A Comparative Study of the Tea Sector in Kenya

A Case Study of Large Scale Tea Estates

KHRC, 2008

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Abbreviations

CBA	Collective Bargaining Agreement
CEDAW	The Convention on the Elimination of all Forms of Discrimination against Women
CPDA	Christian Development Partners Agency
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
DLO	District Labour Officer
EATTA	East African Tea Trade Association
EPZ	Export Processing Zones
ERS	Economic Recovery Strategy for Wealth and Employment Creation
ETI	Ethical Trading Initiative
ETP	Ethical Trade Partnership
FAO	Food and Agriculture Organization
FDG	Focus Group Discussions
FLO	Fair-trade Labelling Organization
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPC	Investment Promotion Centre
ISO	International Standardization Organization
KHRC	Kenya Human Rights Commission
KGS	Kilogram
KPAWU	Kenya Plantation and Agricultural Workers Unions
KTDA	Kenya Tea Development Agency
KTGA	Kenya Tea Growers Association
Kshs	Kenya Shillings
MNCs	Multinational Corporations
MT	Metric Tonnes
MUB	Manufacturing Under Bond
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
SAN	Sustainable Agricultural Network
SAPs	Structural Adjustment Programmes
SCDA	Special Crops Development Authority
SOMO	Centre for Research on Multinationals
TREO	Tax Remissions for Export Office
TRFK	Tea Research Foundation of Kenya
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
USD	United States Dollar
VAT	Value Added Tax

Section One: Introduction

The Kenya Human Rights Commission (KHRC) in November 2006 carried out an informal investigation into labour issues in the tea sector in Kericho. This informal study placed emphasis on large scale tea estates – James Finlays and Unilever Tea Kenya – which are primarily foreign owned. The team of KHRC staff held group discussions with 8 workers in the tea estates. During the group discussions, the workers spelt out a range of violations that they experienced in their places of work. The workers reported cases of discrimination where potential female workers had to undergo a medical examination and if they were pregnant they would be certified as unfit and would not be employed. 'Permanent' casual status of employees was registered as a violation; the workers noted that there were cases where some workers had worked as casuals for up to 10 years. Such workers would work for 3 months, break for 1 month and resume their duties for another 3 months. This trend continued through out the year. This pattern of employment was used by the management of these farms as a means to circumvent the repealed Kenyan labour laws. Child labour was also reported by the workers. The workers reported that some of them were forced to ask their children for help when plucking tea due to the high targets that were set by the management of the estates. The workers noted that if they were unable to meet their targets they risked being fired and to counter this, most chose to get their children to assist them.

This investigation was done in preparation for a strategy meeting on Corporate Social Responsibility (CSR) in the global tea supply chain, that the KHRC had been invited to participate in. The main aim of that meeting was to provide a platform for transparent exchange of information regarding developments in the tea sector with special emphasis on the behaviour of the private sector and the impact of CSR initiatives. During this meeting, presentations were made by different certification initiatives such as Ethical Tea Partnership (ETP), Rainforest Alliance and Fairtrade Labelling Organization (FLO). Emerging issues during this meeting were among others: why the many initiatives? Were these initiatives useful in helping to achieve sustainable development? The outcome of this meeting was the proposal to conduct a comprehensive international comparative research study. It had been noted that there was a global slump in the price of tea; Unilever for instance has reported that the real price of tea has fallen by more than 15 per cent since 1980[1] while the supply of green leaf has steadily increased on the global front. The decrease in prices had negatively affected the working conditions and livelihoods of workers and small scale farmers. However despite this slump, it has been noted that market players such as Unilever (Lipton's Tea) and Tata Tea have continued to make large profits from this sector.

To this end, the Centre for Research on Multinationals (SOMO) approached the KHRC to partner with Christian Development Partners Agency (CDPA) to carry out research on the tea sector in Kenya. The rationale behind this research was that comprehensive data on ecological, social and economic conditions in the tea supply chain was generally lacking.

Objectives

This research study is based on two Multinational Corporations (MNCs) – Unilever Tea and James Finlays – and their operations in Kericho. Generally the study aimed to assess the working conditions and terms of service for workers in the low cadre of employment at the tea estates. The study also aimed to investigate the CSR initiatives of the 2 MNCs.

The aims of this research were:

1. To identify critical issues in the tea sector in Kenya from the perspective of sustainable development and poverty eradication
2. To assert social, economical and ecological conditions under which global tea production and trade takes place and the impacts of the industry on sustainable development and poverty eradication
3. To identify and assess the different quality systems active in the global tea industry throughout the value chain and analyse the role and responsibility of global tea market players, including identification of key influence points for responsible practices
4. To analyse opportunities and bottlenecks for tea (production, processing, (retail) packing) exports in tea producing countries and to make recommendations to various stakeholders on how to improve conditions in the global tea supply chain

Methodology

The research methodologies that were utilised in this research study included in depth interviews and focus group discussion (FDG) with workers in the 2 large tea estates in Kericho. The researchers carried out individual interviews with a total of 30 workers from Unilever and James Finlays tea estates. A FGD composed of 14 workers was also held. The criterion used to select the workers was: employment status that is, both permanent and casual workers, sex, supervisors, team leaders and pluckers were also interviewed. Individual interviews with the companies' management, the Kenya Tea Growers Association (KTGA), the Tea Board of Kenya, the District Labour Officer (DLO) and the Kenya Plantation and Agricultural Workers Union (KPAWU) were also

1 SOMO, Profound and India Committee of the Netherlands, Sustainabilitea: The Dutch Tea Market and Corporate Social Responsibility March 2006

carried out. Desktop research on policy and legal framework of the tea sector and studies done on the tea sector was also done.

A Background into Agricultural Production in Colonial Kenya

The British government used various incentives to entice its British citizens to move to its new colony – Kenya. Advertisements appeared in the British newspapers branding the colony as an attractive destination for agricultural production:

> "Settle in Kenya, Britain's youngest and most attractive colony. Low process at present for fertile areas. No richer soil in the British Empire. Kenya Colony makes practical appeal to the intending settler with some capital. Its valuable crops yields, due to the high fertility of the soil, adequate rainfall and abundant sunshine. Secure the advantage of native labour to supplement your own effort.2"

The effect of such advertisements was the thronging of thousands of British settlers to the colony, it has been estimated that by 1905 three thousand (3,000) settlers had docked in the Mombasa port.

The settlers who arrived in colonial Kenya were guaranteed fertile land that had been confiscated from the indigenous Africans. Famous early settlers such as Lord Delamere owned about 100,000 acres in 1903 and acquired another sixty thousand 60,000 acres. Other settlers acquired landholdings which were much smaller than the Delamere estates however; these were also impressive in size.

To ensure that the British settlers had adequate labour to toil on their large scale farms, the colonial administration in Kenya used four main strategies to force indigenous Africans into the wage economy that they had created. Firstly, the colonial administration confiscated fertile African land and forced the indigenous inhabitants of this land into reserves. Secondly, the administration introduced hut and poll tax. The result of these taxes was that thousands of Africans started looking for work in the settler farms. Third, the administration introduced the identification card or ***Kipande*** system for all African adult men leaving the reserves; this was introduced as a strategy to control the movement of Africans. In consequence to the growing number of Africans who adapted to the new colonial economy and started producing and selling their surplus maize to the internal market, the administration was forced by the settlers to forbid Africans from growing the most profitable cash crops such as tea, coffee and sisal.

The "Booming" Tea Industry in Kenya

Tea was first introduced to Kenya in 1903 from India by a European settler GWL Caine. The British Colonial Administration started exporting it to London by 1933. The cultivation of tea in the colonial period was basically the preserve of the British settlers. After independence in 1963, the cultivation of tea was

2 Caroline Elkins Britain's Gulag: The Brutal End of Empire in Kenya, Jonathan Cape 2005

desegregated to African farmers both small scale and large scale farmers who had bought land from British settlers.

The planting and production of tea has rapidly increased since independence in 1963. Tea production has risen from 18,000 tones in 1963 to 294,170 tonnes in 1998. Increased production of tea has guaranteed Kenya the third position after India and Sri Lanka, in the global tea exporters list and commands 21 per cent of all tea exported to the world and 10 per cent of the global tea production. Pakistan ranks as the highest importer of Kenyan tea at 37,900,000 kgs at a value of Kshs. 5.7 billion, the UK ranks third with total tea imports at 18,600,000 kgs at a value of Kshs. 2.81 billion; the Netherlands is placed at twentieth position with imports of 261,343 kgs at a value of Kshs. 48.6 million[3].

Small scale farmers have continued to play a vital role in the cultivation of tea in Kenya; it is estimated that small scale farmers contribute up to 60 per cent of the total crop in the country whereas large scale tea estates contribute 40 per cent. The tea sector employs 3 million people – directly and indirectly – a figure which is translated to about 10 per cent of the population[4].

The table[5] below elucidates the increases in exports of tea and total revenue generated from the sector:

3 This figures reflect the period January to June 2006 and were obtained from the Tea Board website www.teaboard.or.ke
4 The Tea Board www.teaboard.or.ke
5 The figures are derived from various Economic Survey Reports (1998 – 2006)

Table 1: Total Exports of Tea and Marketed Production at Current Prices

Year	Total Exports	Total Revenue (Kshs. Million)
1998	263,023,210	39,138.0
1999	241,739,293	31,087.6
2000	216,989,625	35,969.8
2001	270,151,810	38,564.5
2002	272,458,768	33,414,7
2003	269,961,799	34,631.1
2004	333,802,071	41,212.2
2005	349,738,362	38,829.9
2006	313,720,495	45,162.0

Key Players in the Tea Sector

The Tea Board

The Kenya Tea Board was established in 1950 and it operates through an Act of Parliament, the Tea Act (Cap. 343 1979) and the Tea (Amendment) Act 1999. The Tea Board's mandate is, "to regulate tea growing, manufacture and trade and to carry out research and promotion of tea." The Act outlines the structure and functions of the Tea Board. The Act spells out the functions of the Board as:

1. To license tea growers
2. To license tea factories

3. Registration, control and improvement of cultivation and processing of tea
4. To control pest and diseases
5. To control export of tea
6. Investigation of, research into all matters relating to the tea industry

Some of the functions of the Board were changed through the Tea (Amendment) Act 1999. The Amendment Act repealed the first function of the Board which was licensing of tea growers and repealed the last 2 functions and amended these to read:

1. Monitoring trade in tea through registration of any person dealing in tea (as stipulated in the Tea (Amendment) Act
2. Coordination of training in all matters relating to the tea industry

The Kenya Tea Development Authority/Kenya Tea Development Agency

The Special Crops Development Authority (SCDA) was established in 1963 to carry out research on crop husbandry and tea processing. The SCDA was transformed to the Kenya Tea Development Authority through an Act of Parliament.

The Kenya Tea Development Authority was the successor of the SCDA and it was established to provide services to small holder tea farmers such as planting materials, fertilizers and extension services, inspecting and collecting green leaf from respective buying centres, processing and marketing of tea.

In the 1990s, the Kenya government made strides to liberalise the tea sector through the Bretton Woods prescribed structural adjustments programmes (SAPs). The aim of liberalizing the tea sector was to ensure the elimination of bottle necks that limit the production of tea and in turn enhance the central role played by agriculture and in this case tea, in poverty alleviation and in the generation of foreign exchange reserves. Through the liberalization measures employed, the government decreased its control over the Kenya Tea Development Authority and the parastatal was transformed to the Kenya Tea Development Agency (KTDA), which was not answerable to the government. This move was however overhauled in November 1999. Other changes made to the tea sector to abide by the Bretton Woods liberalization policies were:

- Equity and shares of KTDA would be purchased by small holders of tea
- Governance and management of tea factories would be done by elected officials

The role of KTDA was changed to that of an agent whose primary role was to collect and process tea and was charged with the mandate of marketing the tea.

The Tea Research Foundation of Kenya (TRFK)

The TRFK is the successor of the Tea Research Institute of East Africa and was established in 1980. The main aim of the TRFK is to, "promote research and investigate problems related to tea and such other crops and systems of husbandry as are associated with tea throughout Kenya including the productivity (yield), quality and suitability of land in relation to tea planting; and matters ancillary thereto.[6]" Since inception the Foundation has developed and released to tea growers forty-five clones of suitable tea.

The Kenya Tea Growers Association (KTGA)

The Kenya Tea Growers Association (KTGA) which was established in 1931 is a voluntary organization of large scale tea growers and is based in Kericho. The association's principal aim is to address the common interests of the large scale growers. The role of KTGA includes lobbying and reinforcing linkages with and between stakeholders on matters affecting large scale tea operations.

The East African Tea Trade Association (EATTA)[7]

The East African Tea Trade Association (EATTA) is a voluntary organization that brings together tea producers, brokers, tea packers, buyers and warehouse people. The functions of the association are:

1. To facilitate the Mombasa Tea Auction operations
2. To facilitate the settlement of disputes within the trade
3. To promote the best interest of the tea trade in Africa
4. To compile and circulate statistical information to assist members in their operations
5. To promote close relations within the tea industry

The association is composed of a Management Committee which comprises of 6 producer representatives, 6 buyers, 3 brokers and 1 warehouse representative elected annually at the Annual General Meeting (AGM). The Committee is mandated to elect a Chairperson and a Vice Chairperson. The Committee is also mandated to co-opt other members to the Committee. The Tea Board of Kenya, the Uganda Tea Association and the Tea Association of Tanzania are all co-opted members of the Committee. The day to day operations of the EATTA are managed by a Secretariat based at the Tea Trade Centre in Mombasa.

The Mombasa Tea Auction

In November 1956, the Export Auction System was initiated under the management of the EATTA in Nairobi and most of the tea produced was consigned to the United Kingdom. In 1969, the auction centre was moved to the Port of Mombasa which was the nerve centre of warehousing, handling and shipping. The Mombasa Tea Auction, consists of a main grades auction and secondary grades auction, and is held weekly on Mondays. The Mombasa Tea Auction has grown to be the second largest tea auction in the world after the Colombo Tea Auction in Sri Lanka.

Tea Estates under Review

As noted above in the methodology, this research study focused on two of the largest tea estates in Kenya – Unilever Tea Kenya Limited (Ltd.) and James Finlays (Kenya) Ltd. Unilever Tea

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6 www.tearesearch.or.ke
7 Information derived from the East African Tea Trade Association website, www.eatta.com

for example produced 32, 370 metric tonnes (MT) of tea in 2002 and James Finlays produced 23, 617 MTs in 2002.

The table below illuminates the tea production in the largest tea estates in Kenya

Table 2: Tea Production in the large tea estates in Kilograms (KGS)

Company	No. of Factories	YEAR				
		1998	1999	2000	2001	2002
Unilever Tea (Brook Bond)	20	33,066,978	26,846,338	26,846,838	32,199,121	32,370,211
James Finlays	15	22,834,067	17,271,981	17,217,981	21,806,868	23,617,706
Eastern Produce Kenya Ltd.	7	19,008,187	14,591,929	12,582,638	17,004,314	16,636,427
Williamson Tea Kenya Ltd.	3	10,538,508	8,462,606	8,443,672	10,074,383	9,159,006

Source: Tea Board of Kenya[8]

1. Unilever Tea Kenya Ltd.

Unilever Tea Kenya was from 1922 to 2004, known as Brook Bond Kenya. Brook Bond acquired their first potion of land in Limuru which measures about 400 hectares and also built the Mabroukie Factory. Brook Bond changed its name to Unilever Tea Kenya in 2004. Unilever Tea Kenya has tea estates in Kericho and in Limuru. There is also a sales office in Mombasa and the headquarters of all Unilever tea operations are in Nairobi. Unilever Tea employees more than 20,000 people who have more than 80,000 dependants. Unilever owns 8,250 hectares under the production of tea; it produces 160,000 tonnes of green tea leaf and 36,800 tonnes of black tea. The company owns twenty tea estates and eight factories manufacturing an average of 32 million KGS of tea annually. According to their website, the company's contribution to the economy has increased from Kshs. 0.25 million in 1972 to Kshs. 5.5 billion in 2007[9].

Unilever Tea is a public listed company having been listed in the Nairobi Stock Exchange (NSE) in 1972. The company's financial review from 2002 to 2006 shows that its profits have been falling from Kshs. 124 million in 2002 to Kshs. 62 million in 2003, rising in 2004 to Kshs. 360 million and falling in 2006 to Kshs. 52 million.

The table below is a presentation of the company's financial review:

8 Jacinta M. Kinyili (2003) Diagnostic Study of the Tea Industry in Kenya, Export Promotion Council

9 www.unilever.co.ke/ourcompany/aboutunilever/introducingunilever/teaeastafrica.asp

Table 3: Financial Review of Unilever Tea Kenya[10]

Year	2002	2003	2004	2005	2006
Net Profit (Kshs. '000)	124,029	62,254	360,946	67,603	52,096

2. James Finlay (Kenya) Limited

James Finlay started planting tea in Kericho in 1925. James Finlays is wholly owned by John Swire and Sons Limited UK. James Finlay's vision is to be, "the global market leader in the production of high quality and safe teas." To achieve this vision, the company's mission is, "(to) earn this leadership by producing consistently high quality and safe tea through cost effective, ethical and environmentally sound practises for the benefit of our customers, our human resources and community around us." The company boosts of having 5,554 hectares under the cultivation of tea and its annual exports of tea from its 15 estates is worth Kshs. 4 billion (approximately USD 590 million). The company employs 14,710 employees and have 55,000 dependants. The total land area under James Finlay's tea is 5,908 hectares[11].

10 Nairobi Stock Exchange, Handbook 2006, 7th Edition
11 Brief Overview of James Finlays Kenya, report presented to the researchers by the management

Section Two: The Benevolent Multinationals

The workers, both permanent and casual, are entitled to a number of benefits that are provided for by the 2 companies. The benefits include free health care provision, housing, water, schools for their children and a few workers are allocated small portions of the land where they can grow food crops for their daily sustenance.

Each of the companies provides clinics or dispensaries in each of their tea estates. These are manned by nurses and medical officers and are equipped to cater for minor illnesses. Each of the companies has a hospital which caters for major illnesses and in-patient care for all their workers. In the case of James Finlays, the hospital has a bed capacity of 106 which is run by trained medical staff, the company also has 21 "satellite dispensaries" of which 19 are health centres and 2 are dispensaries. Unilever has a hospital which has a theatre for surgical procedures, maternity care and laboratory facilities. The company also has 4 health centres, 23 dispensaries and runs a comprehensive HIV/AIDS programme.

This privilege as noted above is extended to both permanent and casual workers, however it discriminates the dependants of casual workers who are charged a fee for use of the benefit. The enormity of this project is exemplified by the costs that each company spends on medical provision for its workers which translates to over Kshs. 100 million incurred by each company[12].

Both companies have built and maintain educational facilities within their estates for workers' dependents. This benefit is non discriminatory in regard to the employment status of the worker. James Finlays boast of 16 primary schools and 1 day secondary school. The company also provides secondary scholarships to 50 students annually who are children of employees and children from the neighbouring communities of Kericho, Bureti and Bomet districts. Unilever lays claim to 20 primary schools, secondary schools and nurseries. Unilever also provides full university scholarships, 24 of these go to the communities neighbouring the company – Kericho, Bureti and Bomet Districts, 30 of the scholarships are taken up by employees' children.

The companies provide housing and water to their workers. In each of the estates, a section of the land is allocated to the provision of housing for workers and these are known as estate villages. Certain sections are also allocated to the different cadres of employees. In each village, there are communal toilets and

12 James Finlay in 2006 spent Kshs. 120 million on medical care

'bathrooms[13]' that are disaggregated according to sex. Unilever for example, has constructed 12,500 houses for their workers. Unilever also provides chlorinated water to estate villages and are working towards improving the sanitation standards in the villages. The companies have provided a community centre in each of the villages which is composed of a shop, butchery, a bar and a large room that is used for meetings. The shops sell an array of groceries from vegetables to cooking oils and are owned by retired workers. The workers are allowed to take groceries and meat from the butchery and the grocery shop on credit and their expenditure is deducted from their wages.

The Case for Workers

Living in Indignity

The companies in their benevolence provide housing for their workers in the estate villages. For Unilever, the houses are painted white on the outside and have a silver roof while at James Finlay the houses are red with a brown/black roof. The architecture of the houses is basically the same. There are one roomed round houses and two roomed houses that are predominately rectangular. Allocation of houses is done by the 'village elders' who allocate the houses depending on marital status, employment status and in some cases in exchange of sexual favours.

13 The 'bathroom' is basically a shelter with no running water but a provision is made for drainage of the waste water used.

Casual workers at the tea estates are usually allocated the one roomed house which they have to share with other casual workers. The workers interviewed noted that in the past housing was not a major problem because each person was allocated their own house. However the situation at present is that sharing of houses is especially common and the situation becomes bleak when the production of tea is high and casual labourers are employed. The magnitude of the problem was best exemplified by a worker from Unilever who has worked for about 24 years. She explained that previously a family was allocated a two roomed house however currently due to shortages in housing, casual workers have to share a two roomed house and there are times that up to six workers share the same house. Another worker interviewed, noted that when he was single he had been allocated a grass thatched house which he used to share with three other men. This worker noted that sharing of houses is a catalyst for acrimony for the 'housemates'. A casual worker from Unilever noted that their housing situation was pathetic and the sharing of houses causes conflict. The worker noted that the workers use one kitchen, share the same bed, same table and same chairs. The workers were placed in a situation where they are forced to do everything together for convenience. The worker noted that, ***"you can imagine living with someone whom you have (a) character clash with, you are squeezed between harsh working conditions and harsh conditions at home, this is not easy for many people, (and) in fact housemates fight in this***

estate everyday for things as small as someone used all the salt or sugar."

Besides the lack of privacy posed by the sharing of houses, the actual allocation of the houses is riddled with allegations of corruption, tribalism and sexual harassment. Workers interviewed noted that relocation to a more adequate house is used as tool of punishment and reward by the village elders. One worker who was in the welfare committee that allocates houses, noted that workers who are perceived as being, ***"non compliant"*** are not relocated good houses. The same worker conceded that the reason that he lived in one of the more preferable houses in the village was due to his position in the welfare committee. A worker from Unilever noted that the village elders abused their power to allocate houses by asking single women for sex in exchange for housing. The worker noted, "***all the village elders are men and so for a women you have to face the reality, if you want accommodation then you have to talk to them nicely and this would even mean going out (having sex) with them***"

The deplorable condition of the houses was one of the issues that were raised by the workers. Some of the workers complained that their houses leak and have not been painted for a number of years. This grievance was also noted by the researchers through their observations. One particular house in Unilever caught the attention of the researcher who noted that, ***"X lives in a round hut like-house with an iron roof and painted white in the outside. From the outside one would be deceived to think that the neatly painted white exterior also applies in the interior. The house is unusually dark; the walls could have once in the distant past been white however the colour seems to be a mixture of brown, grey and black. The house is basically one roomed and X has separated the 'kitchen' area and the 'bedroom' area with a wade of old bed sheets. X has very little furniture in her 'kitchen/ living room' besides 3 old wooden chairs and a stool that I used during the interview."*** Another worker at Unilever noted that he lives in a two roomed house however the room used as a kitchen has a leak on the roof and despite constantly reporting to the management the leak has not been repaired. The same trend was noted at James Finlay where one worker raised an interesting issue in regard to the allocation of the houses and their conditions. The worker noted that in some estates the workers had been moved to other houses to pave way for machine operators[14]. The worker claimed that the houses that they had been allocated were deplorable, there were constant complaints of leaks and the houses had not been painted.

Sexual Harassment

Sexual harassment was one of the violations that was predominately highlighted by all the workers interviewed from both companies. A former worker from James Finlays noted that a female worker can be told by the ***Nyapara*** (the supervisors are commonly referred to using this term) to remain behind in the just plucked section, if the woman refuses to obey the directive, the ***Nyapara*** looks for any excuse to get the woman fired. A similar

14 Machine operators are the workers who use machines to pluck tea

experience was shared by a worker from Unilever who noted that sexual harassment was prevalent in the estate that she worked in. The worker noted that women pluckers who refused the sexual advances of their supervisors were targeted. If the woman for example, reported for duty late, the 'aggrieved' supervisor would use this as reason to fire the woman as punishment. The women have no form of redress, the worker noted that when such cases are reported to the assistant manager, the woman was usually told to negotiate with the supervisor or in some cases the woman would receive verbal abuse. Another worker interviewed from Unilever noted that, ***"sexual harassment is a serious problem because all the supervisors are men, some of them want you to go beyond your work obligations and satisfy their sexual needs and if you don't do that, they fake other charges on you or give you too much work or allocate you lonely or dangerous plucking zones."*** A peer educator from Unilever conceded to the prevalence of sexual harassment and its impunity. The worker noted that cases of sexual harassment were 'solved' by either bribing the supervisor to take up the issue or if the perpetrator was from the same ethnic group as the assistant manager the complaint would not be taken seriously. The worker attributed the rampant cases of sexual harassment in the estates to the fact that a majority of the supervisors at the estates did not live with their wives.

The prevalence of sexual harassment in the tea estates of James Finlays and Unilever was denied by both companies' management. The James Finlays management conceded that sexual harassment was a major issue in the past however it had been dealt with. The management noted that a gender and sexual harassment policy had been developed and the company was in the process of setting up gender committees which would be mandated to handle cases of sexual harassment. Cases of sexual harassment could also be reported to the Ethical Trade Manager who is a woman. In the case of Unilever, the management conceded that employee relations were governed by the Unilever Code of Business Principles which was available to all workers in English and Kiswahili. According to the Unilever management, the Code of Business Principles clearly spells out the reporting mechanism in which employees can use if they are aggrieved. The management noted that at Unilever cases of sexual harassment are treated with the seriousness that they deserve. An aggrieved worker can report the allegation of sexual harassment to the line manager or can report directly to the Human Resource Business Partner. Unilever also provides the option of reporting the case directly to their London office – a hotline has been provided where workers can report cases of sexual harassment either through email or can call directly. The management noted that they receive many allegations of sexual harassment however after careful investigation by the management it is determined that most allegations are "spurious malice," the management also receives a number of anonymous cases however they are unable to act on them because there is no complainant. Unilever has a Sexual Harassment Policy in place that applies to all workers at Unilever whether they are permanent or casual. The sanctions that are provided by the policy are verbal warnings and in some cases summary dismissals may be utilised.

The Disposition of Promotions and Employment

Most of the workers interviewed noted that promotions and employment at both companies were largely determined by ethnicity.

The Unilever Business Code of Conduct, states that Unilever, "will recruit, employ and promote employees on the sole basis of the qualifications and abilities needed for the work to be performed.[15]" However the perception from Unilever employees was that ethnicity played a critical role in employment and in promotions. A factory worker from Unilever noted that the key requirement to be employed at the factory was an O-Level certificate, other requirements include being in possession of a national identity card, the National Health Insurance Fund (NHIF) card and the National Social Security Fund (NSSF) card. The factory worker however commented that despite being in possession of these requirements, the ethnicity of the individual was imperative for promotion.

One worker raised his suspicions about the ethnic role played in promotions by noting that, ***"No doubt you could be having all the papers but for as long as you do not speak Kalenjin then your chances of getting employed or promoted in the factory is close to nil."*** Another worker interviewed from Unilever observed that the manager and assistant manager from his tea estate had promoted a number of people, all of whom were from their ethnic group. The supervisors, he noted also recommended the employment of casual labours from their ethnic group.

Similar complaints were also raised from James Finlays where one worker noted that previously supervisors were promoted from within the 'gang members' and was solely based on experience. The worker however lamented that, ***"nowadays they (the supervisors) are brought by 'God fathers'. Many of the supervisors lack experience and interpersonal skills. Most of them are Kalenjin men because the top management is also Kalenjin that is the reality around here!"***

The Unilever management denied these perceptions and noted that promotions at Unilever were conducted on a meritorious basis. The management however conceded that "58 per cent" of top level management at Unilever Tea were from one ethnic group. A similar trend was observed by the researchers at James Finlays during the management interviews where 4 out of the 6 of the managers were from one ethnic group. During an informal discussion one of the managers noted that the trend was perpetuated during the previous regime and employment was used as a tool to compensate the indigenous people of Kericho who had lost their land to the MNCs.

15 http://www.unilever.co.ke/ourcompany/aboutunilever/introducingunilever/teaeastafrica.asp

Medical Tests

Potential employees at both companies are mandated to take a medical test before they are employed; this was attested by all workers that were interviewed. A male worker from Unilever noted that before he was employed he underwent a medical examination where he was asked to remove all his clothes for a physical examination. The worker responded that he was never informed what tests were to be carried out. Some of the female workers interviewed stated that women were subjected to a pregnancy test. If the tests revealed that the woman was not pregnant her form would be stamped 'fit' however if she was pregnant the form would not be stamped. Potential female employees who were in possession of a family planning card were not be subjected to the pregnancy test. The same trend was noted at James Finlays where a female worker noted that all potential employees have to take a medical test at the estate dispensaries and in some cases in the hospital. She noted that the tests are done to check for pregnancy and open wounds. The worker stated before she was confirmed she was taken to the hospital where she took a urine test. She was never informed what tests would be run.

The James Finlays Management strongly denied the perception that pregnant women are denied employment at the company. The Management noted that pregnancy tests are done to ensure that pregnant women are allocated light duties. In regard to other tests that are done, the management stated that they check for allergies and for asthma. This is done to ensure that the employee is not allocated to tasks that could be injurious to their health. The Management noted that they also check for open wounds and other scars that the potential employee could have had. From their experience they noted that employees had sued the company for injuries that the employees claimed they had received in pursuit of their duties.

The Unilever management too denied this perception that pregnant women are discriminated in regard to employment. However they did not state what medical tests are carried out.

Child Work

The use of child labour is prohibited by the management of both companies. The Unilever management noted that the minimum age for plucking of tea is 18 years. In the past, Unilever had a child helper policy where children above the age of 14 years were allowed to help their parents pluck tea during the school holidays. Unilever would provide refreshments to the children and parents during such arrangements. This policy is now redundant. Most of the workers interviewed noted that there was no use of child labour in the tea estates. However 2 workers from different estates of Unilever noted that some supervisors allow the employees to use child helpers. One of the workers revealed that employees are allowed to use 'helpers' however this depends on the team leader. The worker noted that some team leaders ask the helpers for identity cards however most do not. The team leaders demand for bribes ranging from Kshs. 300 to Kshs. 800 to allow the children to work.

The District Labour Officer and the trade union official noted that they had not received any complaints of child labour in any of the companies.

Some workers complained about the blanket ban on child helpers. These workers noted that in the past their children were allowed to help them pluck tea. The windfall payments that the parents would receive would go towards school fees and new uniforms. However the ban had forced parents to work more to ensure they meet their obligations to their children.

Despite the information that was received from the workers interviewed, the researchers were unable to get any comprehensive evidence to back up the claim that children do work on the tea estates.

Letters of Appointment

The old Employment Act clearly stipulated that a written contract of service be issued to employees who work for a designated period of more than six months[16]. However 60 per cent of the permanent workers who were interviewed during this research study indicated that they did not have written contracts or letters of appointment. Most of the workers interviewed had worked for more than three years at the plantations without any letters of appointment. This was confirmed by the DLO who noted that he had to push the management of both companies to issue their employees with letters of appointment. This was also confirmed to the researchers by the trade union representative who noted that the trade union had written to the management of both companies requesting them to issue their employees with letters of appointment. The union representative noted that the letters of appointment that had been issued were largely flawed because they did not capture vital information such as the actual contracting dates. This was attested to by the workers who were interviewed. One worker for instance noted that he was only issued with his letter of appointment in 2006 after the DLO ordered the factory management to issue all the employees with appointment letters. He however laments that the letter he got was not backdated and shows that he was employed in 2006 instead of 2004 when he was employed[17]. In some cases it was noted that the letters of appointment were issued in English yet some of the workers could not read or write in English.

Casualization of Labour

Majority of the workers interviewed indicated that permanent employees had not been employed in the tea estates for periods ranging from 3 to 4 years ago. A Unilever employee, who has worked for over 25 years, noted that the last permanent worker employed was in 2004. The same case applied in James Finlay where workers noted that the permanent workers were last employed in 2004.

16 This provision has been revised in the new Employment Act which stipulates that written contracts have to be issued to workers who are engaged for periods longer than 3 months

17 Please see *Appendix I* for the attached Letter of Appointment

The management of both companies confirmed that permanent workers had not been employed in the tea estates and were instead depending on casual labourers. The reason given for this was the high costs of labour. The management of both companies claimed that they were promoting flexibility in the workforce. The trade union representative confirmed that the companies were not employing workers on a permanent basis. The representative noted that the justification for this was that the companies were cutting back on their costs. The union had challenged however guardedly the companies on this premise. The position of the union was that they could not pressure the companies to employ people on a permanent basis because this could render the companies insolvent and the union did not want to be in a position where jobs were lost due to high labour costs.

Casual labourers are ideally meant to work for periods of three months; the system at Unilever had however changed to retain casual labourers for periods of 6 months. However some of the casual labourers interviewed noted that they had worked for periods as long as 6 years. The Unilever management dismissed the claim that there were casual labourers who have worked for such long periods, the management noted that the cases were reported to the research team were exceptional and it was not the norm to retain casual labourers for such long periods.

The DLO conceded that casualization was a rampant problem in the tea estates; he noted that this was because the law was not clear on the period in which a casual or temporary worker could be employed for. The DLO indicated that the employers seemed to be aware of this loophole in the law and were thus taking advantage of this.

Mechanization of Tea Plucking

The issue of mechanization of tea plucking gained popularity in May 2006 when at the Labour Day celebrations the Central Organization of Trade Unions (COTU) Secretary General Francis Atwoli declared that over 500,000 people were at risk of losing their livelihoods due to the introduction of the tea plucking machines. The former Minister of Labour Dr. Newton Kulundu announced that the government would not allow the mechanization of tea because this would challenge the government's efforts to create 500,000 jobs as enshrined in the Economic Recovery Strategy Paper for Wealth and Employment Creation (ERS). The Minister indicated that his ministry had taken steps to avert a dispute between the union and the Kenya Tea Growers Association (KTGA), the steps that had been taken by the ministry included hosting a 2 day meeting between both parties.

In Nandi Town, a tea growing hub, the Kenya Plantation and Agricultural Workers' Union (KPAWU) national treasurer on 1st May 2006 led workers in a peaceful demonstration. Before the procession, the trade union official had announced that due to the tea plucking machines over 80,000 people would be rendered jobless. On 3rd May 2006, the Minister of Labour announced that he had instructed the companies to revert to using the machines on 3 per cent of their plantations as dialogue continued. The

COTU Secretary General on 4th May 2007 however issued a, 21 day strike notice to all tea growers. The strike however did not materialise. As the controversy of the plucking machines gained ground, the management of James Finlays issues a Press Release on 6th May 2006 to clarify the use of the plucking machines. The management noted in their Press Release that the public had been misinformed on the issue of the machines.

The problem of mechanization was most pertinent to James Finlay. It was during the heated debate that 28 workers from James Finlays were sacked. According to the workers and the union, the workers were sacked because they participated in the strike.

Some of the workers interviewed claimed that there was no trade union representation in their estate because workers were scared to take up leadership in the event that they were targeted like their former colleagues. Some workers as noted above felt that machines were introduced to replace them. Some workers noted that the machine pluckers lived in better conditions, were paid more and that they were being moved to inhabitable houses to pave way for them.

The DLO indicated that the tensions over the tea plucking machines had arisen when James Finlays completed their green tea factory and consequently started using the machines at 'large scale'. According to the DLO, the issue of mechanization had created tensions at James Finlays. He noted that the growers felt that mechanization of tea plucking and pruning would tremendously reduce the costs of labour. The DLO acknowledged that 28 workers had been sacked from by the James Finlays management[18]; however the trade union official had not submitted any other names of workers that had been sacked or declared redundant to the Ministry.

The Chair of the KTGA noted that the organization supported the use of appropriate technology in the production of tea. And through this, the organization championed the use of technology that would increase productivity and ensure competitiveness. The Chair indicated that the machines were not out to render any people jobless but were introduced to ensure the sustainability of the tea industry. The machines were only used on 2 per cent of the plantations and were only used in particular areas and on a particular type of tea. This claim was confirmed by the Managing Director (MD) of the Tea Board of Kenya who noted that the Board had participated in the debate and they had that less than 3 per cent of the tea estates were suitable for mechanization. The MD elucidated that machines could only be used on certain topography, the desired type was flat terrain. The machines could also only be used for the production of a particular type of tea – green tea which had to be taken to the factory in less than an hour after plucking to ensure that the leaves did not start to ferment.

The management of James Finlays described some of the challenges of producing tea in the country some of these

18 According to the management of James Finlay, the persons who were sacked were former employees who engaged in the illegal strike and went on the rampage destroying the estate's property

included the rising costs of production (including labour costs). The management conceded that companies had little option but to mechanize in order to stay in business. This policy was not geared to mass redundancy of workers because mechanization would only be used for certain varieties of tea.

Representation of Workers

Workers in Kenya are guaranteed the freedom of association and the government recognises the right to effective collective bargaining. This right was enshrined in the repealed Trade Unions Act (Cap 233)[19].

Permanent workers in the agricultural sector are represented by the KPAWU. All permanent workers interviewed for this research were members of the trade union.

The trade union official, who was interviewed for this report, lamented that the major issues handled by the union, were dismissals. No cases of sexual harassment had been reported to the union offices. The union official also complained that the large tea estates do not issue their workers with letters of appointment. The official noted that the union had written a letter to the companies requesting them to avail the appointment letters to their staff. The official contended that the companies were in the process of issuing these letters however the letters did not contain critical information such as the date the workers was employed. The workers also raised this issue during the interviews.

19 The Labour Relations Act, 2007 has guaranteed this right under section 4

The union official noted that their members from both companies had been gradually decreasing over the years; the official noted that the companies were not employing permanent workers and casual workers were unable to join the union.

From the analysis one of the major complaints from the workers was the inefficiency of the union. The union official noted that a needs assessment had been carried out at the branch level and the recommendations submitted to the head office. Senior officials of the union had however not implemented the recommendations. The union official noted that the inefficiency of the union had lead to lack of effective representation of the workers. Our analysis showed that most workers did not know who their branch secretary was and most did not even vote during the trade union elections that were held in 2006. The analysis also showed that most factory workers were more organised and more informed about their rights, moreover the factory workers interviewed also participated in the trade union elections.

The workers interviewed noted that they contribute their dues to the union which are deducted directly by the employer. The union official stated that the contributions from the members were all relayed to the Head Office of the union[20]. The Branch office did not have a bank account and instead depended on "petty cash" which was remitted from the Union's headquarters. The Branch did not have an annual plan and budget for its activities – the union instead implemented its activities in an ambiguous

20 The head office of the Union is in Nakuru and is about 150 kilometres from Kericho town

fashion. The Branch was thus unable to carry out activities that are geared to empowering workers such as awareness creation forums and educating workers on the labour laws.

According to the union official the process of negotiating the Collective Bargaining Agreement (CBA) involves collecting and collating the views of the workers in the tea estates. The branch secretary sends a letter to the shop stewards who are ideally meant to inform the workers about the commencement of the negotiations. The shop stewards are mandated to collect the views of the workers and submit these to the branch secretary. Ideally also, all workers should have a copy of the CBA. The analysis derived from the interviews showed that factory workers were more likely to understand the nature of the CBAs as compared to the pluckers; most pluckers associated the agreement with increased pay. Despite their different levels in understanding the CBAs, none of the workers had a copy of the agreement. A plucker from Unilever who had worked at the estate for over 10 years noted that he had never seen the CBA. The plucker noted that the shop steward at the estate had informed workers that the CBA was in his house and any worker was free to see it from there. Most of the workers interviewed for this research were not aware of their rights at the workplace. A supervisor from Unilever also noted that the shop steward was unwilling to give him a copy of the CBA. The same trend was witnessed at James Finlay where a plucker noted that he knew what the CBA was, but was not conversant with the details of the agreement. The plucker noted that ordinary workers were not allowed to own copies of the CBA. The union official laid blame on the workers' ignorance and apathy.

Wages

Pluckers

Tea pluckers from James Finlays and Unilever are paid their monthly wages using the piece rate system. This generally means that the pluckers are paid their wages depending on the amount of tea they have plucked. Both tea estates have set a minimum (target) amount of tea that has to plucked during the high season. The target set is 33 ½ kgs of tea per day at a rate of Kshs. 6.30 (USD[21] 0.093) per kgs. Using the target, a plucker from either of the tea estates would be entitled to receive Kshs 211.05 (USD 3.12) per day, this amount translates to Kshs. 6331.50 (USD 93.4). Using these figure as the mean wage paid to pluckers one can conclude that they are paid monthly wages almost three times higher – Kshs. 2,536 (USD 37.40) – than the stipulated basic minimum consolidated wages for unskilled employees in the agricultural sector[22]. Depending on the productivity of the individual plucker, the plucker can surpass the target and pluck as much as 45 kgs per day or about 1107 kgs per month. This translates to higher wages for the plucker. However, these high wages are only applicable to the pluckers during the high season

21 Conversion of the US dollar at Kshs. 67.8 to USD 1

22 Regulations of Wages and Conditions of Employment (Cap. 229) First Schedule Constitution, Officers and Proceedings of the General Wages Advisory Board and the Agricultural; Wages Advisory Board L.N. 35/2004

when the tea leaves are abundant. During the low season the tea leaves are usually scarce. Some of the pay slips that the researchers received (annexed to this report) show that the workers can be paid Kshs 3,401.72 after plucking 579.50 kgs of tea.

To determine the sufficiency or adequacy of the wages, the researchers interviewed workers on their monthly budgets and the food costs. The table below presents the shopping basket of some of the workers' interviewed for this report

Table 4: Monthly Shopping Basket

1. Female Plucker Married with 3 children (Employment status: Casual)		
Food Costs per Month		
Food	Details	Costs
Sugar	1 KGS	70
Salt	½ KGS	20
Kale	Kshs 40 x 8	320
Cabbages		25
Fish (Omena)	2 KGS	100
Ground maize	Kshs 35 x 2	70
Cooking fat	2 KGS	270
Onions	2 weeks x Kshs 20	40
Rice		120
Meat	3 KGS x Kshs 160	480
Tea Leaves		70
Bread	Kshs 30 x 4	120
Potatoes		25
Beans		75
Porridge		80
Milk	1 cup x Kshs 10 x30 days	300
Total of Food Basket		**2185**
Uniforms	Kshs 1000 x 2 children x1 year/12 months	167
Exam Fees	Kshs 60 x 3 terms x 2/12 months	30
Telephone	Kshs 50 x 30 days	1500
Cooperative Savings		300
Women's Group		500
Total		2497
Grand Total		4682

2. Male Plucker, Permanent Employee, Married with 4 children		
Maize		600
Sugar	2 KGS x Kshs 68	136
Salt		20
Kale		300
Fish		240
Meat	2 KGS x Kshs 160	320
Milk		300
Beans		100
Tea leaves	Kshs 10 x 4	40
Onions		20

Cooking Fat	2 KGS x Kshs 130	260
Total of Food Basket		**2336**
Other Expenses		
Bar Soap		120
Bathing Soap		45
Alcohol	Kshs 280 x 4	1120
Cigarettes	Kshs 3.50 x 4 x 30	420
Cooperative Savings		600
Welfare Association		50
Exams	Kshs 20 x 4 x 3/12	20
Tuition	Kshs 200 x 1 child x 3 terms	50
Total		2425
Grand Total		**4761**

Factory Workers

Factory workers on the other hand, are not paid using the piece rate system. Unilever classifies its factory workers into four grades and are paid a monthly wage depending on their grade. The table below elucidates the estimates of wages paid to factory workers according to their grades:

Table 5: Wages Paid to Factory Workers

Grade	Monthly Wage (KSh)	Monthly Wage (USD)
General Factory Worker	5,600	82.6
Grade 3	6,400	94.4
Grade 2	10,000	147.5
Grade 1	14,000	206.5

Factory workers interviewed for this research report noted that when it was low season, they were only paid for the days worked. One of the pay slips for a factory worker indicated that he was paid approximately Kshs. 180.50 per day for 23 days which translates roughly to Kshs. 4151.50. The workers noted that during the low season they often worked for 4 days in a week. Their monthly wage would thus fall approximately, to Kshs. 2888.

Section Three: The Challenges of Producing Tea In Kenya

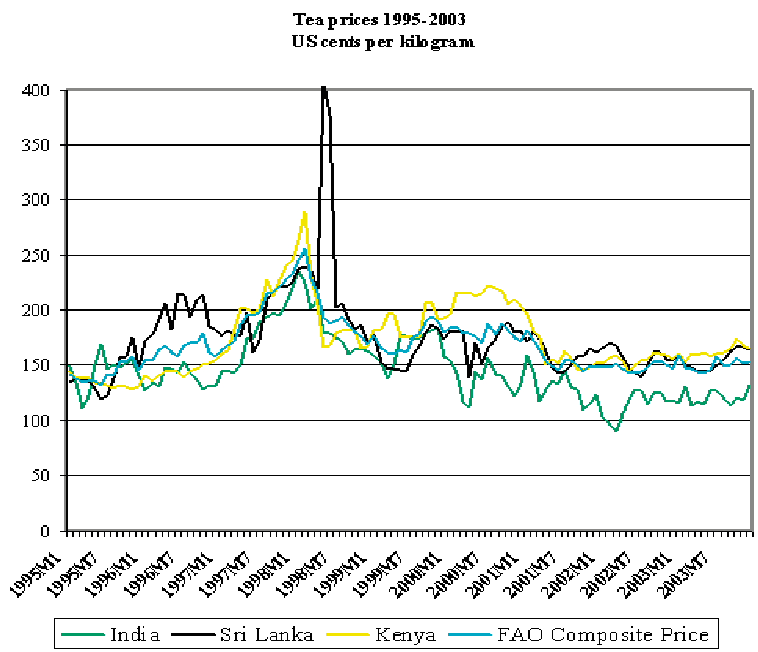
1. Rising Costs of Labour

The key challenges affecting the production of tea in Kenya as illuminated by both James Finlays and Unilever management was the rising costs of production especially the rising costs of labour. Labour costs as a percentage of total costs had markedly increased from 1999 to 2006 as presented by Unilever. In 1999, labour costs constituted about 43 per cent of total costs and the figure had risen to about 55 per cent of total costs in 2006. On a comparative note, the costs of labour had increased in dissonance with the rate of inflation. A presentation submitted by Unilever showed that from 1996 to 1997, the industry wage costs were in conformity to the rise in inflation however since 1998 the variance between inflation rates and rising labour costs had grown disproportionately. In 1999, for example inflation rates stood at slightly above 5 per cent however wage costs had increased to slightly over 10 per cent. An analysis done by Unilever indicated that the 2007 inflation rate stood at about 8 per cent while the wage rate had increased to about 22 per cent. Generally wages had risen to about 175 per cent yet the inflation rate has only grown to about 70 per cent from 1996 to 2007. The management at both companies as well as the Chair of KTGA noted that the rising wage costs were unique to Kenya where workers demanded USD 3 per day as compared to countries such as Malawi, India and Sri Lanka where workers were paid less than a dollar. The Tea Board MD noted that compensation awards paid to former employees as a result of injury was higher than other more profitable agricultural sectors.

2. Price volatility on world markets

Closely related to the rising costs of production was the ***unstable*** global price of tea. In 1998, the Kenya Average Auction tea price stood at about USD 1.95 per KGS and dropped in 1999. The price picked in 2000 to about USD 2.1 per KGS. The price plummeted to USD 1.6 per KGS in 2001. The price fluctuation of tea was maintained through 2001 to 2005 however it picked in 2006 to USD 1.9 per KGS and fell in the first quarter of 2007 to about USD 1.7. The fluctuating prices are illustrated in the diagram below which also captures the prices of Indian and Sri Lankan tea.

Figure 1: Price Volatility



Source: FAO

3. Revaluation of the Kenya Shilling vis-à-vis the US Dollar

The strengthening of the Kshs against the USD has impacted on the tea estates which mainly sell black tea in USD. Of consequence to the world price of tea is the strengthening of the Kshs against the USD. For the last 2 ½ years (2004 to May 2007) the Kshs has gained ground against the USD to trade at Kshs. 80 to USD $1 in 2004, it plummeted to Kshs. 75 in 2005, in 2006 the exchange rate for the USD to the shilling was at Kshs. 72 and in 2007 at Kshs 69 to USD $1 .

4. Production outpacing exports?

The 'glut' in production of tea as evidenced by the rising levels of production and low consumption has caused anxiety among the major players in the industry. As highlighted in the table below, the production of tea in both small holder and large tea estates has steadily increased from a total production of 294 million KGS in 1998 to 311 million KGS in 2006. Of mention is that local consumption of tea has significantly increased from 12 million in 1998 to 17 million in 2006.

Table 6: Kenya Tea Production Smallholder and Large Tea Estates

Year	Estates		Smallholder (KTDA)		Estates/Smallholder		Total	Local
	Planted	Production	Planted	Production	Total	Total	Exports	Consumption
	Hectares	KGS.	Hectares	KGS.	Hectares	Production	KGS	KGS
1998	33,761	118,537,242	84,657	175,627,855	118,418	294,165,097	263,023,210	11,767,880
1999	33,884	94,852,750	84,658	153,855,363	118,542	248,708,113	241,739,293	10,488,307
2000	35,313	90,739,810	85,083	145,546,258	120,396	236,286,068	216,989,625	12,653,577
2001	38,781	112,905,523	85,511	181,725,815	124,292	294,631,338	270,151,810	11,289,414
2002	44,399	111,196,801	85,941	175,905,432	130,340	287,102,233	272,458,768	12,628,238
2003	45,080	112,881,528	86,373	180,788,713	131,453	293,670,241	269,961,799	12,651,134
2004	48,754	132,056,462	87,954	192,552,108	136,708	324,608,570	333,802,071	13,626,020
2005	48,633	130,776,195	92,682	197,721,429	141,315	328,497,624	349,738,362	14,025,000
2006	51,297	119,400,981	95,779	191,177,061	147,076	310,578,042	313,720,495	16,549,414

Source: Tea Board of Kenya

The same trend is witnessed at a global level, where countries such as China have increased their tea production from 24.1 per cent of global tea production in 2002 to 29.0 per cent in 2006. Tea production in Sri Lanka has played out in the inverse with marked decrease in tea production over the periods 2002 to 2006.

While the production of tea has been growing in Kenya, evidence points there is a large variance between production and exports with exports lagging behind production.

Table 7: Production Outpacing Exports

1. Production										
	2006		2005		2004		2003		2002	
Country	Vol.	%	Vol.	%	Vol.	%	Vol.	%	Vol.	%
China	1,020	29.0	934	27.2	835	25.2	768	24.0	745	24.1
India	955	27.1	927	27.0	892	26.9	878	27.4	838	27.2
Sri Lanka	311	8.8	317	9.2	308	9.3	303	9.5	310	10.0
Kenya	310	8.8	328	9.5	324	9.8	293	9.2	287	9.3
Indonesia	139	3.9	165	4.8	164	4.9	169	5.3	162	5.3
Others	788	22.4	764	22.2	791	23.9	790	24.7	743	24.1
Total	3,523	100.0	3,435	100.0	3,314	100.0	3,201	100.0	3,085	100.0
2. Export										
	2006		2005		2004		2003		2002	
Country	Vol.	%	Vol.	%	Vol.	%	Vol.	%	Vol.	%
Sri Lanka	315	20.0	2 98	19.2	290	18.9	290	20.8	285	19.8
Kenya	313	19.8	339	21.8	330	21.5	269	19.3	272	18.9
China	286	18.1	286	18.4	280	18.2	259	18.5	252	17.5
India	203	12.9	188	12.1	179	11.6	170	12.2	198	13.8
Indonesia	96	6.1	102	6.6	98	6.4	88	6.3	100	6.9
Others	365	23.1	343	22.0	360	23.4	321	23.0	332	23.1
Total	1,578	100.0	1,556	100.0	1,537	100.0	1,397	100.0	1,439	100.0

Source Tea Board of Kenya

Other challenges that were noted were serious climatic changes that had decreased tea production. Dilapidated infrastructure which causes an increase in costs of transportation, unreliable energy supplies and its subsequent high costs are other challenges that bedevil the production of tea in Kenya.

6. Value Addition of Tea

The Kenyan government has made strides to entice foreign investors to invest in the tea sub sector. The Export Processing Zones Authority (EPZ-A)[23] noted that there was the availability of a well established export friendly market, availability of affordable labour and investor friendly arrangements among other advantages of investing in the country. The investor friendly arrangements were:

- The Export Processing Zones (EPZ) program offers attractive incentives to export-oriented investors and EPZ Authority to provide one-stop-shop service for facilitation and aftercare
- The Investment Promotion Centre (IPC) to promote all other investment in Kenya including in Manufacturing under Bond (MUB) program
- The Tax Remission for Export Office (TREO), a program for intermittent imports for export production
- Generous investment and capital allowances, double taxation, bilateral investment and trade agreements

23 Coffee and Tea Industry in Kenya (2005), Export Processing Zone Authority (EPZ-A)

The investment opportunities that are open to investors include among others investment in tea plantations and processing and packaging of tea for export under the MUB and EPZ Programmes. The benefits offered to investors under the EPZ Act are among others exemption from, "all existing and future taxes and duties payable under the Customs and Excise Act and Value Added Tax (VAT) Act[24] on all export processing zone imports for use in the eligible business activities of the export processing zone enterprise including machinery and equipment, spare parts, tools, raw materials, intermediate goods, construction materials and equipment, office equipment and supplies, and transportation equipment…..[25]".

Investors do not have to register under the VAT Act, they are exempted from excise duties under the Customs and Excise Act, are exempted from payment of withholding taxes on dividends and other payments made to non residents. Investors have the privilege to be exempted from quotas or other restrictions and are exempted from paying rent in the zones among others.

However despite these incentives, major players in the global tea sector have no intentions to relocate their processing and packaging of tea to Kenya. The management of Unilever for example said that they had no plans to move their tea processing plants to Kenya despite these incentives. Unilever processes and packages their tea in Dubai where the company enjoys benefits such as tax-brakes and there are better infrastructural facilities.

24 http://www.kenyalaw.org/kenyalaw/klr_app/view_cap.php?CapID=326
25 The Export Processing Act Cap 517 section 29 (1)

Processing and packaging of tea was more economical in regions that were closer to the market (the EU and American market), the reason being that transportation costs were less, in the words of the Unilever management, 'shipping tea bags from Kenya was like shipping air" which was not cost effective.

Section Four: Corporate Social Responsibility (CSR) Initiatives in the Kenyan Tea Sector

CSR is slowly gaining ground in the business community, this is largely attributed to the growing recognition of the adverse impact that business activities or behaviour have on workers, the community, the environment among others. In line with this recognition and evidence derived from business opinion polls and corporate behaviour, there is now greater understanding of the close link between responsible business and good business.

CSR has been defined by the ISO 26000 Working Group on Social Responsibility as, "the responsibility of an organization for the impacts of its decisions and activities on society and the environment through transparent and ethical behaviour that is consistent with sustainable development and the welfare of society; (it) takes into account the expectations of stakeholders; (it) is in compliance with applicable law and consistent with international norms of behaviour; and (it) is integrated throughout the organization.[26]" CSR thus requires that the organization or business acknowledges that it is accountable for its actions and behaviour.

26 Working Definition, ISO 26000 Working Group on Social Responsibility, Sydney, February 2007 cited from Corporate Social Responsibility Implementation Guide for Business International Institute of Sustainable Development March 2007

The ISO 26000 Working Draft identified three types of principles that govern CSR; these are general, substantive and operational principles. The General principles include, respect for internationally recognised conventions and declarations, respect for the rule of law and recognition of the right of stakeholders to be heard and the duty of an organization to respond. The substantive principles compel organizations to "respect, promote and advance" internationally recognised environmental standards, human rights, labour rights, good governance, fair business practises and community involvement. The operational principles guide the behaviour of the organization, the criteria includes accountability, transparency and multi-stakeholder approach among others.

The two large tea estates – James Finlays and Unilever Tea – are both involved in implementing various aspects of CSR. The companies have been involved in provision of health care for their workers; they have provided educational facilities for employees' children among others. Both tea estates are also certified by the Ethical Tea Partnership (ETP) due to the membership of their packing companies, that is Finlays Beverages Ltd. and Unilever (Europe). Unilever Tea is also certified by Rainforest Alliance which commenced in 2007. The James Finlays Corporate Affairs Director informed the researcher that the company was considering certification from Fairtrade Labelling Organization (FLO) which currently certifies their cut flower farms[27].

Rainforest Alliance

Rainforest Alliance is the secretariat for the Sustainable Agricultural Network (SAN) and administers the certification systems. SAN is a coalition of non profit, independent conservationist organizations that work towards the promotion of social and environmental sustainability of agricultural activities. This is done by developing standards that certifying farms must comply with. The objectives of this standard are to monitor and evaluate social and environmental performance and best management practises of each certified farm.

The standard utilised by the SAN comprises of ten principles, these include;

1. Social and environmental management system
2. Ecosystem conservation
3. Wildlife protection
4. Water conservation
5. Fair treatment and good working conditions for workers
6. Occupational health and safety
7. Community relations
8. Integrated crop management
9. Soil management conservation
10. Integrated waste management

Each of the above principles is made up of criteria which describe the best practises of social and environmental management. The criteria are evaluated through the certification process. The criteria are further broken down into indicators whose purpose is to describe how compliance is evaluated in comparison to the criteria. The indicators are also used to cite examples of good and unacceptable social and environmental practises. The criteria utilised are categorised into ***Critical Criteria*** and ***Social Criteria.*** Compliance to Critical Criteria is crucial for certification and for a farm to maintain certification.

SAN identifies the Critical Criteria as:

27 The researcher learnt that the management of James Finlay has instead chosen to get certified by Rainforest Alliance.

Table: 8 Rainforest Alliance Critical Criteria

Criterion	Description
1.10	A chain of custody system is necessary to avoid the mixing of products from certified farms with products from non-certified farms.
2.1	The farm must have an ecosystem conservation program.
2.2	The integrity of natural ecosystems must be protected; destruction of or alterations to the ecosystem is prohibited.
3.3	It is forbidden to hunt, gather, extract or traffic wild animals.
4.5	The discharge of untreated wastewater into bodies of water is prohibited.
4.7	The depositing solid substance in water channels is prohibited.
5.2	Farms must not discriminate in work and hiring polices and procedures.
5.5	Farms must pay legal or regional minimum wage or higher.
5.8	Contracting children under the age of 15 is prohibited.
5.10	Forced labour is not permitted.
6.13	The use of personal protective gear is required during the application of agrochemicals.
8.4	Only permitted agrochemicals can be used on certified farms.
8.6	Transgenic crops are prohibited.
9.5	New agricultural production must be located on land suitable for that use.

Source: SAN and Rainforest Alliance

The performance (or lack of it) of the farm is computed by grading all the criteria. To obtain certification or maintain it, the farm is obligated to comply with 50 per cent of each critical criterion and 80 per cent of all criteria. A farm that does not implement the criteria is assigned by the audit team a sanction or non conformity. In cases of systemic non conformity, the auditors conduct comprehensive reviews of available physical evidence supported by interviews from the workers and administrators. From the document that was reviewed for this research that was submitted by Rainforest Alliance, there were no explicit details on sanctions that would be imposed on systemic non conforming farms.

It was revealed by the Rainforest Alliance respondent that the audit reports that are done are not accessible to the public and are only issued to the farm that contracts the auditors. This policy of Rainforest Alliance negates the operational principles of CSR as spelt out by the ISO 26000 Working Draft 2 which stipulate transparency and accountability. By denying other stakeholders such as trade unions and CSOs the audit reports, the farms that are certified by Rainforest Alliance are not held to account to for their actions and behaviour that may have grave impacts on the environment and on human rights.

Rainforest Alliance's Certification of Unilever

In 2006, Unilever invited Rain Forest Alliance to review their Sustainable Agriculture Standards and its application in tea. Rainforest Alliance prior to certifying Unilever had never certified any other large scale tea estate. The Rainforest Alliances mission to Kenya involved objectively reviewing Unilever's Sustainable Agricultural Standards and redefining and interpreting the standards. The outcome of this would be the development of 'Local Indicators for Sustainable Tea in Kenya.'

The Rainforest Alliance mission to Kenya involved hosting a workshop with stakeholders in Kericho. The workshop however did not incorporate key stakeholders such as the KPAWU; the reason given by a respondent from Rainforest Alliance was that they did not have any contacts of the trade union. There was no representation from small scale tea farmers yet these farmers sell their tea to Unilever. The respondent defended the lack of comprehensive participation of stakeholders noting that the workshop served as the first round of consultations[28].

Despite conducting this first round of consultations which lacked comprehensive stakeholder participation, Rainforest Alliance conducted its first audit of Unilever and according to the Unilever management, the tea estates scored above the minimum criteria.

Ethical Tea Partnership (ETP)

ETP is a non commercial alliance of the major tea packing companies working together towards the promotion of social responsibility in the global tea sector so as to ensure the ethical sourcing of tea. ETP defines ethical trade as, "a shared responsibility to ensure that the social and ethical conditions involved in growing the tea that its members buy meets, at a minimum, local laws, trade union agreements and some international standards, and to encourage improvements where needed."

ETP is active in twelve regions – Argentina, Kenya, Malawi, Assam (Northern India), Kerala (Southern India), Tamil Nadu (Southern India), Sri Lanka, Brazil, China, Indonesia, Tanzania and Zimbabwe.

ETP carries out independent monitoring of six areas – employment (including minimum age and wage levels), education, maternity, health and safety, housing and some areas of basic rights. Tea producers who meet these requirements are awarded a graded certification.

28 Interview with Edward Millard of the Rainforest Alliance on 10th May 2007

ETP utilises the Ethical Trading Initiative (ETI) Base Code, which contains nine clauses which reflect the most relevant international standards with respect to labour practices. The table below is a presentation of the ETI Base Code[29] and the criteria used for monitoring and compliance:

Table 9: ETI Base Code

STANDARD	CRITERIA
1. Employment is Freely Chosen	• There is no forced, bonded or involuntary prison labour • Workers are not required to lodge 'deposits' or their identity papers with their employer and are free to leave their employer after reasonable notice
2. Freedom of Association and the Right to Collective Bargaining are Respected	• Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively. • The empl oyer adopts an open attitude towards the activities of trade unions and their organisational activities. • Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace. • Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.
3. Working Conditions are Safe and Hygienic	• A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment. • Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers. • Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided. • Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers. • The company observing the code shall assign responsibility for health and safety to a senior management representative.

29 http://www.ethicaltrade.org/Z/lib/base/code_en.shtml

4. Child Labour Shall Not be Used	• There shall be no new recruitment of child labour. • Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child; "child" and "child labour" being defined in the appendices. • Children and young persons under 18 shall not be employed at night or in hazardous conditions. • These policies and procedures shall conform to the provisions of the relevant ILO standards.
5. Living Wages are Paid	• Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income. • All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid. • Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.
6. Working Hours are Not Excessive	• Working hours comply with national laws and benchmark industry standards, whichever affords greater protection. • In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period on average. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.
7. No Discrimination is Practised	• There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.
8. Regular Employment is Provided	• To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice. • Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub- contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

9. No Harsh or Inhumane Treatment is Allowed	• Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

Section Five: 'Workers' Rights are Human Rights' – International Human Rights Instruments and Kenyan Labour Laws

Kenya has ratified an assortment of International Human Rights Instruments of particular note are the Universal Declaration on Human Rights (UDHR) United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) in 1972. Kenya has also ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in 1984 and the Convention on the Rights of Children (CRC) in 1990. Kenya is also a member of the International Labour Organization (ILO) having joined the institution in 1964.

The Right to Work

The right to work as guaranteed in the UDHR and the ICESCR is not acknowledged in the Kenyan Constitution. The UDHR in Article 23 (1) guarantees the right to work, it is stipulated in the declaration that, *"everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."* Article 7 of the ICESCR, edicts that, *"state parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) remuneration which provides all workers, as a minimum with: (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays"*

The major issue with the right to work in the tea estates is primarily based on the ***casualization of labour.*** As illuminated by the workers and the management, the system of ***casual labour*** has taken root in the tea estates.

The repealed labour laws provide a loophole in which ***casual labour*** can be exploited. The laws were not clear on what constitutes casual labour in regard to duration of service. The repealed Employment Act for example defined a casual employee as, "an individual the terms of whose engagement provide for his (or her) payment at the end of each day, and who is not engaged for a longer period than twenty four hours at a time." On Contracts of Service, the Employment Act in section 14 elucidates that contracts for periods longer than six months should be written. In regard to wages, casual workers as noted above should receive their wages at the end of the day however workers (both permanent and casuals) from the tea estates were paid at the end of the month. This was inconsistent to the repealed law.

Casualization of labour is a major concern because workers are not guaranteed job security and other benefits that permanent workers accrue such as pension and access to medical care for their children.

The Right to Adequate Housing

The right to adequate housing is enshrined in the ICESCR Article 11 (1). To this end, Kenya is obligated to take steps to ensure the realization of the rights contained in this Covenant. In realizing this right, the Kenyan government mandates employers through the repealed Employment Act (Cap 226) Part II section 9 to provide ***reasonable*** housing for their employees or provide housing allowance in addition to the wages. The Act however does not define what 'reasonable' housing implies making it hard to interpret the section. The repealed Regulations of Wages and Conditions of Employment Act mandate the Medical Officer of Health in the region to approve the housing conditions of the workers. Despite the deplorable housing conditions described by the workers, Unilever and James Finlays as employers cannot be held to account under this section of the Employment Act due to the lack of clarity on what constitutes 'reasonable' housing.

Discrimination against Women

Discrimination against women in the tea estates takes the form of sexual harassment and 'forced' pregnancy tests. Sexual harassment violates the equal protection provisions in the ICCPR, the ICESCR, the CEDAW and ILO's Discrimination (Employment and Occupation) Convention. The Committee on the Elimination of Discrimination against Women in 1992 acknowledged that gender specific violence such as sexual harassment in the workplace was a form of discrimination that, "seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." In recognition of the widespread and grotesque nature of this violation, the Beijing Platform for Action adopted in 1995 at the Fourth World Conference on Women called on governments and employers to, "enact and enforce laws and develop workplace policies against gender discrimination in the labour market, especially……….regarding discriminatory working conditions and sexual harassment (and to develop mechanisms) for the regular review and monitoring of such laws."

Sexual harassment of women was identified by all workers interviewed as a major violation that women experience. Women workers who refused the sexual advances of the male supervisors were usually targeted for dismissals and retributions in the form of allocation of excess work. Workers – male and female – revealed that potential women employees were subjected to pregnancy tests, women who were exempted from these tests were those who were holders of family planning cards[30]. Kenya as noted earlier has ratified the CEDAW which clearly recognises that discrimination against women violates the principles of equality of rights and respect for human dignity. State parties to this Convention are mandated to take effective steps to ensure the elimination of discrimination against women. The Convention lays down measures that state parties have to comply with to meet this objective. Some of the measures include, to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women and to take all appropriate measures to eliminate to eliminate discrimination against women by any person, organization or enterprise. Tandem to this the ILO Declaration on Fundamental Principles and Rights at Work outlines four fundamental rights at work – freedom of association and recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. The Declaration mandates all member states (irrespective of whether they have ratified the Conventions related to these rights) to respect, to promote and realise the four fundamental rights.

30 Family Planning Cards are given to women of reproductive ages who are using various contraceptives.

The Kenyan Constitution guarantees freedom from discrimination however none of the repealed labour laws recognised sexual harassment as a violation. Sexual harassment is criminalised in the Sexual Offences Act (Cap 3 of 2006) Section 23 (1). The Act stipulates, "any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty if the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred shillings or both.[31]" This is a relatively new Act and many of the workers were not aware of the provisions contained therein which guarantee their rights against sexual harassment.

Freedom of association and the effective recognition of the right to collective bargaining

This is one of the fundamental rights spelt out in the UDHR, ICESCR and the ICCPR. In recognition of this right, the ILO in its Declaration on Fundamental Rights and Principles at Work obligates members to respect and promote freedom of association. As noted above Kenyan workers are guaranteed the freedom of association and the government recognises the right to effective collective bargaining, this provision is guaranteed under the repealed Trade Unions Act. From the analysis carried out, it is imperative to note that the effective representation of

31 Laws of Kenya, Sexual Offences Act www.kenyalaw.org/kenyalaw/klr_app/frames.php

workers has been violated by the union. As noted earlier, the union neither has a budget or a work plan, without any of these basics, the trade union was unable to effectively represent workers. The inefficiency surrounding the union has created apathy among the workers who seem more interested in salary increments during the collective bargaining process moreover the workers are not consulted during the collective bargaining process.

Section Six: Conclusions and Recommendations

This research study was able to conclusively investigate issues that gyrate the large tea estates from the perspectives of the workers especially the low cadre employees and the management.

Of notable concern was the issue of ***sexual harassment.*** From the analysis presented in this research report sexual harassment is prevalent in the large scale tea estates. Due to the nature of this crime, women victims suffer in silence due to the enormous costs associated with seeking redress and the stigma associated with 'coming out' and reporting this crime. Sexual harassment causes incalculable economic, psychological and physical harm to its victims and it serves to entrench patriarchal systems that inhibit the empowerment of women. It should be noted that the formal mechanisms to report cases of sexual harassment are either absent in the case of James Finlays or under utilised in the case of Unilever. It is our recommendation to the management of both companies to take the issue of sexual harassment seriously and develop suitable and impartial avenues in which such cases can be reported and seriously acted upon by the management. The management of James Finlays needs to speed up the development of their Gender Policy and ensure its immediate implementation.

Casualization of Labour is a serious issue that the government needs to address. As elucidated in this report there are employees at both tea estates who have worked for long periods as ***casuals. Casualization of Labour*** in the tea estates has an impact on job security and thus impedes the realization of the right to work. It is understandable for the management of both companies to use this root as an avenue to decrease their labour costs. However the mandate to realize the right to work and ensure that casual labourers are guaranteed on job security lies with the government.

From our observations the housing conditions of the workers especially the pluckers is deplorable. It is our estimation that the workers living in such conditions are not living a dignified life. As explicated by the workers interviewed for this research report, sharing of houses and dilapidated houses with leaking roofs and unpainted walls were common grievances. As noted above the laws in Kenya do not explicitly state what 'adequate shelter' is however it is our recommendation that the Medical officer in Kericho should take a more active role in inspecting the housing conditions for low cadre employees in the tea estates. The management should also immediately increase the housing quarters of the workers or make alternative arrangements for their housing, this would include provision of housing allowance which is commensurate to the average and adequate house rent payable in Kericho.

On lack of representation of employees, numerous studies done on this issue have shown that it is predominately the employers who violate the right of workers to join trade unions; however our analysis has shown that the trade unions have failed to effectively represent their members. Workers were generally not aware of the goings on in their trade union. Workers did not know their branch representatives, they were unaware of the contents of the CBAs and neither did they have access to them. It was our observation that the branch office in Kericho does not have the capacity to effectively represent their members. As noted in this research report, the union does not have direct access to funds and thus cannot determine which trade union activities should be implemented and the priority of these activities; this is the privy of the headquarters which is based over 200 kilometres away. The branch officer does not have adequate transportation means which would assist him to transverse the vast tea estates. It is our recommendation to the KPAWU to immediately develop plans of action that prioritise and detail the activities that the trade union needs to implement, for example awareness creation on the contents of the CBA. It is our recommendation that each of the branch offices of the KPAWU should be in a position to manage their own funds.

The Ninth Parliament passed five new labour laws in 2007, the Employment Act, 2007, the Occupational Safety and Health Act, 2007, the Work Injury Benefits Act, 2007, the Labour Relations Act, 2007 and the Labour Institutions Act, 2007 repealed the previous archaic laws. These laws can be said to be progressive in that they create new provisions in the labour statutes that did not exist. The new provisions include clauses on sexual harassment and incorporate a better understanding of casualization of labour by stipulating that persons employed longer than three months should have written contracts. It is our recommendation that these laws should be fully and impartially enforced to ensure the demise of casualization of labour and sexual harassment in the workplace.

CSR initiatives such as FLO and Rainforest Alliance are new efforts in the tea sector which mandate the companies to take responsibility for their actions and decisions. These initiatives as noted have only recently commenced and it would be premature to suggest that they have had any impact.

Appendix IL Letter of Appointment

Unilever

Unilever Tea Kenya Limited
Registered Office
Kericho - Nakuru Road
P.O. Box 20 Kericho - 20200 Kenya.

Telephone: +254 (0)52-20146-9
Facsimile: +254 (0)52-30347

Private & Confidential

Pay Roll
Chagaik Factory,
P.O. Box 20,
KERICHO.

Dear

LETTER OF APPOITMENT

In accordance with the Employment Act, laws of Kenya, you are required to receive an official letter of Appointment and to signify your consent by way of signing your name, imprinting your thumb or any one of your fingers below.

This is therefore to formalize your appointment in the company as factory worker.

All other terms are governed by the existing KPAWU/KTGA collective Bargaining Agreement.

Yours Sincerely
Unilever Tea Kenya Limited

Z.K. Mitei
Manager Chagaik Factory

I .... Pay roll No. .... have read and understood the contents of this letter formalizing appointment.

Dated this day of ..

DIRECTORS: W. K. MARTIN R. A. FAIRBURN* N. C. KELLY* N. M. MUGWANDIA C. A. OUDA M.K.A. SANG R.K. YEGON
305002 (7/2004) (* BRITISH)

References

1. Caroline Elkins ***Britain's Gulag: The Brutal End of Empire in Kenya*,** Jonathan Cape 2005
2. ***Coffee and Tea Industry in Kenya***, Export Processing Zone Authority (2005)
3. Government of Kenya, ***Economic Surveys 1998–2006***
4. Government of Kenya, ***The Employment Act Cap 226*** (repealed)
5. Government of Kenya, ***The Sexual Harassment Act***
6. Government of Kenya, ***The Tea Board Act***
7. Hezron O. Nyangito, ***Policy and Legal Framework for the Tea Sub sector and the Impact of Liberalization in Kenya***, Kenya Institute for Public Policy Research and Analysis (KIPPRA) 2001
8. Hezron Nyangito and Joseph H. Kimura, ***Provision of Agricultural Services in a Liberalised Economy: The Case of the Smallholder Tea Sub Sector***, Insitute of Policy Analysis and Research, 1999
9. Jacinta M. Kinyili (2003) ***Diagnostic Study of the Tea Industry in Kenya***, Export Promotion Council
10. Nairobi Stock Exchange (NSE), ***Handbook 2006***, 7th Edition
11. SOMO, Profound and India Committee of the Netherlands, ***Sustainabilitea: The Dutch Tea Market and Corporate Social Responsibility***, March 2006
12. Working Definition, ***ISO 26000 Working Group on Social Responsibility***, Sydney, February 2007 cited from ***Corporate Social Responsibility Implementation Guide for Business*** International Institute of Sustainable Development March 2007