



UNILEVER RESPONSE TO QUESTIONS RAISED IN THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES AL OTH 32/2023, 20th JUNE 2023

We are grateful to the United Nations Working Group on Human Rights and Transnational Corporations and other Business Enterprises and the associated Special Rapporteurs for the opportunity to respond to their questions in the Joint Communication from Special Procedures AL OTH 32/2023. These questions relate to allegations over handling of the post-election violence in 2007 and 2008 on the Kericho tea plantation in Kenya that was owned by Unilever Tea Kenya Ltd (UTKL) at the time¹. Our responses are set out below and further details of Unilever's approach to Human Rights and our related policies and procedures are available online in our most recent Human Rights Policy Statement².

Question 1: Please provide any additional information and/or comments you may have on the above-mentioned allegations.

The terrible events in Kericho in 2007 and 2008 were not isolated to UTKL but related to the nationwide breakdown of law and order in Kenya that followed the disputed Presidential elections, and which led to violent attacks across the country. The allegations raised with the Working Group need to be understood in the context of that national tragedy where, as the 2008 UN OCHR report stated at the time, *"...more than 1,200 Kenyans were reported killed, thousands more injured, over 300,000 people displaced and around 42,000 houses and many businesses were looted or destroyed. A significant number of cases of sexual violence were also reported"*³. This level of electoral violence was entirely unprecedented and, thankfully, has not happened again after subsequent elections.

The question of who holds responsibility to protect individuals and provide remedy in such situations is then directly relevant, and the same 2008 UN OCHR report also noted that *"states bear the primary responsibility for protecting the rights of all individuals within their territory"*. This point was reinforced in a 2019 UN OCHR report which explained that *"[t]he State is mandated to allocate appropriate human and financial resources to effectively implement laws and policies for the prevention of [Sexual and Gender-Based Violence], including [Electoral Related Sexual Violence]"* and *"Under international and regional conventions to which it is party (CEDAW, ICCPR, CAT, ICESCR, African Charter on Human and People's Rights), the [Kenyan] Government has human rights obligations to prevent sexual violence, protect survivors, investigate and prosecute, and provide reparations as part of effective remedies to survivors of [Electoral Related Sexual Violence]"*⁴. The responsibility for states to provide access to remedy is also set out in two reports mentioned in the Joint Communication⁵.

UTKL was not responsible for the actions of the hundreds of armed criminals that invaded the plantation in Kericho and UTKL cooperated fully with the police and security authorities before, during

¹ UTKL ceased to be a member of the Unilever Group in July 2022.

² Available here: [Unilever Human Rights Policy Statement](#)

³ Available here: [2008 UN OCHR Report](#)

⁴ Available here: [2019 UN OCHR Report](#)

⁵ See paragraphs 81 to 95 of the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly (A/75/212) (noting that the reference to action against businesses is restricted to cases where the business is considered to be a "perpetrator" of the abuse or "actively and willingly contributed to serious human rights violations") and paragraphs 58 to 65 of the report of the Special Rapporteur on violence against women and girls, its causes and consequences on indigenous women and girls to the Human Rights Council (A/HRC/50/26).

and after the attacks. While there were some criminal prosecutions in the area afterwards, we are not aware of any involving UTKL employees, and allegations that UTKL workers were involved in attacks or that UTKL managers incited violence were not upheld by the English Court. Neither was UTKL specifically targeted among the tea companies in Kericho but rather bore the brunt of the violence as the armed criminals came from communities living adjacent to UTKL property and crossed UTKL land first as the attacks began.

These events of 2007 and 2008 have been the subject of extensive examination by the English Courts and there was no finding that UTKL caused or contributed to the violence or otherwise failed in its duties to the claimants. On the contrary, the English Courts accepted that “... [T]here is no evidence, and no pleaded case, that anything comparable had happened on [UTKL’s] land before”, and found that “...it was not (even arguably) foreseeable that post-election violence of this kind would spill over from the surrounding area into the plantation... [or that] law and order would break down generally in Kenya and that the police would be unable to provide protection to the inhabitants of the plantation”.⁶ The English High Court also dismissed the suggestion that UTKL could have prevented the violence by using extra security or implementing an evacuation plan, or that it should have been compelled to act as a surrogate police force⁷.

Contrary to what is suggested in the Joint Communication, the UK Supreme Court in the Vedanta case approved the reasoning applied by the Court of Appeal in the Unilever case⁸. It was also only after its decision in the Vedanta case that the UK Supreme Court then refused the claimants in the Unilever case permission to appeal, on the basis that, because of the very different factual evidence to the Vedanta case, there was no arguable case against Unilever in these circumstances. The Supreme Court concluded that: “...the factual conclusions both of the judge and of the Court of Appeal create such formidable obstacles to success that the refusal of permission to appeal will not cause injustice”⁹.

Question 2: Please highlight the steps that your company has taken, or is considering to take, to protect against negative human rights impacts of its business activities, including those of its subsidiaries, ensuring that you conduct effective human rights due diligence to identify, prevent, mitigate and account for how you address your impacts on human rights throughout your operations, including in conflict-affected areas, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs).

Unilever PLC endorsed the UNGPs in 2011 and we have been reporting our approach to Human Rights publicly since 2015. Our most recent Human Rights Policy Statement¹⁰ sets out our overall approach and commitment to respect human rights throughout our operations, and is supported by two key internal policies, our Code of Business Principles¹¹, in particular the sections on Respect, Dignity and Fair Treatment, and our Responsible Partner Programme¹², which describes what we require of our business partners, including contractual assurances that they meet our integrity, ethics, human rights

⁶ See para. 12 of AAA & Ors v Unilever Plc & Anor [2018] EWCA Civ 1532 available here: [English Court of Appeal Ruling](#)

⁷ See AAA & Ors v Unilever PLC & Anor available here: [English High Court Ruling](#)

⁸ See para. 50 of *Vedanta Resources plc v Lungowe* [2019] UKSC 20, available here: [UK Supreme Court Vedanta Ruling](#)

⁹ See the list of decisions available here: [UK Supreme Court Permission to Appeal Decision](#)

¹⁰ Available here: [Unilever Human Rights Policy Statement](#)

¹¹ Available here: [Unilever Code of Business Principles](#)

¹² Available here: [Unilever Responsible Partner Policy](#)

and environment-related requirements, and will appropriately address any negative impacts if identified. In line with the UNGPs we create action plans to respond to salient human rights issues that we identify, and we actively engage with other stakeholders, including civil society, trade unions, rights-holders and their representatives, expert organisations and peer companies, to identify solutions, discuss challenges and learn from others.

Question 3: Please provide information regarding the measures that your company has taken, or is considering to take, to ensure that those UTKL employees and their families who were victims of serious human rights abuses occurred in the UTKL plantation in the aftermath of the 2007 elections, have access to effective non-State-based non-judicial remedies in line with the UNGPs. As part of this response, please indicate the steps that your company has taken, or is considering to take, to provide effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes in line with the UNGPs, to address adverse human rights impacts that it may have caused or contributed to, or be linked with.

Although UTKL was not responsible for what happened and could not have prevented it, the company provided significant support at the time to employees impacted by the violence. On return to UTKL, employees whose possessions had been looted were provided with replacement items such as furniture, bedding and clothing, TVs, mobile phones and cows or cash to purchase those items. Anyone unable to undertake their previous role was retrained to take up a different job, medical support and counselling were freely available and 93% of those affected returned to work at UTKL, with those who chose not to return given voluntary redundancy packages. We believe this support was substantially more than most other companies across the country offered to employees similarly affected by the violence.

The Unilever Group also donated US \$1million in cash and Unilever products through the World Food Programme to help the people of Kenya affected by the 2007 post-election events. A further US \$500,000 was provided specifically to help UTKL employees and their families who had suffered because of the violence. UTKL employees were also provided with compensation in kind to help offset the impact of loss of earnings during the instability.

Regarding grievance mechanisms, the Unilever Group has a longstanding approach integrated into our Code of Business Principles¹³, which has been in operation for almost 30 years. Our Code of Business Principles support line is open to third parties, which enables our suppliers and distributors, their workers, or other affected stakeholders to contact us if they're concerned about any breaches either of our Code of Business Principles (relating to the actions of our employees) or of our Responsible Partner Policy¹⁴ (relating to the actions of our partners and suppliers). We do not have any record of the claimants in this case lodging a grievance or requesting support through these mechanisms while we still owned UTKL.

Nevertheless, as reported in the Financial Times on 16 February 2022, following the UK Supreme Court decision to refuse claimants in the case against UTKL further permission to appeal, we were made aware that some of the claimants may have missed out on support offered to other UTKL employees

¹³ Available here: [Unilever Code of Business Principles](#)

¹⁴ Available here: [Unilever Responsible Partner Policy](#)

at the time. UTKL, which was still owned by the Unilever Group at that point, engaged an independent third party to review if that was the case and, if so, make recommendations as to what should be done. That independent review has now concluded, we have accepted its recommendations and arrangements are now being made to implement them.

As we highlighted earlier, our view, supported by the UK courts, is that the allegations brought to the Working Group are unfounded. Q63 in the UN OHCHR Interpretive Guide to the Corporate Responsibility to Respect Human Rights asks whether there is any obligation to provide remedy if allegations are unfounded and the answer given is: *“No. This Guiding Principle is limited to situations where the enterprise itself recognizes that it has caused or contributed to an adverse human rights impact. It is in these situations that the enterprise is necessarily expected to enable the remediation of that impact. It may find that it has caused or contributed to adverse impact through its own impact assessments, grievance mechanism or other internal processes, or the impact may be brought to its attention by other sources and confirmed by its own investigations.”*

Question 4: Please indicate whether the victims and survivors of rape have had access to remedies, including medical and psychological services as well as other measures provided by your company to identify and hold accountable the perpetrators of violence.

UTKL had (and its successor company continues to have) onsite hospital and other free medical facilities available to employees and their families. These are extensive and well-resourced medical facilities which, at the time, were serving a population of around 60,000 people living in company provided accommodation. All employees who returned to the plantation would have had access to these, with additional psychological support offered at the time to those who requested it.

As we noted in our answer to Question 1, investigating and prosecuting the perpetrators of Sexual and Gender Based Violence in a case of external criminal attack like this is the responsibility of the state. UTKL cooperated fully with the authorities in their efforts to do this but, as noted earlier, the UK court did not accept the assertion made in the allegations that UTKL workers were involved in attacks nor that UTKL managers incited violence and there is no independent evidence to support this assertion.

Question 5: Please describe the guidance, if any, that the Government of the United Kingdom of Great Britain and Northern Ireland has provided to your company, or to which your company has access, on how to respect human rights throughout your operations, including in conflict-affected areas, in line with the UNGPs.

UK Government guidance to companies is set out in the document *Good Business. Implementing the UN Guiding Principles on Business and Human Rights (updated 2016)*¹⁵ and the *UK Action Plan on implementing the UN Guiding Principles on Business and Human Rights (updated May 2020)*¹⁶. These documents list the various elements of guidance available to business which we take into account in our work to implement the UNGPs.

¹⁵ Available here: [Good Business. Implementing the UN Guiding Principles on Business and Human Rights](#)

¹⁶ Available here: [UK Government National Action Plan](#)

Question 6: Please provide information on the role that Unilever, as the parent company, plays in relation to policy and decision-making of UKTL relevant to this incident and more generally to human rights-related issues.

Unilever played no role in relation to policy and decision making of UKTL in relation to the events of 2007 and 2008, as confirmed by the 2018 English Court of Appeal ruling which stated:

28. The evidence showed that UTKL carried out its own crisis management training programme. Neither in drafting its crisis management policy, its occupational health and safety policy nor in training its staff for crisis management was it subject to direction or any specific or detailed advice from Unilever...

40 ...The evidence also shows clearly that UTKL understood that it was responsible itself for devising its own risk management policy and for handling the severe crisis which arose in late 2007, and that it did so.¹⁷

As mentioned earlier, UTKL no longer forms part of the Unilever Group. While under Unilever ownership UTKL would have been expected to adhere to the overall approach to Human Rights taken by Unilever since the endorsement of the UNGPs in 2011.

We hope that our responses answer the questions raised by the UN Working Group Members and Special Rapporteurs over the allegations relating to the UTKL handling of the impact of the post-election violence in Kericho in 2007 and 2008 that were brought to them. More broadly, we also hope that this response, together with our Human Rights Policy statement and related policies, reassures them of Unilever's commitment to implementing the UNGPs and promoting Human Rights both within our operations and within the international business community.

¹⁷ See AAA & Ors v Unilever Plc & Anor [2018] EWCA Civ 1532 available here: [English Court of Appeal Ruling](#)