



**PERMANENT MISSION OF
THE REPUBLIC OF KENYA**

TO THE UNITED NATIONS
AND OTHER INTERNATIONAL ORGANISATIONS
GENEVA – SWITZERLAND

REF. N° **KMG/PROT/11/VOL. XV (138)**

The Permanent Mission of the Republic of Kenya to United Nations Office at Geneva and other International Organizations in Switzerland, presents its compliments to the Secretariat of United Nations Human Rights Special Procedures of the Office of the High Commissioner for Human Rights in Geneva and has the honour to refer to the latter's letter Ref.: AL KEN 1/2023 dated 3rd May 2023 on a joint communication from the Special Procedures concerning Unilever Tea Ltd (UTKL).

The Mission transmits herewith, the attached response from the relevant competent authorities of the Government of the Republic of Kenya concerning clarity on the list of issues submitted in the letter.

The Permanent Mission of the Republic of Kenya to United Nations Office at Geneva and other international organizations in Switzerland, presents its compliments to the Secretariat of United Nations Human Rights Special Procedures of the Office of the High Commissioner for Human Rights in Geneva, the assurances of its highest consideration.

Geneva, 11th July 2023



**Secretariat of The United Nations Human Rights Special Procedures
of the Office of the High Commissioner for Human Rights**

Geneva

Encls.

RESPONSE TO JOINT COMMUNICATION FROM SPECIAL PROCEDURES CONCERNING UNILEVER TEA LTD (UTKL)

1. The violence that broke out after the 2007 presidential election occasioned the most severe human rights crisis in Kenya's independent history. The post-election crisis, however, brought a renewed sense of urgency within the Grand Coalition Government at the time for far reaching constitutional, legal, policy and institutional interdependent issues of human rights, democratic governance, the rule of law and security.
2. To address the crisis, the National Accord was signed on 28 February 2008, under the Kenya National Dialogue and Reconciliation Framework. The framework identified four main agenda items. The final goal of this political dialogue was to achieve sustainable peace, stability and justice through the rule of law and respect for human rights. Within this framework, there was commitment to address long-standing issues including constitutional and institutional reforms, land reforms, police and judicial reforms, socio-economic inequalities, corruption, accountability and youth unemployment.
3. The Judiciary has been instrumental in handling reported cases on sexual and gender-based violence (SGBV) that arose in the country during the 2007/2008 Post Election Violence period. In the case of *Coalition on Violence Against Women & 11 others v Attorney General of the Republic of Kenya & 5 others; Kenya Human Rights Commission(interested Party), Kenya National Commission on Human Rights & 3 others(Amicus Curiae)* [2020] eKLR the High Court of Kenya held that the failure to conduct independent and effective investigations and prosecutions of SGBV-related crimes during the post-election violence is a violation of the positive obligation on the Kenyan State to investigate and prosecute violations of the rights to life; the prohibition of torture, inhuman and degrading treatment; and the security of the claimants. The Government was thus ordered to pay damages to the claimants.
4. No claims against the failure and negligence on the part of Unilever Tea Ltd during the 2007/2008 Post Election Violence were formally filed in the Kenyan courts.
5. In 2015, employees and residents of Unilever tea plantation in Kenya filed a lawsuit against Unilever PLC and Unilever Tea Kenya at the High Court of Justice

Queen's Bench Division in England. The Plaintiffs alleged that Unilever failed to protect their workers 'from the foreseeable risk of ethnic violence. The English Court held there was Insufficient evidence to demonstrate that Unilever PLC dictated or advised on the terms of Unilever Tea Kenya's crisis management plans, and as such, it has no jurisdiction over the English domiciled parent company.

6. In order to protect citizens from negative human rights impacts arising from the activities of Kenyan business enterprises, the Government of Kenya has developed a National Action Plan on Business and Human Rights, Sessional Paper No. 3 of 2021. This is a Comprehensive government policy document that guides businesses, both private and State-owned enterprises on their human rights obligations as envisages under article 20(1) of the Constitution. The National Action Plan (NAP) has domesticated the UN Guiding Principles on Business and Human Rights and has focusses on the five thematic issues identified by stakeholders namely; Land and Natural Resources, Labour Rights, Revenue Transparency, Environmental Protection and Access to Remedy. It outlines concrete commitments by the Government by addressing adverse business-related human rights impacts under these themes. It does not create new obligations but restates those already recognized under the Constitution. It is oriented towards addressing actual and potential business and human rights challenges by both the Government and businesses.
7. The NAP was formally adopted by the Kenyan Parliament in November 2022 as sessional paper no. 3 of 2021. Implementation of this policy document is currently ongoing with simplified versions of the document, both in English and Swahili languages, having been developed for dissemination to members of the public.
8. The Government has committed itself in the NAP to develop and disseminate guidance for businesses on the establishment of credible operational-level grievance mechanisms that are consistent with international standards. This will ensure that businesses domiciled in Kenya establish and participate in effective operational level grievance mechanisms.
9. Article 159 of the Constitution mandates the Judiciary to promote alternative forms of dispute resolution (ADR) in the administration of Justice. The judiciary has now embraced ADR as an avenue for addressing case backlog in the court system and continues to implement, improve and expand Court Annexed Mediation (CAM) across all the court stations as an avenue to resolve disputes

especially in family matters. In the Financial year 2021/2022, 181 matters were referred to Court Annexed Mediation, with 66 of these matters successfully concluded.

10. To further address the structural and procedural barriers to access to remedy, the Judiciary has established small claims courts. The Small Claims Courts are a community-oriented social justice forum that seeks to unlock access to justice for the vulnerable and marginalized through accessible, cost-effective, friendly, flexible and simple processes. As at December 2022, eleven small claims courts had been established and operationalized in Kajiado, Machakos, Nyeri, Naivasha, Nakuru, Eldoret, Kakamega, Kisumu, Mombasa, Thika and Meru counties.
11. In addition, the Government of Kenya has committed through the National Action Plan on Business and Human Rights to increase the capacity of the labor inspection department to handle labor related grievances, including through: increasing the number of labor inspectors to monitor and enforce compliance with labor standards by businesses, with a particular attention to the implementation of mandatory policies to prevent and address sexual harassment and violence, payment of minimum wages, equal pay for work of equal value, prohibition of child labor and nondiscrimination against women, marginalized groups and minority groups.
12. With regards to provision of legal aid, the Legal Aid Act. 2016 has for the first time in the history of Kenya, granted legal and formal legal recognition; away from ad hoc initiatives of pro bono legal services, pauper briefs, and legal aid clinics. The Act establishes the National Legal Aid Service (NLAS) which is charged with, among others; the duty of establishing and administering a national legal aid scheme that is affordable, accessible, sustainable, credible, and accountable. NLAS also has the power' to support. legal aid providers, train persons in legal aid, educate the public on legal issues, and increase legal awareness. The Act establishes the Legal Aid Fund, which is administered by National Legal Aid Service to finance legal aid activities.