**ATUMA and UNILEVER PLC- NCP NOTE**

***Introduction***

*We are an association, ATUMA (Association des Ex-Travailleurs Unilever Marsavco/PHC au Congo) of former workers of UNILEVER in the Republic Democratic of Congo/ D.R. Congo. We wish to make you aware of a considerable, large debt UNILEVER has accumulated over years in D.R. Congo claimed by the former workers’ association against UNILEVER in D.R.Congo.*

*The amounts ATUMA, representing 686 former workers claim within the OHADA legal framework is not less than USD 45,931,798. The amount represents solely compensation for in kind payment due, excluding outstanding wages, daily food- and transport allowances. The claim is based on the Unilever Plc DR Congo collective labour agreement, which can be mailed to upon request.*

**The Fact**

1. ln 2001, MARSAVCO UNILEVER/P.H.C SARL dismissed 802 Congolese employees in breach of the redundancy agreement signed on 06 August of the same year. The company paid them their monthly salaries but failed to include the package constituted of oil and soaps given to them twice a month. lt argued it was not part of their final salary scheme.

2. On 15 May 2002, all of them complained to the Congolese General lnspectorate for labour about their collective dismissal and the withholding of the package/in kind payment. They argued their dismissal and the withholding of the package were unfair. The complaint was done through our client who also brought the matter to the attention of Congolese authorities at different levels (Judiciary, Government and the Office of the President of the Republic).

3. ln 2006, UNILEVER PLC transferred to MARSAVCO UNILEVER/P.H.C SARL the sum of USD 35 million to settle the dispute. Unfortunately, no settlement was reached. The money wasn't paid to even one single dismissed employee.

4. On 26 December 2006, in its ruling number R.A.A 168, the Court of Appeal of Kinshasa/Gombe, accepted the 802 non-conciliation reports issued by the Provincial Labour lnspectorate prevented the former employees from taking immediately possession of their rights estimated without contest to USD 24,408,496 (Twenty Four million Four Hundred and Eight Thousand Four Hundred Ninety Six Only) and ruled that their claim was admissible and justifiable while declaring void the incriminated non-conciliation reports because they were issued by a labour inspector without capacity and failed to take into account their package as part of the calculation of the final salary as benefit in nature.

5. This means your argument that the package/in kind payment wasn't part of the final salary scheme failed to convince Congolese Judges and that UNILEVER had to pay them the monetary equivalent of the package. ATUMA 's argument that the package had to be included into the final salary scheme won. There is a legal duty to pay the package.

6. On 06 September 2007, the certificate of non-appeal number 005107 was issued by the Registrar of the Supreme Court. lt confirmed that no appeal was lodged against the judgment number R.A.A 168.

7. This means the above ruling can no longer be challenged. lt has the force of res judicata. Unilever must comply with it or it will be enforced by ATUMA.

8. On 22 November 2007, the Congolese Minister of Justice wrote the letter number 790/BM255/IL/CAB/MIN/J/2007 to the Managing Director of MARSAVCO UNILEVER/P.H.C SARL regarding the inclusion of the package into the payment of the final salary of all former employees of MARSAVCO UNILEVER/P.H.C SARL. The Minister also instructed him to comply with all the various administrative and judicial decisions to settle this matter by paying the package.

9. On 05 June 2008, the Congolese Minister for Employment, Labour and Social Welfare wrote the letter number 12/CAB/MIN.ETPS/VLN/LAA/362/08 to the Managing Director of MARSAVCO UNILEVER/P.H.C SARL. The Minister suggested that her involvement was in support of the actions of administrative and political authorities who requested the rehabilitation of all the former employees into their rights and stressed that high government authorities had pleaded for them to be put back into their rights.

10. On 04 September 2008, the Congolese National General Meeting of the Social Dialogue Permanent Framework (CPDS) voted a resolution inviting MARSAVCO UNILEVER/P.H.C SARL to comply with the judicial decision regarding taking the benefits in nature (package) into account in calculating the final salaries of their former employees/workers while advising the company and its former employees to favour a negotiated solution under its supervision.

11. On 20 November 2009, the Congolese National Assembly voted the recommendation No.006 instructing the Congolese Government to give sufficient means to the CPDS to enable it to fulfill its missions, to use all legal, statutory and conventional means to enable the Union of the Congolese Enterprises Federation (FEC) to definitely settle this dispute by complying with the decisions of the Congolese Courts and the Congolese Government while compelling the Direction of MARSAVCO UNILEVER/P.H.C SARL to pay the package inside the final salary under the letter No.12/CAB/MIN.ETPS/VLN/LAA/362/03/08 dated 05 June 2008 of the Congolese Minister for Employment, Labour and Social Welfare. lt also instructed the Congolese Prime Minister to sign the decree proposed by the CPDS and summon it into an extraordinary session for the final settlement of the dispute.

12. On 07 January 2010, the Congolese Prime Minister issued the Decree No. 010/01 summoning an Extraordinary General Meeting of the Social Dialogue Permanent Framework (CPDS) as recommended by Congolese members of Parliament. Accordingly, the document invited MARSAVCO UNILEVER/P.H.C SARL and its former employees/workers to submit their own point of view about the package to enable the General Meeting of the CPDS to rule in all fairness.

13. ln September 2010, UNILEVER FRANCE made a public announcement that it wanted to close its FRALIB tea processing and packaging factory located in the town of Gemenos in France, where 182 employees had been making Lipton teas and Elephant infusions.

14. On 12 November 2010, back in the DRC, the National General Meeting of the CPDS decided that the relevant labour inspectorate had to regularise the procedure of the 686 Congolese employees dismissed by MARSAVCO UNILEVER/P.H.C SARL.

15. On 06 April 2011, the Congolese Prime Minister issued the Decree No. 011/17 deciding that all the resolutions of the Extraordinary General Meetings of the CPDS related to the payment of the equivalent in money of the package in favour of the 802 former employees of the MARSAVCO UNILEVER/P.H.C SARL are made enforceable.

16. This means that UNILEVER has now a legal duty to comply with the Congolese Prime Minister's decree by paying the package accordingly alongside your legal duty to comply with the Court ruling number R.A.A 168.

17. On 18 June 2012, the Congolese First President of the Supreme Court wrote to the Congolese General lnspector regarding the enforcement of the relevant decree of the Congolese Prime Minister regarding the payment of the package. He instructed enforcement must be done in compliance with the Congolese Constitution and the Congolese law and that MARSAVCO UNILEVER/P.H.C SARL should avoid any delaying tactics aim at tarnishing the image of Congolese Justice in a just cause, as the high institutions of the country, with proper power on the matter, have officially taken position to ensure the triumph of the rule of law by the enforcement of relevant judicial decisions.

18. ln September 2012, UNILEVER FRANCE closed its FRALIB Gemenos factory and several employees started a sit in inside the plant while their trade union mounted a legal challenge against your social plan. They were successful three times. MARSAVCO UNILEVER/P.H.C SARL lost three times.

19. On 05 April 2013, back in the DRC, in its ruling number RA. 1271, the Congolese Supreme Court of Justice dismissed the challenge brought by the FEC against the decree No. 011/17 dated 06 April 2011 on the application of the resolutions of the CPDS Extraordinary General Meeting regarding the payment of the package or principal of the debt to the former employees of MARSAVCO UNILEVER/P.H.C SARL.

20. This means the challenge mounted by the Congolese employers' union failed and the disputed PM Decree in favour of ATUMA’S members was upheld. As a result, MARSAVCO UNILEVER/P.H.C SARL must comply with it.

21. On 06 November 2013, our client contacted by fax Mr. Paul Polman, the CEO of Unilever Plc, in London to request the payment of the package to his members in the DRC. The following days, you made a transfer of USD 25,100,000 to MARSAVCO UNILEVER/P.H.C SARL. However, no settlement was reached. The money wasn't paid to even one single dismissed employee.

21 A. On 10 May 2014, UNILEVR PLC transferred USD 66 million for the package settlement this money went straight to the charity association of the Rawji in Pakistan

22. On 28 May 2014, you agreed to pay EUR 20 Million to the French former employees of the FRALIB factory. This agreement was reached after several negotiating meetings between the employees/workers and the representatives of UNILEVER FRANCE, including their Chief Executive Officer (CEO). He was personally involved in the discussions.

23. On 29 May 2015, back in the DRC, a report was issued and signed between the Congolese former employees, the company and the Labour General lnspectorate regarding the closing of this case. The lnspectorate in charge of labour calculated that each employee/worker should get Twenty Five packages during a year

24. This means the following:

• 802 employees will get the monetary equivalent of 25 packages or an amount of USD 24,408,096 (Twenty Four Million Four Hundred and Eight Thousand Ninety Six Only).

• Each of the 802 employees will receive USD 30,434.53 (Thirty Thousand Four Hundred and Thirty Four American dollars and Fifty Three cents Only).

• USD 30,434.533 x 686 employees = USD 20,878,90 (Twenty Million Eight Hundred Seventy Eight Thousand Ninety Only) to be paid by MARSAVCO to the 686 employees.

• 116 Employees were in dispute with MARSAVCO through judicial jurisdiction and lost at the DRC Supreme Court of Justice.

25. This show an agreement was reached between MARSAVCO SARL and ATUMA and that Unilever have a legal duty to comply with it or make sure your agents do.

26. ln June 2015, ATUMA (assisted by his Lawyers) and MARSAVCO UNILEVER /P.H.C SARL or MARSAVCO SARL (represented by your agent, the chairman of its board of Directors where other of your agents sit) had numerous rounds of negotiation to settle the dispute. Unfortunately, no agreement was reached. UNILEVER PLC refused to get involved in the discussions despite the pressing invitations of ATUMA who wanted to secure an agreement with MARSAVCO UNILEVER /P.H.C SARL or MARSAVCO SARL and stop its members' suffering.

27. On 12 February 2016, the ruling number RA.1271 of the Supreme Court was serviced with enforcement formula to the FEC and the Government of the Democratic Republic of Congo represented by the Prime Minister. lt was done by the Administrative Registrar of the Supreme Court.

28. This means MARSAVCO UNILEVER/P.H.C SARL or MARSAVCO SARL has now another legal duty to comply with the decision to pay the package (in kind payment).

29. On 17 July 2017, the previous Legal Representative emailed Mr. Polman, the CEO OF UNILEVER PLC a letter reminding you of your legal duty to pay the members of ATUMA under the Decree No. 011/17 of 06 April 2011 signed by the Congolese Prime Minister and validated by the Congolese Supreme Court ruling number RA. 1271 dated 05 April 2013 while giving you notice to pay the package within 8 (Eight Only) days. He added that he hoped you would now give to this proper consideration to this representation to avoid the threat of further legal action in England and Wales and/or remove the threat of public scrutiny of your business and of the conduct of your agents or managers in the DRC.

30. The French Lawyer, Pr. Prevost was still waiting to hear from you when ADL (Advise Learning Bureau) was instructed to contact, the CEO of UNILEVER PLC.

31. On 15 August 2017, the Registrar of the Commercial Tribunal issued a conservatory seizure warrant on MARSAVCO SARL for the payment of the debt of USD 46,558,140.7 (Fourty Six Million Five Hundred Fifty Eight Thousand US Dollars and Seventy cents Only).

lt's constitute of the following:

* Principal: USD 20,878,090 (Twenty Million Eight Hundred Seventy Eight Thousand American dollars and Ninety cents only)
* Moratorium interest of 8 %: USD 25,053,708 (Twenty Five Million Fifty Three Thousand Seven Hundred and Eight American dollars Only).
* Proportional right of 3% of the principal: USD 626,342.7 (Six Hundred Twenty Six Thousand Three Hundred Fourty Two American dollars and Seventy cents Only).

32. On 25 September 2017, ATUMA CHAIRMAN attended a meeting at the British High Commission in Kinshasa. The payment of the above debt was discussed. lt was agreed that UNILEVER PLC should pay the package as soon as possible.

**Legal basis of the claim**

In 2006 by transferring USD 35 Million to MARSAVCO UNILEVER/P.H.C SARL to settle this dispute (Ten million was for the Marsavco increase in capital, the balance Twenty Five million to settle the package payment), then transferring USD 25,100,000 for the same purpose in *2013* and then transferring USD 50 Million for the same purpose in *2017*, Unilever Plc showed clear intention to put its Congolese company in the position to comply with the various Congolese legislative, ministerial and judicial decisions in favour of ATUMA members. This is strong evidence that UNILEVER PLC liable for the quadruple failure of its appointees leading and sitting in the board of Director of MARSAVCO UNILEVER/P.H.C SARL or MARSAVCO SARL.

However, in the unlikely event UNILEVER PLC decide to deny liability and resist our claim, ATUMA intends to argue it has direct parent liability because it undertook to pay the money and help them/marsavco settle the dispute and that while UNILEVER had the power to appoint a controller to investigate the misappropriation of the money, it refused to do so. We intend to add that MARSAVCO UNILEVER P.H.C SARL or MARSAVCO SARL does not operate as truly independent organisation.

lt is under UNILEVER PLC influence and control. UNILEVER PLC regularly finances MARSAVCO UNILEVER/P.H.C SARL or MARSAVCO SARL. This is a regrettable avoidable failure. ATUMA will also argue you have a social responsibility as per “Unilever social charter to treat your employee humanly” toward its members whose rights have been breached, ignored and/or denied for more than fifteen years by defiant and arrogant agents believing that their abhorrent and careless conduct will never be scrutinised because of the scope of corruption in DRC government and of the distance between Kinshasa and London.

ATUMA will argue Mr. Paul Polman refusal to intervene in the dispute in the DRC led to the failure of the negotiation and that if you had agreed to do so like in the dispute in France, an agreement would have been reached in the DRC in 2015 like in France in 2014.

**Factual basis of the claim**

UNILEVER PLC made four (4) monetary transfers to MARSAVCO UNILEVER/P.H.C SARL or MARSAVCO SARL to comply with the various Congolese legislations, ministerial and judicial decisions to settle this dispute. On each occasion, Mr. Paul Polman, CEO of Unilever Plc failed to ensure the local representatives paid the money to the right people while ignoring ATUMA's alarming reports and warning signs. UNILEVER also refused to investigate the circumstances of the misappropriation whether initiated by management staff in London or Kinshasa.

Mr. Paul Polman refused to participate in the negotiation between ATUMA and MARSAVCO UNILEVER/P.H.C SARL or MARSAVCO SARL. His refusal led to the failure of the negotiation in Kinshasa and the extension of the suffering of the 686 ATUMA’s members. We wonder whether this is not a case of discrimination towards an African subsidiary, when at the same time UNILEVER had successfully negotiated a dispute between FRALIB factory former employees and UNILEVER in France.

In our opinion, Mr. Paul Polman involvement in the DRC dispute, like in France, would have led to the success of these negotiations and the settlement of this dispute. His personal responsibility is clearly visible.

**Responsibility**

We believe, UNILEVER PLC failure to insure that the money was correctly paid to the right people and no action taking from their side to investigate the most likely misappropriation of funds constitutes a grave case negligence supporting mismanagement and fraud. This makes UNILEVER PLC liable!

Atuma also believe Unilever Plc refusal to be involved in the negotiation between ATUMA and MARSAVCO UNILEVER/P.H.C SARL or MARSAVCO SARL in the DRC, contrary to what unilever CEO, Mr.Polman did between UNILEVER FRANCE and its employees at the FRALIB factory amount to negligence.

This inconsistency makes Unilever Plc liable to damages and/or enforcement action.

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| **EVIDENCE** |
| **Courts Decisions** |
| • 26 December 2006, in its ruling number R.A.A 168, the Court of Appeal of Kinshasa/Gombe, accepted the 802 non-conciliation reports issued by the Provincial Labor inspector. It prevented the former employees from taking immediately possession of their rights (“packages”) estimated USD 24,408,496 (Twenty Four Million Four Hundred and Eight Thousand and Four Hundred Ninety Six Only) and ruled that their claim was admissible and justifiable. It also declared void the incriminated non-conciliation reports because they were issued by a labor inspector without formal authorization. |
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| • 06 September 2007, the certificate of non-appeal number 005107 was issued by the Registrar of the Supreme Court. lt confirmed that no appeal was lodged against the judgment number R.A.A 168.This meant the above ruling could no longer be challenged (res judicata). Unilever must comply with the ruling. |
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| • 05 April 2013, in its ruling number RA. 1271, the Congolese Supreme Court of Justice dismissed the challenge brought by the FEC against the decree No. 011/17 dated 06 April 2011 on the application of the resolutions of the CPDS Extraordinary General Meeting regarding the payment of the package or principal of the debt to the former employees of MARSAVCO UNILEVER/P.H.C SARL. |
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| This new amount includes the following: |
|  Principal: USD 20,878,090 (Twenty Million Eight Hundred Seventy |
| Eight Thousand and Ninety cents only) |
|  Moratorium interest of 8 %: USD 25,053,708 (Twenty Five Million Fifty Three Thousand Seven Hundred and Eight Only). |
|  Proportional right of 3% of the principal: USD 626,342.7 (Six Hundred Twenty Six Thousand Three Hundred Forty Two and Seventy cents only). |

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| **Administrative Decisions** | |
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|  10 May 2011: The Prime Minister’s Decree No. 011/17 is published in the President of the Republic’s DR Congo official bulletin no.10 | |
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|  15 November 2017: the RA 1271 Supreme Court Judgment is published in | |
| the President of the Republic's DR Congo official bulletin no.22 | |
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| • 04 September 2008, the Congolese National General Meeting of the Social Dialogue | |
| Permanent Framework (CPDS) voted a resolution inviting MARSAVCO UNILEVER/P.H.C | |
| SARL to comply with the judicial decision, while advising the company and its former employees to favour a negotiated solution under its supervision. | |
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| • 20 November 2009, the recommendation No.006. The Congolese National Assembly voted the recommendation No.006 instructing the Congolese Government to give sufficient means to the CPDS to enable it to fulfill its missions, to use all legal, statutory and conventional means to enable the Union of the Congolese Enterprises Federation (FEC) to definitely settle this dispute by complying with the decisions of the Congolese Courts and the Congolese Government while compelling the Direction of MARSAVCO UNILEVER/P.H.C SARL to pay the package inside the final salary under the letter No.12/CAB/MIN.ETPS/VLN/LAA/362/03/08 dated 05 June 2008 of the Congolese Minister for Employment, Labour and Social Welfare. lt also instructed the Congolese Prime Minister to sign the decree proposed by the CPDS and summon it into an extraordinary session for the final settlement of the dispute. | |
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| DRC National Assembly recommendation No.003 et 006 “MARSAVCO/PHC UNILEVER CONGO” | |
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| • 7th January 2010, PM Decree No. 10/01. The Congolese Prime Minister issued the Decree No. 010/01 summoning an Extraordinary General Meeting of the Social Dialogue Permanent Framework (CPDS) as recommended by Congolese members of Parliament. Accordingly, the document invited MARSAVCO UNILEVER/P.H.C SARL and its former employees/workers to submit their own point of view about the package to enable the General Meeting of the CPDS to rule in all fairness. | |
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| * This means that UNILEVER has now a legal duty to comply with the Congolese Prime Minister's decree by paying the package accordingly alongside its legal duty to comply with the Court ruling number R.A.A 168.  |  | | --- | | **Criminal Brigade** | | |
| 22 November 2017: the Kinshasa Criminal Brigade of the Kinshasa-Gombe district |
| invites the General Labour Inspector. |
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| 22 November 2017: the Kinshasa Criminal Brigade district of Kinshasa-Gombe invites the Cabinet Director/Chief of staff of H.E. The State Minister of Works, Labour and Social |
| Welfare. |
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| 27 November 2017: the Kinshasa Criminal Brigade of Gombe |
| district invites Mr. Jean-Marie LOKOTO, Chairman of ATUMA/PHC |
| Unilever Congo. |
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| 06 December 2017: the Kinshasa Criminal Brigade Gombe |
| district invites Mr. Ali Reza RAWJI, Chairman of the Marsavco Board. |

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| **DR Congo Institution letters** |
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| • 18 June 2012, the Congolese First President of the Supreme Court wrote to the Congolese General lnspector regarding the enforcement of the relevant decree of the Congolese Prime Minister regarding the payment of the package. He instructed enforcement must be done in compliance with the Congolese Constitution and the Congolese law and that MARSAVCO UNILEVER/P.H.C SARL should avoid any delaying tactics aim at tarnishing the image of Congolese Justice in a just cause, as the high institutions of the country, with proper power on the matter, have officially taken position to ensure the triumph of the rule of law by the enforcement of relevant judicial decisions. |
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| • 22 November 2007, the Congolese Minister of Justice wrote the letter number 790/BM255/IL/CAB/MIN/J/2007 to the Managing Director of MARSAVCO UNILEVER/P.H.C SARL to the Managing Director of MARSAVCO UNILEVER/P.H.C SARL regarding the inclusion of the package into the payment of the final salary of all former employees of MARSAVCO UNILEVER/P.H.C SARL. The Minister also instructed him to comply with all the various administrative and judicial decisions to settle this matter by paying the package. |
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| • A number of other Letters could be added / listed. |