

**NATIONAL ASSEMBLY
DIRECTORATE OF
DEPARTMENTAL COMMITTEES**

TO: HEAD OF THE TABLE OFFICE DEPARTMENT

THRO': DIRECTOR, DEPARTMENTAL COMMITTEES

Forwarded 22/05/23

**THRO': HOD, GOVERNANCE, ADMINISTRATION AND SOCIAL SECTOR
COMMITTEES**

FROM: SENIOR CLERK ASSISTANT

DATE: 18TH MAY 2023

**SUBJECT: AMENDED REPORT ON THE INQUIRY REGARDING SEXUAL
HARASSMENT OF FEMALE WORKERS IN TEA ESTATES IN
KERICHO COUNTY**

The Departmental Committee on Labour tabled the report on the inquiry regarding sexual harassment of female workers in tea estates in Kericho County on 23rd March 2023. Amendments to the report were proposed and adopted by the House on Tuesday 25th April, 2023.

This is therefore to transmit the amended report for the requisite action.

Thank you



Rose M. Wanjohi





**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY**

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON –

**INQUIRY REGARDING SEXUAL HARASSMENT OF FEMALE WORKERS IN TEA
ESTATES IN KERICHO COUNTY**

As amended by the House on Tuesday 25th April, 2023

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CHAIRPERSON'S FOREWORD

The Hon. Beatrice Kemei, MP (Kericho County) on 21st February 2023 sought a statement from the Chairperson, Departmental Committee on Labour regarding sexual harassment of female workers in various tea estates in Kericho County. The Honourable member reported that the female workers in various tea estates in Kericho County worked and lived in deplorable conditions and had been victims of sexual abuse at the hands of their male bosses.

An expose' by BBC Africa eye documentary by the British Broadcasting Company (BBC) entitled "*sex for work: the true cost of our tea*" was aired on 20th February, 2023 in which two companies namely; James Finlay Kenya and Ekaterra Lipton Teas and Infusions (formerly Uniliver) were reported as having incidences of sexual harassment and exploitation. In addition, several anonymous females featuring in the documentary named four male persons, two in each of the companies reported as the perpetrators of the acts.

In view of the foregoing, the Committee resolved to conduct an inquiry into the matter in line with the provisions of National Assembly Standing Order 216(5) (e) which mandates Departmental Committees to investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House. This was besides facilitation of issuance of a response to the Statement request by the Cabinet Secretary for Labour and Social Protection for reporting by the Chairperson to the House.

While conducting the inquiry, the Committee therefore heard evidence from the Hon. Beatrice Kemei, MP (Kericho County), Kericho County Security Team, The management of James Finlay Kenya, Ekaterra Lipton Tea and Infusion Companies, Officials of the Ministry of Labour and Social Protection, victims of the sexual harassment (if they consented to making their submissions to the Committee) and officials of Kenya Planters Cooperative Union and their shop stewards in Kericho.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the inquiry. Finally, I wish to express my appreciation to the Honorable Members of the Committee, Committee Secretariat and all those who responded to the Committee's invitations to provide information on the matters under the inquiry.

On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its findings regarding the inquiry into the sexual harassment of female workers in various tea estates in Kericho County.

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR

PART I

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Labour was constituted on 27th October, 2022 and is established under provisions of S.O 216. Standing Order No. 216(5) grants the Committee amongst other functions to:
 - a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - (ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - c) *study and review all legislation referred to it;*
 - d) *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e) *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - (fa) *examine treaties, agreements and conventions;*
 - g) *make reports and recommendations to the House as often as possible, including recommendation of propose legislation;*
 - h) *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i) *examine any questions raised by Members on a matter within its mandate.*
2. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to Labour, human capital and remuneration, trade union relations and public service.

1.2 Oversight

3. In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments and Agencies (MDAs):
 - a) The State Department for Public Service and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) Kenya School of Government; and
 - b) Institute of Human Resource Management.

- b) The State Department for Labour and Skills Development and its autonomous and semi-autonomous Government agencies which include;
 - a) National Industrial Training Authority (NITA);
 - b) National Productivity and Competitiveness Centre (NPCC);
 - c) Kenya National Labour Board and the Wages Council;
 - d) National Employment Authority (NEA);
 - e) Migrant Workers Welfare Fund; and
 - f) Department of Labour Migration Management.
- c) Public Service Commission;
- d) Salaries and Remuneration Commission;

1.3 Committee Composition

4. The Departmental Committee on Labour was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency

UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency

GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency

ODM Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency

ODM Party

Hon. George Aladwa Omwera,
Makadara Constituency

ODM Party

Hon. Amina Dika Abdullahi, MP
Tana River Constituency

KANU

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency

ANC Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency

Jubilee Party

MP Hon. Catherine Wambiliaga, MP
Bungoma County

FORD-K

Hon. Dorice Aburi Donya, MP
Kisii County

WDM-K

Hon. Patrick Simiyu Barasa, MP
MP
Cherangany Constituency
DAP-K Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency
UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County
UDA Party

Hon. Mangale Munga Chiforomodo,
Lunga Lunga Constituency
UDM Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County
UDA Party

1.4 Committee Secretariat

5. The Committee has the following technical staff, representing the Office of the Clerk:

Ms. Rose M. Wanjohi
Senior Clerk Assistant /Head of Secretariat

Mr. Binensa Mabungu
Clerk Assistant III

Ms. Christine Odhiambo
Senior Legal Counsel

Ms. Wambui Nyachae
Research Officer III

Ms. Zainab Wario
Serjeant-At-Arms

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Fredrick Muthengi
Chief Fiscal Analyst

Mr. Timothy C. Tsungulah
Research Officer III

Ms. Rehema Koech
Audio Officer

2.0. INQUIRY INTO SEXXUAL HARASSMENT OF FEMALE WORKERS IN TEA ESTATES IN KERICHO COUNTY

2.1 Background Information

6. The Hon. Beatrice Kemei, MP (Kericho County) on 21st February 2023 sought a statement from the Chairperson, Departmental Committee on Labour regarding sexual harassment of female workers in various tea estates in Kericho County. In the Statement request, the Members averred that female workers in various tea estates in Kericho County lived and worked in deplorable working conditions and were victims of sexual abuse in the hands of their male bosses. The Member's prayers in the Statement were as follows-
 - i. Could the Chairperson provide concrete information on the allegations of sexual harassment of female workers in the various tea estates in Kericho County?
 - ii. Could the Chairperson explain what measures the government is putting in place to protect the rights of female workers in these tea estates?
 - iii. Could the Chairperson explain measures the government is putting place to ensure these tea estates adhere to labour laws and implement policy on sexual harassment?
 - iv. Could the Chairperson consider carrying out investigations into the heinous acts to ensure culpable perpetrators are brought to book and justice is served?
7. An expose' by BBC Africa Eye documentary by the British Broadcasting Company (BBC) entitled "*sex for work: the true cost of our tea*" was aired on 20th February, 2023 in which two companies namely James Finlay Kenya and Ekaterra Lipton Teas and Infusions (formerly Uniliver) were reported as having witnessed incidences of sexual harassment and exploitation. In addition, several anonymous females featured in the documentary named four male persons, two in each of the companies named as the perpetrators of the acts.

2.2 Inquiry into the sexual abuse allegations

8. Following the request for statement, the Committee resolved to conduct an inquiry into the sexual abuse allegations and table a report in the House with a view to having the report debated, adopted and recommendations forwarded to the concerned agencies for implementation. This was besides facilitating the issuance of a response by the Cabinet Secretary for Labour and Social Protection for reporting to the House by the Chairperson.
9. The decision of the Committee to conduct an inquiry into the matter was informed by Standing Order 216 (5) (e) which mandates Departmental Committees to investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House.
10. The Committee set its terms of reference for the inquiry as follows-
 - (i) To establish if there is concrete information on the allegations of sexual harassment of female workers in the various tea estates in Kericho County.
 - (ii) To establish the measures the government is putting place to protect the rights of female workers in these tea estates.
 - (iii) To establish the measures the government is putting place to ensure these tea estates adhere to labour laws and implement policy on sexual harassment;

- (iv) To establish the status of investigations into the heinous acts to ensure culpable perpetrators are brought to book and justice is served.

2.3. Public Participation (Art 118 of the Constitution)

12. The Committee carried out public participation in accordance with the requirements of Article 118 of the Constitution of Kenya 2010. The Committee identified the following stakeholders whom it requested to make submissions on the matters under inquiry-
- i. The County Security Team of Kericho- included the Directorate of Criminal Investigations, The National Police Service, the National Intelligence Service and the County Commissioner;
 - ii. The National Labour Commissioner Office and State Department for Labour and Skills Development;
 - iii. The County Labour Officer, Kericho;
 - iv. The Management of James Finlay Kenya Limited;
 - v. The Management of Ekaterra Lipton Teas and Infusions;
 - vi. The Shop Stewards, James Finlay Kenya Limited;
 - vii. The Shop Stewards, Ekaterra Lipton Teas and Infusions;
 - viii. The Assistant General Secretary, Central Organization of Trade Unions (COTU);
 - ix. The Branch Secretaries, Kenya Plantation and Agricultural Workers Union of the Counties of Kericho and Bomet; and
 - x. Victims of the sexual harassment (if they consented to make their submissions to the Committee)

2.3 Methodology of the Inquiry

13. The Committee:
- a) Conducted public hearings in Kericho County on 3rd and 4th March, 2023 during which it held meetings and heard submissions from the aforementioned stakeholders. Both oral and written submissions were made to the Committee by those who testified.
 - b) Analyzed the submissions received the outcome of which informed its findings and recommendations.

2.4 Challenges

14. During the conduct of the Inquiry, the Committee faced challenges that included:
- a) The witness who had by the Labour Office to speak in camera to the Committee on the allegations declined and referred to their lawyer
 - b) The nature of the allegations made it difficult to receive witness information including from the shop stewards and the union

2.5 Definition of Sexual harassment

15. Sexual Harassment is defined to include;

- a) Any direct or indirect requests for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express:
 - i. promise of preferential treatment in employment;
 - ii. threat of detrimental treatment in employment; or
 - iii. Threat about the present or future employment status of the employee.
- b) Any behaviour that is unwelcome or offensive, of a sexual nature that includes physical conduct, display of visual material and communication whether written, verbal or non-verbal and includes electronic material.
- c) Examples of Sexual Harassment Sexual Harassment can take various different forms and may include but not limited to:
 - i. Unwelcome and unnecessary physical contact;
 - ii. Transmission of sexual material including photos, videos, pinups;
 - iii. Making suggestive comments, jokes or taunts with sexual connotations;
 - iv. Unwanted persistent invitations to go out on dates;
 - v. Persistent requests for sex;
 - vi. Unsolicited demands or request for sexual favours;
 - vii. Intentionally exposing your private parts;
 - viii. Sexually explicit letters, faxes, emails, text messages or any other electronic content; or
 - ix. Unsolicited and intrusive comments or questions about a person's body, sexuality, sexual orientation, gender identity or gender expression

16. Kenyan legislative framework developed to counter sexual harassment

A. Constitution of Kenya

17. The Constitution of Kenya-

- (i) Guarantees rights and freedoms of every person in Kenya including the right to fair labour practices, the right to freedom and security of the person, the right to human dignity and freedom from discrimination. In accordance with the declaration of international protection and worker rights, the constitution of Kenya under Article 27 prohibits any and all kinds of discrimination in the workplace. It protects every employee working in Kenya from abuse and discrimination from the employer and rights violations. This section exists in line with the fundamental constitutional right of every Kenyan- every citizen is equal before the law and has the right of equal protection and benefit from the law.
- (ii) Although Article 27 doesn't explicitly mention sexual harassment and punitive measures against such an offense, it forms the basis of workplace rights protection laws.
- (iii) In the event an employee claims that he/she was sexually assaulted, the employee can institute court proceedings claiming that any of the above rights have been denied, violated, infringed or threatened. In the event the claim is successful, the court has the power to order for just compensation to be paid to

the victim or order for judicial review in the event due process when handling a sexual harassment allegation was not followed.

B. Sexual Offences Act

18. The Sexual Offences Act-

- (i) Under the Sexual Offences Act (the Act), a person may be found guilty of sexual harassment if any person, who being in a position of authority, or holding a public office, persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome. The penalty of the offence is imprisonment for a term of not less than three years or a fine of not less than KES 100,000 (approx. USD 1,000) or both;
- (ii) The Act, however, imposes an obligation on the alleged victim of sexual harassment to prove that their submission or rejection of the sexual advances or requests would be used as a basis of employment or as a decision relevant to the career of the alleged victim; and that the sexual advances or requests by the perpetrator have the effect of interfering with the alleged victim's work; educational performance or have created an offensive working or learning environment for the alleged victim.
- (iii) It follows that a key ingredient to proving or disproving a sexual harassment allegation is determining whether the advances were welcomed. Lack of consent by the alleged victim is, therefore, a critical element of sexual harassment. Consent means a person agrees by choice and has the freedom and capacity to make that choice.

C. Employment Act

19. Section 6 of the Employment Act defines sexual harassment as where an employer or a representative of the employer or a co-worker:
 - a) directly or indirectly requests an employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express (i) promise of preferential treatment in employment; (ii) threat of detrimental treatment in employment; or (iii) threat about the present or future employment status of the employee;
 - b) uses language whether written or spoken of a sexual nature;
 - c) uses visual material of a sexual nature; or
 - d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.
20. In addition, the Employment Act requires that an employer with twenty or more employees must, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment. The policy should include: a definition of sexual harassment; a statement that every employee is entitled to employment that is free of sexual harassment; a statement that the employer shall take steps to ensure that no employee is subjected to sexual harassment; and a statement that the employer shall

take disciplinary measures as they deem appropriate against any person who subjects any employee to sexual harassment.

21. In addition to having a sexual harassment policy, the employer must ensure that the policy is implemented. Employers should, therefore, train their employees on the parameters of the policy.

D. Case Law

Following the changes in the law, there have been several decisions from the Kenyan courts.

22. In the case of CAS v CS Ltd the employee disclosed that she was constantly sexually harassed by various staff members, including some who were in management. The employee further explained that the lack of a sexual harassment policy by the employer added to her frustration and harassment. The court found the employer guilty of failing to have a sexual harassment policy in violation of section 6 of the Employment Act.
23. Another issue that was canvassed in the case was the employee's unfair termination stemming from the lodging of the sexual harassment complaint. After making her complaint, the employee was issued with a show-cause letter and later dismissed. The judge held that the reasons given for dismissing the employee were not valid given that she was dismissed for seeking help at the employer's head office. In this matter, the court found that the employee had been summarily dismissed and awarded her a compensation of approximately USD 4,000.
24. Similarly, in the case of SRM v GSS (K) Limited & another, the employee disclosed that she was being sexually harassed by an employee in top management. She was dismissed after making her complaint. The court found the employer guilty of failing or ignoring to investigate the claim expeditiously and impartially as required by the company's internal procedures. It was outlined in the business ethics policy, that when an allegation of sexual harassment is made, the same should be raised with the employer's Human Resource Manager who would arrange for the claim to be investigated impartially, confidentially and without delay. The court held that the process outlined within the business ethics policy was not followed by the employer. In this matter, the court found that the employee had been unfairly dismissed and awarded her compensation of approximately USD 60,000.

3.0 STAKEHOLDERS SUBMISSIONS

3.1 COUNTY SECURITY TEAM, KERICHO COUNTY

Mr. Stephen Orinde, Deputy County Commissioner, Kericho County; Mr. Riko Ngare, County Police Commander, National Police Service; Ms. Rodah Kanyi, Director of Criminal Investigations Officer, Kericho County and Mr. Robert Kisiangani, Intelligence Officer, National Intelligence Service appeared before the committee on Friday, 3rd March 2023 and submitted as follows-

26. Mr. Riko Ngare, County Police Commander, acknowledged receipt of the letters from the committee and submitted that no report had been filed with the authorities or the companies mentioned in regards to the allegations of sexual exploitation in the tea estates.
27. The County Police Commander informed the Committee as follows-
- i. There are fifteen (15) Police Stations within the two tea estates, 3(three) within James Finlay Kenya Tea estates and twelve (12) within Ekaterra Tea estates.
 - ii. There is a gender office in Kericho County whose construction was funded by James Finlay Kenya. The Centre is open to the public and it offers a safe house for children and victims of Gender Based Violence.
 - iii. There are regular patrols by the Security team in the tea estates.
 - iv. There is a Court Users Committee that acts as a forum where parties not satisfied with the decision of the Courts can seek advice on avenues available for appeal. The Committee is composed of the management of the tea estates, labour officers, children's officers, non-governmental organizations and members of the security team.
 - v. There are regular meetings with the management of the Tea estates.
28. Ms. Rodah Kanyi, Director of Criminal Investigations Officer, informed the Committee that a team had been constituted by the Directorate of Criminal Investigations to investigate the matter. The Team was headed by Mr. Francis Wanjau, Regional head of the Directorate of Criminal Investigations. The Criminal Investigations officer further submitted as follows-
- i. On 23rd February 2023, her Team visited the two companies mentioned and recorded statements with the management. The management maintained that they had no information in regards to the expose by the BBC network.
 - ii. The investigating team requested for the full information of all the persons mentioned as perpetrators in the expose. Thereafter the team recorded their statements. The team also visited the workstations of the persons mentioned.
 - iii. No formal complaint in regards to the alleged sexual harassment had been made by the victims. Therefore, no arrest had been made.
 - iv. The preliminary investigation findings had been submitted to the Directorate of Criminal investigations awaiting further action.

3.2 SUBMISSIONS BY THE LABOUR OFFICE, KERICHO

Mr. Kephias Odhiambo, Labour Officer, Office of Labour Commissioner, submitted as follows-

29. They were made aware of the allegations of sexual harassment of female tea workers from the social media. The Ministry wrote to the County of Kericho Labour officer instructing him to commence investigation into the allegations as per Section 35 of The Labour

Institutions Act, 2007. The County Labour officer was to engage the tea estates, security agencies and trade unions to get submissions. The Committee awaits detailed and concrete information on the status of investigation into the allegations to enable it report back to the house.

30. In addition the Labour officer submitted as follows-
- i. The interaction with the companies is mainly on the terms of working conditions in accordance with the Employment Act and International Labour Standards.
 - ii. Both James Finlay Kenya and Ekaterra Teas have a sexual harassment policy.
 - iii. Both Companies have reporting structures as per the Collective bargaining agreement with the trade Union.
 - iv. Both have active gender committees to deal with employee welfare and grievances.
 - v. James Finlay has outsourced some sections of the labour services to contractors.
32. The labour Officer also emphasized the need for Kenya to ratify the **C190 - Violence and Harassment Convention, 2019 (No. 190)**. The Convention protects workers and other persons in the world of work, including employees as defined by national law and practice. It also protects persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.

3.3 SUBMISSIONS BY JAMES FINLAY KENYA LIMITED

Mr. Daniel Kirui, Human Resources Director, James Finlay Kenya accompanied by Mr. Sammy Kirui, General Manager, Corporate Affairs James Finlay Kenya; Raymond Cheruiyot, General Manager, Tea Estates and Ms. Evelyne Ng'eno, Legal Manager, James Finlay Kenya appeared before the Committee on Friday, 3rd March 2023 and made the following submissions:-

33. Mr. Daniel Kirui, Human Resource Director, submitted that they were unaware of sexual harassment in the farms. The BBC programme broadcasted some deeply shocking and upsetting testimony of sexual exploitation at James Finlay Kenya.
34. Mr. Daniel Kirui, Human Resources Director, James Finlay Kenya submitted as follows-
- i. The Company immediately suspended the two individuals featured in the BBC investigation and barred them from accessing all James Finlay tea estates sites. The Company also terminated the agreement with John Chebochok's Company, Sislo Holdings. All three hundred (300) employees who had been contracted by Sislo Holdings who were working at James Finlay Kenya have been offered direct employment at James Finlay Kenya.

- ii. James Finlay Kenya reported the allegations against John Asava and John Chebochok to the Kenya Police and committed to continue working closely with the police, sharing additional information that results from the investigations.
 - iii. The Company also commissioned a private investigation into the matter. The investigation will cover two key areas, first to examine the cases highlighted by the documentary and secondly areas where the company can improve its approach to prevent and address sexual violence, abuse and harassment.
35. The Company also briefed the committee on its Harassment & sexual offences Policy, Child Protection Policy, Gender equality and Diversity Policy and the grievance handling policy.

3.4 SUBMISSIONS FROM SHOP STEWARDS AND GENDER COMMITTEES AT JAMES FINLAY KENYA

36. The shop stewards and gender committee members appeared before the Committee in Camera. The Chairperson informed the workers the purpose of the visit. He further assured them that they would not suffer any victimization for appearing before the Committee. The trade union representatives of Kenya Planters Cooperative Union confirmed that the shop stewards were their duly elected members.

37. The workers submitted as follows-

- i. The management was aware of the continued harassment of workers in the tea estates. However cases of sexual harassment reported are not acted on and tangible sanctions applied to the alleged perpetrators for instance arrests or dismissal.
- ii. There was a communication gap between senior management and low-level workers.
- iii. The majority of the outsourcing contracts on labour are to former employees of James Finlay Kenya
- iv. There was a pay disparity between directly employed employees and the outsourced contracted workers doing the same kind of work.
- v. There are cases of transfer of female workers from working under female supervisors to male supervisors.
- vi. There is victimization of workers engaged in industrial actions.
- vii. The fear of reporting sexual harassment and exploitation is attributable to fear of being fired and unfair reporting structure where the officers receiving the complaints are the alleged perpetrators.
- viii. Payments made under the premium fair trade by tea buyers in the diaspora which are to be paid directly to low cadre workers have been converted by James Finlay Kenya to fund Corporate Social Responsibility (CSR) without consultations with the workers.

3.5 SUBMISSIONS FROM MANAGEMENT OF EKATERRA LIPTON TEAS AND INFUSIONS

Ms. Sylvia Ten Den, Director of Ekaterra, Lipton Teas and Infusions Kenya, Rwanda and Tanzania accompanied by Ms. Irene Ng'ang'a, Welfare Manager; Mr. Chris Chege, Head of Human Resources; Mr. Kenneth Odire, Country General Manager; Ms. Lydia Musili, Head of Legal and Mr. James Kimani, Head of Security appeared before the committee on Saturday 4th March 2023 and submitted as follows-

38. Ms. Sylvia ten Den, Director of Ekaterra, Lipton Teas and Infusions Kenya, Rwanda and Tanzania gave the committee an overview of the history, partner companies and number of plantations in the African region run by the Ekaterra, Lipton Teas and Infusions. The committee was further briefed on the total acreage of land under plantation of Ekaterra, Lipton Teas and Infusions. An overview of the company's organizational, social and environmental strategy including the sexual harassment policy was shared with the Committee (full submissions annexed)
39. Ms. Sylvia ten Den guided the committee through the company's policy on Sexual and Gender based Violence (SGBV) policy quoting 3 points of action which are-
 - i. Prevention- Includes security interventions like CCTV and offering mental health support.
 - ii. Detection- Includes the proper functioning of multiple reporting channels and security interventions.
 - iii. Response- Includes the operation of a safe shelter for the victims of Sexual and Gender Based Violence. The offering of psycho-social counseling to the victims and administration of justice through internal mechanisms are also a part of the response.
40. The company demonstrated that it had already set up women empowerment programmes that were beneficial to its female members of staff. Ms. Sylvia stated that about 43% of the organizational leadership is comprised of female members of staff and she emphasized that she would do all that she can to stomp out sexual harassment in Ekaterra Tea Company, African plantations.
41. The committee was further briefed on the immediate actions that were taken by the company after the expose' by the British Broadcasting Corporation (BBC) Africa eye: -
 - i. The immediate suspension of the mentioned alleged perpetrators, barring them from accessing the company's plantations worldwide and reporting the matter to the police.
 - ii. The company set up an Independent Oversight Committee that would deal with all matters recruitment, promotion to higher cadres of work and performance appraisal.
 - iii. The company set up an anonymous survey platform that they stated, would enhance anonymous reporting by all employees that may need to do so on various matters.
 - iv. The company's management stated that it would increase the situation of gender balance across levels of work in a bid to mitigate occurrences of sexual harassment
 - v. The company launched an independent investigation into the matter of sexual harassment among its workers to try and get the victims to speak up in order to ease

the administration of justice.

42. The management of Ekaterra stated that they purpose to increase the number of women at the supervisory level from 20% after the committee raised concern that the bare minimum quoted in the constitution would not be enough to mitigate cases of sexual harassment in these tea farms. Ms. Sylvia ten Den further briefed the committee that the victims are largely unknown to her and her team as they are not speaking up and out which brought about lack of detection of sexual harassment cases by the management of the company in the country.
43. The Company confirmed that they only outsourced security services and that all other employees were directly employed at Ekaterra.
44. The management of Ekaterra Tea Kenya informed the Committee that the HIV rate among its staff was at 5% and that all the employees were afforded comprehensive health care. The management stated that it educates and trains children within its society offering them guidance on sex education in order to try and keep teen pregnancies at a low level.

3.6 SUBMISSIONS FROM SHOP STEWARDS AT EKATERRA TEAS AND INFUSIONS

The Shop Stewards averred as follows-

45. They expressed concern that the management was not fair in how it handled disciplinary cases among the top-level staff vis-a-vis the lower level staff. They stated that the cases were being handled differently when it comes to the low-level workers and sanctions taken swiftly including dismissal while those of managers can drag on for years.
46. Most workers did not know where the office of the welfare manager is located and therefore found it difficult to air their grievances because of this. The shop stewards further stated that the harassed workers were afraid of reporting their ordeals to the management out of the fear that they would lose their jobs.
47. The management knew of Mr. Jeremiah Koskei's repeated sexual harassment of female subordinates and the management did nothing to stop him. However, the shop stewards did not substantiate this claim before the Committee.
48. The shop stewards alleged that the management was working with the police to frustrate the reporting of sexual harassment cases among the workers in the Ekaterra tea farm. However, the shop stewards did not substantiate this claim before the Committee.

4.0 ISSUES FOR DETERMINATION

The issues for determination are as per the terms of reference of the inquiry as set by the Committee under paragraph 10 of this report. Based on evidence on record which is from testimonies from witnesses and stakeholder, the Committee analyzes the testimonies and determines the issues as follows-

(i) To establish if there is concrete information on the allegations of sexual harassment of female workers in the various tea estates in Kericho County

49. From their submissions, the County security team had yet to interrogate the BBC reporter who made the expose'. The county security team reported that they had communicated with the DCI headquarters' forensic Laboratory to obtain the full information of the reporter to facilitate his interrogation. The Committee expressed its dissatisfaction with the slow pace this was taking.
50. The victims of sexual harassment cases were not reporting the abuse and the two tea companies reported that they did not have knowledge of the extent of the violations until the expose by the British Broadcasting Corporation (BBC) Africa eye was aired. At the time of the visit by the Committee, there were no incidence reports on the allegations of sexual harassment with the police on the four alleged perpetrators namely Mr. Jeremiah Koskei, Mr Samuel Yebei, (Ekaterra Teas and Infusions) Mr. John Chebochok and Mr. John Asava (James Finlay Kenya).
51. James Finlay Kenya terminated the contract agreement with John Chebochok's company Sislo Holdings. They have also suspended Mr. John Asava. The Company has barred Mr. John Chebochok and Mr. John Asava from entering James Finlay Kenya premises. Ekaterra Teas and Infusions reported that they had suspended Mr. Jeremiah Koskei, and Mr Samuel Yebei, and barred the two named persons from accessing Ekaterra Teas and Infusion premises.
52. There is evidence on record that Ms. Sylvia Den, Regional Managing Director acknowledged that incidences of sexual harassment were happening in the Ekaterra Lipton Teas and Infusions Tea Estates. However, since taking up the post in 2019, she has been putting measures and creating awareness to mitigate the incidences. The Company is working towards a 0.0% rate of gender based violence in the estates. Further, the Company does not outsource labour except for security services.
53. The shop stewards at Ekaterra Teas and Infusions distinguished between incidences of unwelcome sexual harassment and incidences of sex for work, where the sex for work was sought for opportunities for employment, promotions, lighter duties, being graded thus increase in pay. However, no written submissions were presented on the specific incidences or names of persons affected.
54. The shop stewards and the union officials acknowledged that incidences of sexual harassment in Ekaterra Teas and Infusions had decreased since 2019 and that there was raised awareness on how to recognize and report sexual harassment as well as clear policies and sanctions against perpetrators.

55. The Committee observed that although there are sexual harassment policies, trainings and reporting channels available reporting, was minimum which makes it difficult to address the incidences.
56. From the foregoing, the Committee finds that there is credible evidence on record that there is sexual harassment in some tea estates in Kericho County and that though there are sexual harassment policies, trainings and reporting channels available, reporting was minimum which makes it difficult to address the incidences.

(ii) To establish measures the government is putting in place to protect the rights of female workers in these tea estates?

57. The Committee noted that there is a gender office within the grounds of the Kericho Police Station, whose independence was in question having been funded by James Finlay Kenya Tea estate. However, the County Security Team informed the Committee that James Finlay Kenya only provided the funds for construction of the Centre. The Centre is fully manned by the Police Officers and is independent from James Finlay Kenya.
58. The Committee heard that Community Policing as an avenue of reporting information relating to sexual harassment and abuse appeared not to be very active as the incidences of sexual harassment continued happening but not reported. The Security team submitted that there is the Community policing and the Nyumba Kumi Initiative at the Ward Level to enable the citizenry report various issues including Gender based violence.
59. James Finlay Kenya was aware of the documentary on allegations of sexual exploitation but failed to act. Mr. Sammy Kirui, General Manager, Corporate Affairs James Finlay Kenya submitted that the company wrote to BBC requesting for more information regarding the allegations but never got a response. The Company further reported to the Directorate of Criminal Investigations because the issues raised were of a criminal nature.
60. The effectiveness of the various channels put in place to deal with sexual harassment and abuse appears to be poor. Both James Finlay Kenya and Ekaterra Teas and Infusion submitted that all employers have access to reporting mechanisms which include welfare committees, toll free anonymous call number, Bulk SMS for mass communication, use of Notice Boards, Use of suggestion Boxes, training of Village Committees on sexual harassment and other forms of abuse among others. The Companies committed to continuously improve the systems.
61. There are few women in leadership positions at James Finlay Kenya. The composition of women in leadership is 29% at lower management level, 19% at high management level, 6% at junior management level and 24% at senior level management. James Finlay management submitted that it conducts gender surveys and that there is continued effort to be female gender inclusive through management trainee programs for women and training of women in ICT.
62. The criteria used to outsource labour services at James Finlay Kenya was unclear. The Company submitted that it conducts a pre-qualification exercise for the services. Services outsourced include labour, maintenance and construction. However, this was disputed by

the Labour Unions who accused the company of directly procuring the services of the accused person's company Sislo Holdings.

63. The Committee observed that the Government has instituted measures to guard against sexual harassment abuses. These include the enactment of Sexual Offences Act and the Employment Act, Community Policing, the presence of Police Stations, Labour and Gender offices in Counties and other initiatives aimed at enabling women seek guidance on their rights and lodge complaints against sexual harassment. The Committee nonetheless noted that many women were not aware of the initiatives and therefore not making use of them.

(iii) To establish measures the government is putting place to ensure these tea estates adhere to labour laws and implement policy on sexual harassment?

64. The Committee observed that there is a gap in the frequency in reporting of sexual harassment incidences despite the documented available reporting channels. There is a need for collaborative effort by the stakeholders i.e., Labour department, Trade unions and legislators to come up with a clear and better framework for reporting.
65. The Committee enquired on the role of the Labour office in creating awareness on matters sexual harassment and exploitation. The Labour Officer, submitted that the department conducts annual visits to the tea estates. This is not adequate to create maximum awareness of the issues. In the last labour inspection conducted in July and May of the year 2021 at James Finlay Kenya and Ekaterra Teas and Infusion respectively, there was no sexual harassment case was found to have occurs or was reported at the time. He appealed for more funding to aid field activities including awareness talks.
66. The outsourcing of employees through contracts was a weak link in enforcing the sexual harassment policies. For instance at James Finlay Kenya, the alleged perpetrator, Mr. John Chebochok owes Sislo Holding, a company contracted to provide contracted labour to James Finlay Kenya. The contracted company is in charge of performance and retention of employees. The competition for the available scarce employment opportunities for placement leaves the employees prone to exploitation and harassment. The Committee resolved to initiate legislation to govern Outsourcing of labour services.
67. The Committee heard and noted that the minimum constitutional requirement of the one third gender rule may not be effective enough to mitigate cases of Sexual and Gender Based Violence in the tea farms. There was therefore the need to incorporate more women in the organizational structures especially at supervisory level in order to balance out the gender composition in the organizations.
68. The tea companies have policies on sexual harassment in place but the policies were not effective in combating instances of sex for work among employees and their supervisors/managers. There was a prevalence of instances where workers chose to exchange sex for lighter/ better duties. In many instances, people offered sex in order to secure jobs in these tea farms. However, though the same was presented orally to the Committee no persons were mentioned nor written documents presented on the same.

69. Ekaterina Teas and Infusions has 43% of female supervisors and managers and were working towards increasing the numbers to 50 %. The Committee commended these but cautioned against discrimination against the male gender competing for the same positions. Further it advised that the influence and ability to effect change of the female supervisors and managers should be empowered to effectively root out the vice.
70. The Committee finds that whereas workers acknowledged that there are polices to ensure adherence to labour laws, the same workers cited frustration in reporting cases since the culprits were never brought to book. Consequently, many of them were no longer reporting cases to the authorities.

(iv) To establish investigations into the heinous acts to ensure culpable perpetrators are brought to book and justice is served

71. The Committee noted that the investigations by DCI into the allegations of sexual harassment and exploitation were progressing slowly. Further, the Kericho County Security Team reported that they are yet to interview the BBC journalist who made the documentary to receive any evidence on the incidences as reported in the documentary at the time of the visit of the Committee.
72. The four persons named in the documentary as the perpetrators had not been arrested, nor charged in a court of law since no victim had filed complaints against them to the police. The Labour Officer, Kericho County did not report the frequency of their visits to the tea estates on matters sexual harassment. There is one Labour Officer in the whole County and this may affect the quality and quantity of his visits.
73. The Committee observed that without credible evidence, DCI's investigation may not sustain a successful prosecution against suspects and appeals to culprits to record statements and furnish evidence to DCI.

5.0 COMMITTEE RECOMMENDATIONS

74. Based on the submissions received and having determined issues forming the inquiry subject, the Committee recommends as follow-
- (i) **The Directorate of Criminal Investigations should fast track their investigations to identify victims of the alleged sexual harassment and bring those found culpable to book;**
 - (ii) **The victims of the sexual harassment in the tea estates should report the incidences to the police for investigation and criminal prosecution of suspects;**
 - (iii) **The victims of sexual harassment should report the incidences to the County Gender Office and the County Labour Office for investigation and counselling services;**
 - (iv) **The Tea Estates should terminate contracts especially for outsourcing labour in the lower cadre jobs except for exceptional services like security services to mitigate against contractors having opportunities to sexually harass job seekers and contracted employees so as to get and keep their jobs. In James Finlay Kenya, where contracts for outsourcing for labour are prevalent, one of the named contractor Mr. John Chebochok is accused of perpetuating sexual harassment in order for persons to secure and maintain jobs.**
 - (v) **The tea estates should ensure that the duties defined as difficult in the estates are made rotational to prevent workers from undertaking such duties for too long thereby creating an avenue for sexual exploitation in order to be assigned lighter duties;**
 - (vi) **The tea estates should incorporate more women especially at the supervisory role in order to ensure gender inclusivity and further reduce occurrences of male workers harassing their female subordinates in a bid to exchange sexual favours or opportunities for sexual harassment for lighter duties;**
 - (vii) **The tea estates should reduce the number of bureaucratic layers of management in their organizational structure in order to improve flow of information from the low cadres of staff all the way to top level management and vice versa which will improve reporting of incidences;**
 - (viii) **The Tea Estates should re-structure and re-organize their current management team since there were incidences of sexual harassment under their watch and for those reported, there were complaints that there were not much done to remedy the situation nor disciplinary action taken against the alleged perpetrators.**
 - (ix) **The Labour Office, Ministry of Labour and Social Protection and the Gender Office, Ministry of Public Service, Gender and Affirmative Action, Kericho**

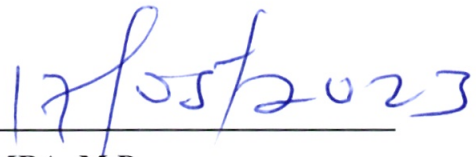
County should increase the frequency of visits to the tea estates in Kericho County and provide mechanisms through awareness creation that such incidences can also be reported to the government offices for action.

- (x) Where the tea estates are found culpable of acts of commission or omission regarding the sexual harassment of their employees, the Government should ensure that the tea estates adequately compensate the victims for the damages occasioned by the heinous acts”; and
- (xi) The Government should provide psychosocial support to the victims to mitigate the effects of these traumatic experiences and aid them in their recovery”.

SIGNED: _____



DATE: _____



HON. ERIC MUCHANGI KAREMBA, M.P.

CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR