compulsory school education.</p> <p>The law under the Employment Act, 2007, and the Children Act, defines a child in Kenya as a person below the age of 18 years. The Employment Act, Part VII provides for protection of children including protection from the worst forms of child Labour.</p> <p>The minimum age for admission to employment</p> <p>Section 56 prohibits employing a child below 13 years in any form of undertaking. However, it allows employment of children from the ages of 13 to 16 years for light work, and defines those of 16 to 18 as employable. In section 58 and 59, the minimum age for employment in an industrial undertaking is 16, unless he/she is an apprentice under the Industrial Training Act (Cap. 237, Laws of Kenya).</p> <p>Records of children in the workplace</p> <p>Section 60 compels a child’s employer to have a register consisting age and date of birth, date of entry into and of leaving the employment and, such other particulars as may be prescribed.</p> <p>Protection of children from child labour</p>

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			<p>The law provides for protection from child Labour and armed conflict under The Children Act, No. 8 of 2001, Section 10.</p> <p>To whom/where individuals can complain about child labour</p> <p>In case a person considers any child to be employed in any activity which constitutes the worst form of child Labour, section 54 of the Employment Act provides for complaints.</p> <p>Legal sanctions applicable if compliance is lacking?</p> <p>Section 64 declares an offence for any person who employs, engages, or uses a child in an industrial undertaking in contravention of the provisions of part VII of the Employment Act.</p> <p>The employment act:</p> <ul style="list-style-type: none"> • http://www.kenyalaw.org/lex/actview.xql?actid=No.%2011%20of%202007&term=Employment%20Act%20No.%201%20of%202007#part_VII <p>Farm should be aware of how many children are living on the farm and their ages.</p>
ACCESS TO COMPULSORY SCHOOL EDUCATION			
9	Do the children of employees living on the company's production/handling sites have access to compulsory school education?	There is documented evidence that children of employees at compulsory schooling age (according to national legislation) living on the company's production/ handling sites have access to compulsory school education, either through provided transport to a public school or through on-site schooling.	<p>It is a GRASP requirement, that when there are minors living in the farm premises, the administration shall:</p> <ol style="list-style-type: none"> 1) Keep a list with the location, name, age, parents' information of the minors 2) Provide evidence that the families have been notified of the necessity that their children go to school. <p>This control point only can be marked as non-applicable when there are no minors living on the premises.</p> <p>Every parent whose child is a Kenyan or resides in Kenya is required by law to ensure that the child attends school regularly. A parent who fails to take his or her child to school as required under the law commits an offence and shall be liable to a fine not exceeding one</p>

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			<p>hundred thousand shillings or imprisonment not exceeding one year, or both.</p> <p>Schooling age is between 4 years to 18 years. It's considered the basic education (Primary to Secondary school).</p> <p>There must be evidence that the farm has accounted for all kids in school age</p> <p>Some sectors in Kenya provide schools for workers children. Some companies give allowances for workers children to go to school.</p> <p>www.kenyalaw.org & Employment Act section 56 - Links:</p> <ul style="list-style-type: none"> • Basic Education Act Kenya – Compulsory Education, Part IV – 28: http://www.parliament.go.ke/sites/default/files/2017-05/BasicEducationActNo_14of2013.pdf • http://www.kenyalaw.org/lex//actview.xql?actid=No.%2014%20of%202013#part_IV
TIME RECORDING SYSTEM			
10	Is there a time recording system that shows working time and overtime on a daily basis for the employees?	There is a time recording system implemented appropriate to the size of the company that makes working hours and overtime transparent for both employees and employer on a daily basis. Working times of the employees during the last 24 months are documented. Records are regularly approved by the employees and accessible for the employees' representative(s).	<p>Records are regularly revised by the employees and accessible for the employees' representative(s). Farm management shall look for an alternative means of employees' representation to avoid non-compliance in those CPCCs. The alternative means shall keep the objectivity, be decided, appointed or elected by the workers and keep the separation from the management.</p> <p>If a daily time recording system is not implemented (e.g. fixed contracts, fixed working hours, fixed monthly salary), alternative way(s) of recording working hours shall be available. Evidence and explanation shall be provided.</p> <p>No legislations on time recording system but various acceptable form of time recording are adopted by employers.</p>

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			<p>The practice in Kenya is to have biometric and a book/register where the working hours are recorded.</p> <p>Auditor will verify that these records can be accessible to the workers.</p>
WORKING HOURS AND BREAKS			
11	Do working hours and breaks documented in the time records comply with applicant legislation and/or collective bargaining agreements?	Documented working hours, breaks and rest days are in line with applicant legislation and/or collective bargaining agreements. If not regulated more strictly by legislation, records indicate that regular weekly working hours do not exceed a maximum of 48 hours, during peak season (harvest), weekly working time does not exceed a maximum of 60 hours. Rest breaks/days are also guaranteed during peak season.	<p>For GRASP compliance, even when permitted by the law, the total number of hours, including overtime and ordinary, SHALL NOT exceed 60 hours per week in any week of the year. This shall be checked by auditor.</p> <p>Under the Regulation of Wages (General) Order (Labour Institutions Act of 2007), subsidiary to the Regulations of Wages and Conditions of Employment Act, the general working hours are 52 per week, but the normal working hours usually consist of 45 hours of work per week, Monday to Friday 8 hours each, 5 hours on Saturday under the special Orders for different sectors subsidiary to the Regulations of Wages and Conditions of Employment Act. Collective agreements may modify the working hours, but generally provide for weekly working hours of 40 up to max. of 52 hours per week. The weekly working time during peak season does not exceed a maximum of 60 hours.</p> <p>Under the Employment Act, section 8, every employee is entitled to at least one rest day in every period of seven days. In many sectors the regular rest-day may not be the Sunday, but another day of the week.</p> <p>Breaks/entitlement granted in Law include</p> <ol style="list-style-type: none"> 1. Annual paid leave 2. Public holidays 3. Maternity leave and maternity protection 4. Sick leave 5. Compassionate leave 6. Study leave 7. Leave for trade union purposes or because of the holding of public office <p>Hours of work</p>

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			<p>(1) An employer shall regulate the working hours of each employee in accordance with the provisions of this Act and any other written law.</p> <p>(2) Notwithstanding subsection (1), an employee shall be entitled to at least one rest day in every period of seven days.</p> <p>Section 3(1) of the Employment (Children) Rules, 1977, allows the employment of children with the prior written permission of an authorized officer, and that the only restrictions are that such employment should not cause the children to reside away from parents without their approval, that permission for work in a bar, hotel, restaurant, etc., needs the consent of the Labour Commissioner and that such permit should be renewed annually.</p> <p>Links:</p> <ul style="list-style-type: none"> • www.kenyalaw.org – Employment Act and Labour Institutions Act of 2007 • THE REGULATION OF WAGES (GENERAL) (AMENDMENT) ORDER, 2017. THE REGULATION OF WAGES (AGRICULTURAL INDUSTRY) (AMENDMENT) ORDER, 2017. https://africapay.org/kenya/salary/minimum-wages/2230-agricultural-industry <p>Source: §2, 17-21 of the Employment Act 2007; §50 of the Labour Institutions Act, 2007.</p>
ONLY APPLICABLE FOR PRODUCER GROUPS			
INTEGRATION INTO QMS			
QMS	Does the assessment of the Quality Management System (QMS) of the producer group show evidence of the correct	The assessment of the Quality Management System of the producer group demonstrates that GRASP is correctly implemented and internally assessed. Non-compliances are identified and corrective actions are taken to enable compliance of all participating producer group members.	In Kenya, the assessment of the Quality Management System of the producer group demonstrates that GRASP is correctly implemented and internally assessed. Non-compliances are identified and corrective actions are taken to enable compliance of all participating producer group members.

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	implementation of GRASP for all participating producer group members?		
ADDITIONAL SOCIAL BENEFITS			
R 1	<p>What other forms of social benefit does the company offer to employees, their families and/or the community? Please specify incentives for good and safe working performance, bonus payment, support of professional development, social benefits, child care, improvement of social surroundings etc.).</p>		<p>CSR activities that the organization may decide to do to the community around. There is not legal requirement compelling any organization.</p>

Annex to GRASP Interpretation for Kenya

Control Point Compliance Criteria 1:

Workers are free to form and join trade unions of choice.

Registration of a trade union

The process of registering a trade union takes six months and is provided for in sections 12, 13 and 14 of the Labour Relations Act, 2007, Laws of Kenya. After obtaining a certificate from the registrar of trade unions, the trade union may apply for registration within six months if they have:

- Complied with the Labour Relations Act, 2007
- The trade union has adopted a constitution that complies with the requirements of the Labour Relation Act, 2007 and requirements set out in the first schedule
- The trade union has an office and postal addresses within Kenya
- No other trade union is already registered that is sufficiently representative of the whole or substantial proportion of the interests in respect of which the applicants seek registration
- Only members in the sector specified in the union constitution qualify for membership of the trade union
- The name of the trade union is not the same as that of an existing trade union
- The decision to register the trade union was made at a meeting attended by at least fifty members of that trade union
- The trade union is independent of direct or indirect control of any employer or employers association
- The trade union's sole purpose is to pursue the activities of a trade union.

Membership

Section 32 of Labour Relations Act, 2007, allows for an employee who is above 16 years to enjoy the rights of membership of a trade union. A voting member of a trade union must be one employed in the sector for which the trade union is registered and his/ her subscriptions must not be more than 13 weeks in arrears.

The level of unionization of employees is provided for in Appendix C of the Industrial Relations Charter. The charter prohibits persons having authority in their organisation's to hire, transfer, appraise, suspend, promote reward, discipline and handle grievances, from being included in the union representation.

Therefore, in view of the foregoing, managers cannot form and belong to trade unions. But managers can form a staff association to protect and promote their interests with respect to terms and conditions of or relating to employment.

A staff association will never assume the legal status of a trade union unless it conforms to the requirements of sections 12, 13 and 14 of Labour Relations Act, 2007, Laws of Kenya.

Agency fees to a trade union

Section 49 of The Labour Relations Act, 2007 provides for agency fees payment to a trade union by an employer after effecting deductions from an employee's salary

The process of agency fee deductions begins when management is approached by the trade union to submit names of unionisable employees to them in order to identify the employees who have been employed under terms and conditions of a prevailing collective bargaining agreement between the trade union and the employer. Agency fees are paid to a trade union that has a registered recognition agreement with an employer in the industrial court and has requested the minister for Labour requiring the employer bound by the collective agreement to deduct agency fees from the wages of unionisable employees who are not members of the trade union but are employed under terms and conditions of the collective bargaining agreement. The rate of agency fees must not be higher than the normal union subscription fees deducted from union members through a check off system.

When a legal trade Union exist, and a representative of this Trade Union is available, aware and documents to take the roles indicated in GRASP CP 1,2,3, 4, 10 , this will be considered by the auditor.

If no representative of the trade Union can take the different roles, then a representative must be elected by the workers in a procedure as indicated in the Compliance Criteria of this control points.

The employees representative cannot be any of the persons defined as employee in the Kenyan law: This is: "employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company. Labour Relations Act No. 14 2007 Revision 2012 Chapter 226, 2

The election or appointment must be done solely by the workers without interference of the management.

If the workers do not want to participate in the election process or there is not candidates to the post, then an alternative process must be done.

If the farm has in place a staff welfare committee and workers different from those defined as employer exist in the committee, then these workers should express their agreement to be appointed by the worker as their GRASP representative. This appointment and acceptance must be documented.

Only as a last resource, if the workers do not want to participate in the election process, or in the appointment process or there are not candidates, or the welfare committee workers do not accept the appointment, then the management could appoint a worker (which is not, in any means, related to management, as the GRASP representative). This must be documented and must follow the indications and requirements of CP1.

Links:

- Labour Relations Act No. 14 2007, 12, 13 & 14.
- <http://www.kenyalaw.org/lex//actview.xql?actid=No.%2014%20of%202007>

Control Point Compliance Criteria 2:

There is an industrial court which deals with all matters regarding employer and employees. There is also an Ombudsman Office that deals with public complaints to administer justice to all. The Ministry of Labour has a mandate over all issues concerning Labour, employment, manpower planning and development.

The general practice in Kenyan farms is to have a complaint and suggestion box present which can be used by employees to air their grievances or give suggestions.

There is normally a committee assigned to open the box, analyse the complaints and handle them. This committee is normally made up of members from HR, staff representative(s) and other members, depending on the company. The complaint and suggestion box is normally opened once a month (or quarterly in some cases) depending on the organisation's procedures. This box is opened in the presence of all members or minimum two member: one from the management and the other from the workers representative.

The complaints and suggestions are analyzed by the committee and resolved or handled normally within a set time frame of between a week and a month. The decision is communicated within these set time periods. If the issue needs more time, the same will be communicated so that the complainant or person making the suggestion are aware that it is being handled.

It is well communicated to all staff that there will be no one penalized for raising complaints or suggestions.

Links:

- <http://www.ombudsman.go.ke>
- Under the Act title :Employment (no 11 of 2007), part XII talks about disputes settlement procedures:http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part_XII
- https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158910/lang--en/index.htm

Control Point Compliance Criteria 3:

Kenya joined the ILO in 1949. As of 4 June 2004, it had ratified 49 ILO Conventions, of which 43 were in force in the country.

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103315

Kenyan law provides for the following:

1. No discrimination

The Constitution of Kenya prohibits discrimination either directly or indirectly against any person on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Employment Act, with specific reference to employment, states that person's access to any institution, employment or facility, or the enjoyment of any right may not be denied because of person's belief or religion. The Act further prohibits employer from discrimination against a current or a prospective worker on the basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. Discrimination in the process of recruitment, training, promotion, terms and conditions of employment, termination of employment and other matters related to employment is not allowed. Anti-union discrimination and discrimination against person with disabilities is also prohibited under the Labour Relations Act and Persons with Disabilities Act 2003 respectively. In accordance with Persons with Disabilities Act, no person can deny a person with a disability access to opportunities for suitable employment. A qualified employee with a disability is subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees. An employee with a disability is entitled to exemption from tax on all income accruing from his employment. The National Council for Persons with Disabilities endeavors to ensure the implementation of five percent quota for persons with disabilities in all casual, emergency and contractual positions in employment in the public and private sectors.

Source: 27 & 32(3) of the Constitution of Kenya 2010; The Employment Act 2007; 5 of the Labour Relations Act 2007; 12-13 of the Persons with Disabilities Act 2003

2. Minimum age

The law under the Employment Act, 2007, and the Children Act, defines a child in Kenya as a person below the age of 18 years. The Employment Act, Part VII provides for protection of children including protection from the worst forms of child Labour. Section 56 prohibits employing a child below 13 years to any form of undertaking. However it allows employment of children from the ages of 13 to 16 years for light work and defines those of 16 to 18 as employable. The Act does not clearly define the parameters for this employment. It does not define light work and does not provide protection for children in such employment, but leaves it at the discretion of the minister. In section 58 and 59, the minimum age for employment in an industrial undertaking is 16, unless he/she is an apprentice under the Industrial Training Act (Cap. 237, Laws of Kenya). The law also puts a time limit for a child in an industrial undertaking to between 6.30am to 6.30pm. This minimum age restriction does not apply to

employees who belong to the same family as the employer - unless the undertaking is dangerous to the life, health or morals of the persons employed. There is no legal minimum working age in the agricultural and services sectors, or for domestic work. Section 60 compels a child's employer to have a register consisting age and date of birth, date of entry into and of leaving the employment and, such other particulars as may be prescribed.

The law provides for protection from child Labour and armed conflict under The Children Act, No. 8 of 2001. Section 10, provides that every child shall be protected from:

- Economic exploitation
- Any work that interferes with his/ her education, or is harmful to the child's health or physical, mental, spiritual, moral or social development
- Recruitment to hostilities armed conflicts, and where armed conflict occurs

In case a person considers any child to be employed in any activity which constitutes the worst form of child Labour, section 54 of the Employment Act provides for complaints and directs them to the Labour officer or a police officer of the rank of an inspector and above. The Labour officer or a police officer will then either carry out an investigation within seven days of reporting and submit the findings to the minister.

Section 64 declares an offence for any person who employs, engages, or uses a child in an industrial undertaking in contravention of the provisions of part VII of the Employment Act. Such a person will be liable to a fine not exceeding KES 200,000 or to an imprisonment of not more than one year or both.

3. Forced Labour

Under Employment Act, 2007, forced or compulsory Labour is any work or service that a person does under threat of any penalty, or work that a person does involuntarily. A threat in this case includes the loss of one's rights or privileges. Under section 4 of Employment Act, 2007, no person shall use or assist any other person in recruiting, trafficking or using forced Labour. The law defines forced or compulsory Labour by excluding the work or service that should not be included as forced Labour. A person who contravenes the provisions of this section commits an offence and shall, on conviction be liable to a fine not exceeding KES 500, 000 or to not more than a two-year jail term or to both.

4. Equal pay

In accordance with the Constitution of Kenya, all human being are born equal and are equal before the law. The Constitution recognizes the right to fair remuneration. The Employment Act, 2007 requires every employer to ensure that men and women workers are paid equally for work of equal value. It is also a liable offence to discriminate in remuneration matters.

Source: 27 & 41 of the Constitution of Kenya 2010; 5(5 & 6) of the Employment Act 2007

5. Right to organize and collective bargaining

The process of collective bargaining is not specifically provided for in law, but there are prerequisite conditions, which must be fulfilled before parties may proceed with bargaining process. Such conditions are contained in the Labour Relations Act, No. 14 of 2007. In section 54 of the Labour Relations Act, there is a requirement that the trade union must have legal recognition in law that is duly registered by having a constitutional jurisdiction. All agreements must be reduced to writing and signed by CEO of any employer, national secretary or any representative of employers' organisation that is party to the agreement (section 59(4)). The agreements become enforceable after registration. In general, collective agreements have a duration span of up to two years before renewal by parties. Collective agreements modify individual contracts. Collective bargaining in Kenya is

commonly conducted either on a single establishment or single plant basis or in a multi-employer approach. Section 60 requires that collective agreements be registered with the Industrial Court. Submission of the agreement to the industrial court for registration is done by the employer or employers' organisation, though submission can be done by a trade union due to failure by the employer. The Industrial Court may object to the registration if the agreement either conflicts with the Act that forms it or any other law, or it does not comply with any guidelines concerning wages, salary and other conditions of employment issued by the minister. The Industrial Court may register a collective agreement within fourteen days of receiving it, unless there is an objection which has been given.

The process of recognizing a trade union is provided for in sections 2 and 54 (1) of the Labour Relations Act, 2007, Laws of Kenya.

To enter into a recognition agreement with the employer, the trade union must have recruited a simple majority of the total number of unionisable employees of that employer. Without a recognition agreement, the employer cannot take cognizance of the union for the purposes of representation of employees of such employer in any capacity on issues of or relating to terms and conditions of employment.

Control Point Compliance Criteria 4:

Information on Kenyan Labour Laws is available at all times at <http://www.kenyalaw.org>.

This NIG is at all times made available on the farm to all concerned employees and management, via www.globalgap.org (updated link to get to approved GRASP guidelines) [https://www.globalgap.org/uk_en/documents?fq=gg.standard.ga:\(%22grasp%22\)&fq=gg.document.type:\(%22guidelines%22\)](https://www.globalgap.org/uk_en/documents?fq=gg.standard.ga:(%22grasp%22)&fq=gg.document.type:(%22guidelines%22))

Industry association's websites may also provide this NIG including the relevant documents mentioned in this NIG (or links to the same). Hard copies of the same will also be available through these offices.

Control Point Compliance Criteria 5:

There are mainly **four types of contracts** under which you can employ someone and these are:

- A contract for an unspecified period of time: An employment contract which does not specify a fixed period of duration, is considered to be for an unlimited period of time, but can be terminated by notice of either party. However, in the organized sector collective agreements which give workers' tenure limit the employers' ability to discharge and end the employment contract.
- Contract for specified period of time: If the contract is for a definite period of time then the term should be specified. If an employment contract specifies a fixed period of employment, usually three months and above, the contractual relationship is automatically terminated at the end of this period, without being considered a resignation or a dismissal. Under section 39 of the Employment Act, such a contract may be prolonged for a period of service up to one month, if the employee is engaged in any journey.
- Contract for a specific task (piecework employment): This is a kind of contract in which a person is employed for the performance of a specific task (section 9). Once the task is completed then that contract comes to an end.
- Contract for casual employment: The "casual employee" is an individual is paid at the end of every day and who is not engaged for a longer period than twenty-four hours at a time.

An employer shall within two months after the beginning of employment provide the worker with a written statement of the particulars of the main terms of the contract of employment (Employment Act, section 10).

Under the Act title :Employment (no 11 of 2007) the following is detailed ([http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part III](http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part%20III)):

Employment particulars

A written contract of service specified in section 9 shall state particulars of employment which may, subject to subsection (3), be given in instalments and shall be given not later than two months after the beginning of the employment.

A written contract of service shall state—

- the name, age,
- permanent address and sex of the employee ;
- the name of the employer;
- the job description of the employment;
- the date of commencement of the employment;
- the form and duration of the contract; the place of work;
- the hours of work;
- the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;
- the intervals at which remuneration is paid; and
- The date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and any other prescribed matter.

The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of:

- any terms and conditions relating to any of the following:
 - entitlement to annual leave, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);
 - incapacity to work due to sickness or injury, including any provision for sick pay; and
 - pensions and pension schemes;
 - the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
 - where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
 - either the place of work or, where the employee is required or permitted to work at various places, an indication of that place of work and of the address of the employer;
 - any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the person by whom they were made; and
- where the employee is required to work outside Kenya for a period of more than one month:
 - the period for which that employee is to work outside Kenya
 - the currency in which remuneration is to be paid while that employee is working outside Kenya;
 - any additional remuneration payable to the employee, and any benefits due to the employee by reason of the employee working outside Kenya; and
 - any terms and conditions relating to the employee's return to Kenya

Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing. The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment. If in any legal proceedings an employer fails to produce a written

contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

If the particulars stated above are stated in a written contract which has been supplied to an employee the employer does not have to furnish the employee with the written particulars. If an employee cannot be able to read and understand the terms of this contract, then you are required by the law to explain it to them in a language they can understand.

This is to avoid any confusion which in case of any, you shall be held liable as the employer according to clause 4 of section 9. Oral contracts are permissible; however, an employee must be supplied with a written statement of particulars containing terms listed above.

It is okay to enter into an oral contract of employment because in case of any legal proceedings the burden of proving or disproving an alleged term of employment falls on the employer (section 10 (7)). If an employer fails to produce a contract of employment or written statement of particulars he/she will then fail to prove any term contained therein and the dispute might be decided against him/her.

Assessment dealing with causals hired by agencies will need to check on the conformity of this CP.

For non-national employees, the law require the persons to apply for a permit while they are in their country of origin. Once the permit is approved, the person is able to come to Kenya and in normal circumstances will be able to work for a period of 2 years only, after which the permit needs to be renewed. Under part XI of Employment Act - FOREIGN CONTRACTS OF SERVICE states:

- Form and attestation- A foreign contract of service shall be in the prescribed form, signed by the parties thereto, and shall be attested by a Labour officer.
- Requirement before attestation - A foreign contract of service shall not be attested unless the Labour officer is satisfied:
 - g) that the consent of the employee to the contract has been obtained;
 - h) of the absence of any fraud, coercion or undue influence, and any mistake of fact, or misrepresentation which might have induced the employee to enter into the contract;
 - i) that the contract is in the prescribed form;
 - j) that the terms and conditions of employment contained in the contract comply with the provisions of this Act and have been understood by the employee;
 - k) that the employee is medically fit for the performance of his duties under the contract; and
 - l) That the employee is not bound to serve under any other contract of service during the period provided in the foreign contract.

Links:

- http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part_XI
- http://www.kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202007#part_III

Control Point Compliance Criteria 6:

Employment Act 2007 sections 17-21 & The Labour Institutions Act, 2007 gives information on remuneration.

Employment Act section 20 states the following:

Itemized pay statement

1. An employer shall give a written statement to an employee at or before the time at which any payment of wages or salary is made to the employee
2. The statement specified in subsection (1) shall contain particulars of
 - a. the gross amount of the wages or salary of the employee
 - b. the amounts of any variable and subject to section 22, any statutory deductions from that gross amount and the purposes for which they are made; and

- c. Where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.
3. This section shall not apply to a casual employee or an employee engaged on piece-rate or task-rate terms or for any period not exceeding six months.
4. The Minister may exclude any category of employees or employees employed in any sector from the application of this section.

In Kenya, where there are no payslips, there is normally a pay register where the employee signs against the amount paid.

links:

- http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf

Control Point Compliance Criteria 7:

In accordance with the provisions of the Labour Institutions Act 2007, workers' salaries must at least be equal to the minimum wage, ensuring every worker a decent standard of living consistent with the human dignity. The National Labour Board, a tripartite body, is entrusted with the responsibility to advise the Labour Minister on, inter alia, appointment of wage councils. The wage rates are determined by Wage Councils constituted in accordance with Labour Institutions Act 2007. Wages are determined for agriculture as well as general sector workers by the Agricultural and General Wage Councils constituted under the Labour Institutions Act. A wages order sets the minimum rates of remuneration; specify the types and manner of deductions as well as the maximum amount/percentage of deductions; maximum amount deducted from pay in respect of rations supplied by the employer; regulate task based and piece work; regulate outwork, casual work and contract work; and other related terms on remuneration.

The Labour Institutions Act, No.12 of 2007 provides for Minimum Wages. Part VI of the Act consists of the wages council & the fixing of wages and terms and conditions of service. Labour Institutions, provide for their functions, powers and duties and other matters related to them. This part empowers the Minister of Labour to establish the Wages Councils. Generally there are 2 wages known as a general wages council and an agricultural wages council (Section 43 (1)). This part also constitutes a wages board (Section 43 (2)). The Wage Councils and Boards are empowered to investigate remuneration and terms and conditions of employment in various sectors and report the findings and recommendations to the Minister. Based on the findings the Minister is empowered by the same Legislation after considering the recommendations to make a Wage Order determining the minimum wage and other conditions of employment for employees in any sector and area of the country. The Regulation of Wages Orders (for general and agricultural industry) are then published by Government Gazette (Section 46) setting the Minimum Wages & conditions of employment (Section 47)

An employer who fails to pay statutory minimum wage or provide a worker with conditions of employment as provided under the Wages Order commits an offence. Labour inspector is authorized to monitor & enforce compliance with the Labour Law. Non-compliance with the Employment Act is an offence, punishable by a fine of maximum 100,000 shillings & imprisonment of 2 years.

Links:

- <https://africapay.org/kenya/salary/minimum-wages/2230-agricultural-industry>
- <https://africapay.org/kenya/labour-laws/work-and-wages/pay-minimum-wage-deductions-in-kenya>

Control Point Compliance Criteria 8:

The law under the Employment Act, 2007, and the Children Act, defines a child in Kenya as a person below the age of 18 years. The Employment Act, Part VII provides for protection of children including protection from the worst forms of child Labour.

The minimum age for admission to employment

Section 56 prohibits employing a child below 13 years in any form of undertaking. However it allows employment of children from the ages of 13 to 16 years for light work, and defines those of 16 to 18 as employable. The Act does not clearly define the parameters for this employment. It does not define light work and does not provide protection for children in such employment, but leaves it to the discretion of the minister. In section 58 and 59, the minimum age for employment in an industrial undertaking is 16, unless he/she is an apprentice under the Industrial Training Act (Cap. 237, Laws of Kenya). The law also puts a time limit for a child in an industrial undertaking to between 6.30am to 6.30pm. This minimum age restriction does not apply to employees who belong to the same family as the employer - unless the undertaking is dangerous to the life, health or morals of the persons employed. There is no legal minimum working age in the agricultural and services sectors, or for domestic work

Records of children in the workplace

Section 60 compels a child's employer to have a register consisting age and date of birth, date of entry into and of leaving the employment and, such other particulars as may be prescribed.

Protection of children from child Labour

The law provides for protection from child Labour and armed conflict under The Children Act, No. 8 of 2001. Section 10, provides that every child shall be protected from:

- Economic exploitation.
- Any work that interferes with his/ her education, or is harmful to the child's health or physical, mental, spiritual, moral or social development.
- Recruitment to hostilities armed conflicts, and where armed conflict occurs.

To whom/where individuals can complain about child Labour

In case a person considers any child to be employed in any activity which constitutes the worst form of child Labour, section 54 of the Employment Act provides for complaints and directs them to the Labour officer or a police officer of the rank of an inspector and above. The Labour officer or a police officer will then carry out an investigation within seven days of reporting and submit the findings to the minister.

Legal sanctions applicable if compliance is lacking?

Section 64 declares an offence for any person who employs, engages, or uses a child in an industrial undertaking in contravention of the provisions of part VII of the Employment Act. Such a person will be liable to a fine not exceeding KES 200,000 or to an imprisonment of not more than one year or both.

Farm should be aware of how many children are living on the farm and their ages.

Links:

- http://www.kenyalaw.org/lex/actview.xql?actid=No.%2011%20of%202007&term=Employment%20Act%20No.%201%20of%202007#part_VII

Control Point Compliance Criteria 9:

Every parent whose child is a Kenyan or resides in Kenya is required by law to ensure that the child attends school regularly. A parent who fails to take his or her child to school as required under the law commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment not exceeding one year, or both.

Schooling age is between 4 years to 18 years. It's considered the basic education (Primary to Secondary school). There must be evidence that the farm has accounted for all kids in school age.

In some farms schools are provided for the workers children. Some instances the employer will give allowances to the worker for schooling.

Some sectors in Kenya provide schools for workers children. Some companies give allowances for workers children to go to school.

Links:

- Basic Education Act Kenya – Compulsory Education, Part IV – 28. - http://www.parliament.go.ke/sites/default/files/2017-05/BasicEducationActNo_14of2013.pdf
- http://www.kenyalaw.org/lex//actview.xql?actid=No.%2014%20of%202013#part_IV

Control Point Compliance Criteria 10:

No legislations on time recording system but various acceptable form of time recording are adopted by employers.

The practice in Kenya is to have biometric and a book/register (normally placed at the entry gate or main gate) where the working hours are recorded.

Auditor will verify that these records can be accessible to the workers.

Biometric time clock systems allow employees to clock in for their work days with only a fingerprint. No punch card or swipe card is necessary. The system automatically records the time the employee came in and left the work place.

Control Point Compliance Criteria 11:

Under the Regulation of Wages (General) Order, subsidiary to the Regulations of Wages and Conditions of Employment Act, the general working hours are 52 per week, but the normal working hours usually consist of 45 hours of work per week, Monday to Friday 8 hours each, 5 hours on Saturday under the special Orders for different sectors subsidiary to the Regulations of Wages and Conditions of Employment Act. Collective agreements may modify the working hours, but generally provide for weekly working hours of 40 up to 52 hours per week.

Links:

- www.kenyalaw.org – Employment Act and Labour Institutions Act of 2007
- THE REGULATION OF WAGES (GENERAL) (AMENDMENT) ORDER, 2017.
THE REGULATION OF WAGES (AGRICULTURAL INDUSTRY) (AMENDMENT) ORDER, 2017. <https://africapay.org/kenya/salary/minimum-wages/2230-agricultural-industry>

Source: §2, 17-21 of the Employment Act 2007; §50 of the Labour Institutions Act, 2007

ADDITIONAL SOCIAL BENEFITS

Organizations are free to engage in community social responsibilities that are acceptable to the beneficiaries without any organizational gain from the recipients.

Voluntary Supporting documents

1. **KS 1758 – available from Kenya Bureau of standards (Kebs)**
2. **AFA Act – available at Kenya Law Reform Website :**
<http://www.kenyalaw.org/lex//actview.xql?actid=No.%2013%20of%202013>