

# Investigation at James Finlay Kenya: Steering group process and next steps

## 1. Steering group and terms of reference

### 1.1 Background

For some time, and with increasing prominence in the past [15 years](#), there have been concerns about the treatment of women workers on tea estates in various regions of Kenya. In February 2023, this was highlighted by a [BBC documentary](#) alleging that sexual abuse and broader harassment of workers is an endemic issue in the tea industry. More specifically the [BBC published](#) evidence and testimony of workers alleging the same behaviour is endemic within a number of companies, including [James Finlay Kenya \(JFK\)](#).

In line with the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), in February 2023, James Finlay Limited (Finlays) instructed a specialist NGO, [Partner Africa](#), to conduct an independent investigation at JFK on the allegations and potential endemic issues. This aimed to provide a deeper understanding of the substance of the accusations, worker welfare, and effectiveness of the systems in place for managing these issues.

The investigation, specific to JFK, also identified measures that can be taken to cease, prevent, and mitigate any adverse impacts identified and determine how JFK can provide remediation to survivors.

### 1.2 Steering group

The credibility of such an assessment and the actions taken is vital, at the same time there needs to be ownership of responsibility and subsequent action. A steering group (SG), including tea brands and retailers sourcing from JFK, [Ethical Tea Partnership \(ETP\)](#), and [ActionAid Kenya](#), chaired by the [Ethical Trading Initiative \(ETI\)](#), was established by Finlays, and funded also by brand and retailer members, to provide oversight and decision-making throughout the investigation process. The purpose of the SG extended to ensuring progress against subsequent remediation plans. The SG members met bi-weekly over the course of one year and provided input to the overall process, promoted transparency, and worked to ensure that opinions, feedback, and requests from third-party stakeholders were adequately considered and incorporated.

SG members include ActionAid Kenya International, Co-op, ETP, J Sainsbury plc, R. Twining and Co Ltd, Tesco PLC, Unilever PLC.

### 1.3 Scope

The investigation was limited in scope to JFK's operations and their direct relationship with relevant stakeholders, including Finlays, governmental structures and institutions, and supply chain actors. The investigation did not extend to assessing the nature of issues in the sector more broadly as the SG was not established to interrogate or respond to the wider challenges and allegations within the tea industry in Kenya. However, the SG will ensure that lessons, related to the process and findings of the investigation are shared with relevant stakeholders to inform understanding and action across the sector.

## 2. Investigation methodology

Finlays, with oversight from the SG, asked Partner Africa to undertake a deep dive investigation into the risks of systemic gender-based violence and harassment (GBVH) at JFK, as well as to ascertain the actual and potential risks and concerns raised by workers on OSH (occupational safety and health).

Partner Africa developed the methodology for the investigation, which the SG sought feedback on from relevant external stakeholders. This included a robust framework based on national and international good practice guidance and focused around key business areas where the actual and potential risks, as well as the impacts of GBVH and OSH that could be determined. These business areas were governance and management systems, leadership, policy, human resources, grievance mechanisms, GBVH resources, OSH standard operating procedures (SOPS) and resources, contractors, physical design, power dynamics and culture, and medical operations. Each business area was analysed through documentation review, system and process analysis, interviews with management at all levels, interviews with worker representatives and workers, and interviews with contractors and contracted workers.

ActionAid Kenya, an SG member, agreed to support Partner Africa by conducting interviews in person with workers, worker representatives, and JFK community members, as well as completing an assessment of the physical workplace to complement the methodological framework, developed by Partner Africa. They developed a supplementary methodology, informed and guided by ActionAid's [Feminist Research Guidelines](#).

The investigation's methodological steps were as follows:

**Phase 1:** Baseline data gathering (including extensive detailed documentation review of JFK policies, processes, systems, and data; initial worker data collection via a remote worker voice data collection tool; the development of communication, safeguarding approaches, a field plan, and tool development).

**Phase 2:** Deep dive assessment of JFK and Finlays including a human rights due diligence (HRDD) analysis of Finlays; worker engagement; management interviews; systems and process evaluations and stakeholder engagement at JFK. A hybrid approach was taken to conduct the assessments. This included remote interviews and stakeholder engagement alongside on-site visits to engage workers, worker representatives, and JFK community members, and to undertake an assessment of the site's physical design. A second visit was conducted to hold a validation workshop with workers, to discuss the initial findings from the project and gather worker reflections on these, to ensure that investigation findings aligned with worker experiences.

**Phase 3:** Data analysis and report writing (including data analysis, root cause analysis and power dynamic analysis; validation workshops with key stakeholders to present initial findings and engage in dialogue around these and the associated root causes; and report writing). Included in the report writing is a set of comprehensive immediate, short-, medium-, and long-term recommendations to address gaps and risks identified during the investigation. This includes an outline of recommendations to JFK buyers and to wider tea sector stakeholders in Kenya.

**Timeline:** The investigation was completed by November 2023.

**Safeguarding and security:** The safety of the researchers and the workers, community members, and those directly affected who were engaged in the process was the SG's, Partner Africa's, and ActionAid Kenya's priority. To this end an extensive threat and vulnerability security assessment was undertaken to determine the safety of the site visit and a detailed safeguarding strategy based on good practice was developed to ensure that the workers, community members, and survivors who were engaged with were provided absolute confidentiality, ongoing support via counselling and medical aid, and if required, support on how to access justice.

### **3. Sale to Browns**

After an extensive process, to identify appropriate new investment in JFK, Finlays agreed to sell JFK to a new investor called Browns Investments PLC (Browns). Finlays made a public announcement on this in May 2023 and concluded the sale in November 2023. JFK is now known as Browns Plantations Kenya (BPK). As part of the sale agreement, Browns and Finlays mutually agreed to sell 15% of shares in BPK to a locally owned cooperative, the Kipsigis Highlands Multi-purpose Co-operative Society. This has been well received by the local community and arrangements are now in hand to ensure extensive local representation behind this 15% shareholding.

With regards to this investigation and subsequent associated action plan and remediation, Browns have committed to implementing and putting into practice all the recommendations from this process. The SG welcomes BPK's participation in the SG and encourages Browns to join the SG as an active member, reaching out to them to express the importance of their involvement in the process. As a key customer of BPK, Finlays has remained actively involved in the SG since the sale.

### **4. Findings and recommendations**

The investigation highlighted several actual and potential human rights impacts affecting workers at JFK. Over an eight-month period, through remote surveys, on-site assessment and interviews, the investigation engaged with around 950 stakeholders, including over 700 workers and their representatives, to reflect a variety of perspective and experiences. The investigation primarily focused on the themes of sexual gender-based violence and harassment (SGBVH) and OSH, but also extended into other risk areas. It set out to understand the risks and impacts and so by its nature focused on shortcomings and challenges, however during the process some positive views were shared by stakeholders. These referred to their experiences at JFK including many workers noting a good relationship with their management, an awareness of OSH measures, the extensive and ambitious suite of policies and improved communication between workers and managers.

In terms of negative impacts, the investigation highlighted direct impacts and root causes contributing to the risk of SGBVH and abuse in the workplace, various forms of discrimination, and overall working conditions including wages and OSH. Impacts were disaggregated to understand the differences experienced depending on gender, employment status (namely contracted workers) and relationship to JFK (employee, community member etc.).

#### **Recommendations**

Partner Africa provided a robust set of recommendations in response to the findings encompassing remediation, structural changes, and improvement of HRDD systems. Cutting

across the recommendations is the need to engage with key external expert organisations to support development and implementation of actions. Additionally, the systematic approach that should be taken to ensure cultural and organisational transformation is at the core of interventions. Following the investigation, Finlays and Browns translated the comprehensive recommendations made by Partner Africa into a detailed and timebound action plan. As of January 2024, the action plan is being delivered and Finlays have committed to publishing the action plan in due course, following worker and community engagement.

The report includes a set of recommendations for **buyers of BPK**, highlighting the need for meaningful engagement and investment in the action plan, acknowledging a shared responsibility and enabling interventions developed in response to the investigation to be implemented. It calls on buyers to both provide support to BPK on the topic of HRDD and to commit to reviewing the effectiveness of their own organisations' HRDD processes with a view to supporting other suppliers in their supply chains to conduct appropriate and meaningful HRDD.

**Members of the SG** have committed to promoting and actioning their support for the action plan and wider HRDD improvements, and developing their respective individual, and collaborative, action plans accordingly. As part of the collaborative efforts, SG members will support Finlays to work with an independent third-party organisation to undertake credible verification of the BPK action plan to ensure that actions are being undertaken appropriately and generating the intended outcomes.

Finally, the report outlines recommendations for **stakeholders in Kenya's wider tea sector**. These include learning from this investigation, conducting transparent conversations between tea producers on the issues identified and collaborating to develop interventions targeted at root causes of SGBVH in Kenyan tea estates. Collaboration should extend to:

- Developing good practice guidelines for tea producers on how to handle cases of workplace SGBVH and to develop avenues for survivors to access justice via judicial and non-judicial means.
- Working with, and supporting, specialist local NGOs and other civil society organisations to both enhance existing and develop new interventions to address issues of SGBVH.
- Using the collective leverage of the tea sector to advocate for the full enforcement of existing legal protections by government and law enforcement agencies in Kenya,
- And where necessary, advocating for legal and policy reform to strengthen the regulatory environment in support of protecting survivors and access to justice.

### **Next steps**

Mindful that these serious issues and appalling practices appear persistent and prevalent across the sector, the intention is to support sector-wide dialogue with the aim of aligning stakeholder response. The SG will enable a validation workshop in Kenya in Spring 2024 with stakeholders to share and discuss investigation findings and learning from the process to inform broader sector action.

Transparency is critical to the process and the SG endorses the constructive sharing of learning and findings. The SG strongly believes that an independently produced summary of the JFK investigation should be published, outlining the findings, recommendations, and corresponding action plan. Based on independent advice, on the recommendation of Partner Africa, the SG does not feel that publication of the full report would be in the best interest of workers. The SG's

position is that publication of the report's Executive Summary along with the action plan is of upmost importance to ensure transparency and enable accountability. Such transparency is recognised as best practice and aligned with the expectations of businesses laid out in the UNGPs.

The primary objective of the SG remains to enable and support appropriate remediation for survivors and to create positive change for survivors, workers, and the local community. The SG is acutely aware of the risk that survivors and workers perceive a lack of transparency around and accountability for what they have experienced. There have been many stakeholders engaged over the course of the investigation who have shared their experiences, information, and perspectives. It is critical that those stakeholders are extended visibility of the findings which they helped to shape, ultimately validating that their views have been heard.

It is imperative that a credible community action plan be communicated to outline how the findings, recommendations, and action plan to be shared with survivors, workers, and the local community, giving them a genuine opportunity to help design and participate in the action plan. The SG welcomes Finlays and BPK's efforts to develop and deliver such a plan with third-party expert support. The SG encourages BPK to establish regular forums and ongoing dialogue with relevant stakeholders – including workers and their representatives, civil society organisations, and local community members – to enable two-way information exchange to support the delivery of the action plan and build trust to foster a more collaborative environment.