

February 14, 2013

Daniel Adler
Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue, NW Room F11K-232
Washington, DC 20433
United States
cao-compliance@ifc.org

RE: Policy violations committed by Amalgamated Plantations Private Limited in Assam, India

Dear Mr. Adler,

We are the group of civil society organizations who submitted a complaint to the CAO on February 2, 2013, on our behalf and on behalf of workers and their families on three Amalgamated Plantations Private Limited (“APPL”) plantations: Nahorani, Majuli, and Hattigor. The issues raised in the complaint were discussed with the CAO assessment team during their meetings with various stakeholders, and we take this opportunity to submit that information in writing in support of the ongoing compliance audit.¹

We strongly urge the IFC to ensure that all international, domestic, and World Bank standards are met on APPL plantations. IFC has failed to meet its due diligence and supervisory obligations with respect to its decision to invest in and oversee the activities of its client, APPL. These shortcomings were outlined in the original complaint to the CAO and discussed with the CAO assessment team. This letter will describe in greater detail the specific violations of IFC Performance Standards, Indian and international law.² IFC should have been aware of these problems prior to making an investment in APPL and should now take steps to ensure that APPL complies fully with these standards.

IFC’s mandate is to eliminate extreme poverty by 2030 and to boost shared prosperity, but is failing on both accounts with respect to workers on APPL plantations, who not only continue to live in extreme poverty but have also been made worse off since IFC’s involvement. Our hope is that as a result of the investigation process, IFC will make changes that will lead to a better standard of living for all APPL workers.

¹ This letter was prepared with support from Accountability Counsel and Nazdeek.

² The CAO Appraisal Report for the Tata Tea/APPL compliance review triggered by CAO Vice President, Meg Taylor, analyzed which set of Performance Standards would be applicable for IFC’s investment in Tata Tea/APPL. The report concluded that 2006 Performance Standards applied, and the analysis in this letter will use the same 2006 Performance Standards. CAO Appraisal Report for Amalgamated Plantations Private Limited (APPL), January 8, 2013, *available at* http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalReport_TataTea_Jan082013.pdf (hereinafter “CAO Appraisal Report Jan 2013”).

I. Introduction

On February 2, 2013, we submitted a complaint to the CAO regarding violations of international, national, and state law on three APPL plantations (Annex 1). These violations are the result of more than 150 years of subjugation and oppression of tea plantation workers. Under British colonial rule, the forebears of many of Assam's tea plantation workers were forcibly migrated from tribal areas in central India to work in the tea industry in northeast India, and were eventually re-employed through economic and physical coercion.³ Today, tea plantation workers in Assam continue their "generational servitude."⁴ They remain isolated from Assam's mainstream, both physically and in terms of economic development,⁵ and are dependent on APPL for their livelihoods, and their families' housing, health, food, education, and cultural life.

Our complaint raised concerns regarding labor and working conditions, inadequate compensation, poor sanitation and health conditions, poor living conditions on the plantations, restricted freedom of association, and a faulty worker share program. We submit this supplemental document today for two purposes:

- To document in further detail APPL's violations of IFC Performance Standard 2; Indian laws, namely: the Indian Plantations Labour Act, 1951 ("PLA"), the Assam Plantations Labour Rules, 1956 ("Assam Rules"), the Minimum Wages Act, 1948 ("MWA"), and the Payment of Wages Act, 1936 ("PWA"); and fundamental conventions of the International Labour Organization ("ILO") to which India is a party; and
- To illustrate APPL's violations of IFC Performance Standard 7 against the *adivasi* workers and families on its plantations.

Workers and their families continue to suffer abysmal living and working conditions, and ongoing violations of their legal rights. Such violations include:

- Failure to inform workers of their legal rights;
- Denial of access to a representative union;
- Payment of wages below the state mandated minimum and the national floor minimum wage, unpaid rest day remuneration, overtime and sick pay, and illegal deductions;
- Replacement of permanent workers with temporary workers, with reduced benefits;
- Excessively long working hours and work requirements;
- Inadequate health benefits, with limited doctors providing poor medical care in substandard facilities;
- Lack of accommodation for pregnant workers;
- Workers bearing costs that APPL is required to cover, including medical expenses and dependency benefits for female workers;

³ Behal, Rana, *Coolies, Recruiters and Planters: Migration of Indian Labour to the Southeast Asian and Assam Plantations during Colonial Rule*, Crossroads Asia Working Paper Series (2013), pp. 5-8 (hereinafter "Behal article") (Annex 2).

⁴ Behal article, p. 8.

⁵ CAO Meeting with NGOs in Tezpur, June 29, 2013 (hereinafter "NGO Meeting, June 2013") (minutes on file); Saikia, Biswajeet, "Development of Tea Garden Community and Adivasi Identity Politics in Assam," *The Indian Journal of Labour Economics*, Vol. 51, No. 2, 2008, p. 308, 321-322 (hereinafter "Saikia article") (Annex 3).

- Severe water and sanitation related health hazards;
- Overcrowded housing in states of disrepair;
- Inadequate education systems for workers' children;
- Lack of childcare;
- Presence of child labor on the plantation;
- Occupational health and safety violations, including a lack of safety equipment, training and medical attention for pesticide sprayers;
- Incomplete information and coercion on workers to enter a flawed employee share program;
- An ineffective grievance mechanism for redress of complaints; and
- Retaliation against workers who voice their concerns or complain about these violations.

Finally, APPL threatens the *adivasi* cultural identity of workers and their families by failing to engage *adivasi* workers as partners in development and instead violating their rights.⁶ The cumulative effect of APPL's actions is to ensure that generations of *adivasi* workers will remain dependent on the tea plantations, thus perpetuating their historic marginalization.

Given the well-documented history of Assam's problematic labor practices in the tea industry and the entrenched nature of labor practices and relationships across the state, IFC should have better understood the challenges associated with promoting real sustainability and ethical labor standards. In approving the investment in Tata Tea/APPL, IFC failed in its due diligence, relying too heavily on certification programs and external auditing, to approve the investment in Tata Tea/APPL. IFC must now take additional steps to rectify the harm to workers caused by labor violations under IFC supervision.

II. Labor Rights Violations

IFC Performance Standard 2 ("PS2") recognizes that the pursuit of economic growth must be balanced with protection for basic rights of workers. Objectives enshrined in PS2 include "to establish, maintain, and improve the worker-management relationship," "promote the fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labor and employment laws," and "promote safe and healthy working conditions, and to protect and promote the health of workers."⁷

APPL has met none of these objectives: its relationship with its workers is oppressive, it is not in compliance with labor and employment laws, and working conditions and worker health are appalling. This section will outline PS2 violations, in addition to violations of applicable laws and international treaties.

⁶ "*Adivasi*" is an umbrella term for indigenous peoples of India, and refers to a heterogeneous set of ethnic and tribal groups. The term "*adivasi*" derives from the Hindi word "adi" which means of earliest times or from the beginning and "vasi" meaning inhabitant or resident, and was coined in the 1930s as a consequence of a political movement to forge a sense of identity among the various indigenous peoples of India. See <http://www.refworld.org/docid/49749d14c.html>.

⁷ IFC Performance Standards on Social and Environmental Sustainability, 2006, Performance Standard 2: Labor and Working Conditions, para. 2 (hereinafter "PS2").

A. Failure to Inform Workers of Their Rights

Under PS2, APPL must adopt a human resources policy, under which they must inform employees of their “rights under national labor and employment law, including their rights related to wages and benefits. This policy will be clear and understandable to employees and will be explained or made accessible to each employee upon taking employment.”⁸ After the beginning of employment, APPL must “document and communicate to all employees and workers directly contracted by the client their working conditions and terms of employment, including their entitlement to wages and any benefits.”⁹

However, APPL has not sufficiently informed its employees of their rights, making it more difficult for workers to identify and act upon the many violations of those rights. For example, APPL provides payslips in English to workers who speak other regional and local languages, and provides no further information or training regarding the calculation of wages or deductions.¹⁰ This lack of information and communication on behalf of APPL has been particularly challenging with regard to the Employee Stock Ownership Program (“ESOP”), detailed further below.

A major driver of this breakdown in communication, as well as the difficulties with rectifying the many workers’ rights violations on the plantations, is the fact that the officially recognized union does not represent worker interests and is not protecting workers’ rights.

B. Workers’ Organizations Do Not Represent Workers

Under PS2, “[i]n countries where national law recognizes workers’ rights to form and to join workers’ organizations of their choosing without interference and to bargain collectively, the client will comply with national law.”¹¹ Furthermore, “the client will not discourage workers from electing workers representatives, forming or joining workers’ organizations of their choosing, or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and collective bargaining.”¹² “Worker organizations are expected to fairly represent the workers in the workforce.”¹³ The right to freedom of association is also enshrined in the Indian Constitution¹⁴ and in various international agreements to which India is a party.¹⁵

⁸ PS2, para. 6.

⁹ PS2, para. 7.

¹⁰ Initial Complaint Letter to CAO re Hattigor, Nahorani, and Majuli APPL Plantations, February 2, 2013 (hereinafter “Feb 2013 Complaint”).

¹¹ PS2, para. 13.

¹² PS2, para. 14.

¹³ PS2, para. 10.

¹⁴ Constitution of India, 1949, Article 19(1)(c).

¹⁵ See, e.g., International Covenant on Civil and Political Rights, Article 22; International Covenant on Economic, Social and Cultural Rights, Article 8.

The official union acting on behalf of workers at almost all Assam tea plantations, including those owned by APPL, is the Assam Chah Mazdoor Sangha (“ACMS”),¹⁶ formed shortly after India’s independence through an agreement between the tea industry and the Congress Party, the ruling party at the time and the party currently dominant in Assam.¹⁷ In exchange for preserving pre-existing exploitative labor practices in the Assamese tea industry, the Congress-affiliated union was able to prevent opposition party unions from entering the plantations.¹⁸

ACMS does not fairly or adequately represent tea plantation workers or their interests. Workers are not able to freely choose which union represents them, and workers are forced to pay ACMS union dues, which are automatically deducted from salaries.¹⁹ ACMS’ dominance comes from its close relationships with and support from tea plantation management and the state government. ACMS not only has a hold over almost all Assam tea plantations, it is the only one recognized by the state administration,²⁰ and the only union with the right to negotiate with the tea industry, even though there are other registered unions offering membership.²¹

ACMS has a long history of compromising workers’ interests in negotiations with tea producers.²² For example, as will be shown below, ACMS has allowed workers’ minimum wage to be set at a rate well below the minimum wage applicable to workers who are not union members, and has not taken action to persuade APPL management to raise compensation to the legal minimum wage.²³

APPL, though aware of the current situation, has not taken steps to remedy the situation, and is profiting from the arrangement that denies workers the right to freely choose their representative organization and the right to collective bargaining, which are guaranteed by state and national law. As a result, the agreements negotiated by ACMS on behalf of workers do not represent the standard set under PS2 of being collective bargains by unions of workers’ own choosing and made under workers’ delegated authority.

IFC should have been aware of the union situation for tea workers in Assam prior to investing in APPL. The exploitative relationship created by ACMS and the tea industry has been in place for

¹⁶ The only exception among the tea plantations in the Feb 2013 Complaint is Nahorani, which is represented by the Communist party affiliated union.

¹⁷ “About Us: Assam Chah Mazdoor Sangha,” *available at* <http://www.assamchahmazdoorsangha.org/aboutus.html>.

¹⁸ Behal, Rana P., “Power Structure, Discipline and Labour in Assam Tea Plantations during Colonial Rule,” *Coolies, Capital, and Colonialism: Studies in Indian Labour History*. Cambridge: Cambridge University Press, 2006, p. 155 (Annex 4). ACMS is affiliated with the Indian National Trade Union Congress referred to in this article.

¹⁹ “FNV Company Monitor: Unilever and the trade union challenge,” August 2010, pp. 26-27, *available at* <http://tradeunionfreedom.fnvcompanymonitor.nl/perch/resources/Unileverandthetradeunionchallenge1.pdf> (hereinafter “FNV Company Monitor”) (Annex 5).

²⁰ “Ever since its inception the ACMS has been working successfully to its credit as the only ONE and ONE actively strong and effective union of the Tea Plantation Workers recognized by the Tea Industry as well as the State Administration.” Assam Chah Mazdoor Sangha, “About us,” *available at* <http://www.assamchahmazdoorsangha.org/aboutus.html>.

²¹ FNV Company Monitor, p. 26; Saikia article, p. 308; and Biswas, Debashish, “History and Growth of Trade Union Movement in Tea Industry and Prior to Globalization with Special References to Dooars Region in West Bengal,” *Abhinav*, Vol. 1, No. 4, p. 73 (hereinafter “Biswas article”) (Annex 6).

²² See Saikia article, p. 308; and Biswas article, p. 74.

²³ Minutes of CAO Meeting with NGOs in Tezpur, June 29, 2013. Hereinafter “NGO Meeting, June 2013.” See also Saikia article, p. 310; and Biswas article, p.73.

over 60 years, is widely understood in Assam, and is well documented. Therefore, IFC should have taken steps to ensure that APPL did not deny workers their right to freely choose their unions, and did not take part in and apply collective bargaining agreements negotiated with unions that are part of Assam's collusive labor practices.

C. Poor Working Conditions

APPL has obligations under PS2 to provide adequate working conditions, specifically:

Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment (such as wages and benefits, hours of work, overtime arrangements and overtime compensation, and leave for illness, maternity, vacation or holiday) the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.²⁴

i. Guiding National Law

In this case, the workers do not have a workers' organization that they freely chose and that legitimately represents their interests, for the reasons outlined in the above section. ACMS collective bargaining agreements do not reflect reasonable working conditions and terms of employment, as they have been negotiated in collusion with the tea industry to maintain exploitative labor practices. The union has bargained away many of the workers' rights guaranteed under national and state law. Therefore, for purposes of compliance with PS2, the Plantation Labour Act ("PLA"), the Assam Rules, state and national-level minimum wage standards constitute a baseline for "reasonable working conditions and terms of employment" on the three plantations subject to this complaint.

Specific violations of the PLA and "reasonable working conditions" as required under PS2 are detailed below.²⁵

ii. Inadequate Wages

Tea plantation workers' poor financial conditions have been maintained not only by APPL's failure to pay minimum wage, but also its imposition of illegal wage penalties for not meeting onerous workload targets, wage deductions for costs that should in fact be borne by APPL, and over-deductions for supplies like electricity. Besides keeping workers in poverty, other

²⁴ PS2, para. 8.

²⁵ The definition of "worker" under the PLA is "a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical," who earns no more than Rs. 10,000 per month. Plantations Labour Act, 1951, Act 69 of 1951, as amended by Act 17 of 2010, s. 2. Since 2010, this definition includes workers employed by the plantation on contract for more than 60 days in a year. Plantations Labour (Amendment) Act, 2010, Act 17 of 2010, s. 2 (hereinafter "PLA 2010 Amendment"). Virtually all workers in Hattigor, Nahorani, and Majuli fulfill the above criteria.

consequences of inadequate wages include worker malnutrition and family breakup, as some family members are forced to migrate to find better paid work.²⁶

1. Wages Below Minimum Wage

In 2013, APPL workers in Hattigor, Nahorani, and Majuli received a daily wage of Rs. 89 (≈US\$1.50).²⁷ This wage is approximately *half* the minimum wage rate applicable to other agricultural industries in Assam, as well as tea plantation workers that are contract laborers. With this unacceptable wage, workers are unable to properly feed and support themselves and their families. APPL, in contrast, reported a profit after tax of Rs. 11 crores (≈US\$1.8 million) in 2012, and of Rs. 24 crores (≈US\$4 million) in 2013.²⁸ While the daily wage rate cannot be justified by any circumstance, APPL's profits show that these wages were and are applied in the absence of financial exigency.

It is unconscionable that tea plantation workers under ACMS, including APPL workers, have been paid only half the minimum wage. Their wages are set by agreements between ACMS and five employers' associations, including the Assam Branch of the Indian Tea Association ("ABITA"), an employers association of which APPL is a member.²⁹ The following table shows the striking disparity between the applicable wages of ACMS members and other contract laborers in Assam.³⁰

²⁶ Feb 2013 Complaint. *See also* Dhar, Aarti, "Storm in the tea cup," *The Hindu*, February 22, 2012 (hereinafter "Dhar article") ([Annex 7](#)); and Chamberlain Gethin, "How poverty wages for tea pickers fuel India's trade in child slavery," *The Guardian*, July 20, 2013 ([Annex 8](#)).

²⁷ Feb 2013 Complaint. The daily wage was increased to Rs.94 as on January 1, 2014. *See* "Wage hike for Brahmaputra Valley tea workers," *The Assam Tribune*, March 1, 2012, available at <http://www.assamtribune.com/scripts/detailsnew.asp?id=mar0212/at094>.

²⁸ "Directors' Report for Tata Global Beverages Ltd," *The Economic Times*, March 2013 ([Annex 10](#)). 2010 saw a "significant improvement in profit." "Directors' Report for Tata Global Beverages Ltd," *The Economic Times*, March 2010, available at <http://economictimes.indiatimes.com/directorsreport.cms?companyid=12929&year=2010>.

²⁹ Indian Tea Association website, "National Committee – 2012-2013," available at <http://www.indiatea.org/committees.php>.

³⁰ The years 2011 and 2013, and the figures relating to contract laborers are used because of their salience for this case, as well as the availability and accessibility of data.

2013			
Daily Rated		Monthly Rated	
Assam Contract Laborers ³¹	ACMS tea plantation workers ³²	Employees in the Assam agricultural sector ³³	ACMS tea plantation workers ³⁴
Unskilled: Rs. 169 /day Skilled (without industrial training certificate): Rs. 175 /day	Rs. 89 /day	Unskilled: Rs. 4122.30 /month Semi Skilled: Rs. 4756.50 /month	Grade III (lowest): Rs. 2260 to 2770 /month Grade II: Rs. 2370 to 2920 /month
2011			
Daily Rated		Monthly Rated	
Assam Contract Laborers ³⁵	ACMS tea plantation workers ³⁶	Employees in the Assam agricultural sector ³⁷	ACMS tea plantation workers ³⁸
Unskilled: Rs. 142 /day Skilled (without industrial training certificate): Rs. 147 /day	Rs. 71.50 /day	Unskilled: Rs. 3102.60 /month Semi Skilled: Rs. 3412.80 /month	Grade III: Rs. 1640 to 2080 /month Grade II: Rs. 1721 to 2181 /month

The wages of ACMS tea plantation workers are far below the minimum wage rates set by the Assam Government. Furthermore, ACMS negotiated wages have been and are below *even* India's national floor minimum daily wage, which is the lowest common denominator for India's

³¹ Government of Assam Notification NO.ACL.43/2004/1989-2022, March 1, 2013 (with effect from March 1, 2013) ([Annex 11](#)).

³² Memorandum of Settlement between the Tea Industry of Assam Valley and ACMS, March 1, 2012 (w.e.f. January 1, 2012 to December 31, 2014) ([Annex 12](#)). This document also shows the wage increase for 2014 to Rs.94/day.

³³ Government of Assam Notification NO.GLR.318/90/Pt-III/49, December 27, 2012 (w.e.f. September 9, 2012) ([Annex 13](#)).

³⁴ Memorandum of Settlement between the Tea Industry of Assam Valley and ACMS, June 26, 2012 (w.e.f. April 1, 2012) ([Annex 14](#)).

³⁵ Government of Assam Notification NO.ACL.43/2004/15111, December 14, 2010 (w.e.f. December 14, 2010) ([Annex 15](#)).

³⁶ Memorandum of Settlement between the Tea Industry of Assam Valley and ACMS, February 3, 2010 (w.e.f. February 1, 2010) ([Annex 16](#)).

³⁷ Government of Assam Notification NO.GLR.318/90/254-A, October 28, 2011 (w.e.f. July 1, 2011) ([Annex 17](#)).

³⁸ Memorandum of Settlement between the Tea Industry of Assam Valley and ACMS, June 18, 2009 (w.e.f. April 1, 2009) ([Annex 18](#)).

diverse states.³⁹ The national floor daily wage was Rs. 80 in 2007, Rs. 80 to 100 from November 2009 to March 2011, and Rs. 115 from April 2011.⁴⁰

Even if the non-cash benefits that APPL claims to provide its workers are added to the workers' basic wage, the disparity remains significant. For example, ABITA claims that the non-statutory benefits provided to workers, namely, food grains, dry tea, and "fuel etc." were worth Rs. 22.40 per day in 2011, when the basic wage was Rs. 71.50, and Rs. 19.31 per day in 2013, when the basic wage was Rs. 89 (Annex 19). Thus, the wages, both in cash and in kind, purportedly paid to workers were still only Rs. 93.90 in 2011 and Rs. 108.31 in 2013, well below the minimum wage rates set by the Assam Government for agricultural workers.

ABITA has sought to add other items to the basic wage in their wage calculation, such as housing, medical and welfare facilities, holiday pay, sickness benefits, earned leave, education and maternity benefits, and payments to provident fund and deposit linked insurance (Annex 19). However, the Minimum Wage Act expressly excludes many of these benefits from the definition of "wages," including housing, electricity, water, healthcare, and any contribution paid by the employer to any pension fund or under any scheme of social insurance.⁴¹ Hence, these benefits cannot be used in calculating whether a wage meets minimum wage standards. Worse, as will be discussed below, APPL has not adequately implemented many of these benefits and statutory entitlements.

Finally, the daily wage that APPL workers earn does not meet the minimum standards set by the Supreme Court of India, which has defined the concept of minimum wage as a wage that is sufficient to provide not only the basic components of food, housing, clothing, fuel, lighting and other basic necessities, but also minimum recreation and provision for marriages and old age.⁴²

By all counts, the wages and benefits paid by APPL are below the state and nationally mandated minimum wage. This has come about because ACMS has illegitimately bound workers to unconscionable collective bargaining agreements, and APPL has been happy to go along, including by deducting ACMS union dues automatically from wages. The risks posed to workers by the long-standing collusive practices between government, industry, and the ACMS

³⁹ Labour Bureau, Ministry of Labour and Employment, Government of India, *Report on the Working of the Minimum Wages Act, 1948, For The Year 2011*, p. 11 (hereinafter "Labour Ministry Minimum Wages Report 2011").

⁴⁰ Labour Ministry Minimum Wages Report 2011, p. 9.

⁴¹ Section 2(h) of the Minimum Wages Act, 1948, provides that the term "wages" ... does not include ... (i) the value of (a) any house-accommodation, supply of light, water, medical attendance, ... (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance."

⁴² The Supreme Court of India in the seminal case of *Workmen Represented by Secretary vs Management of Reptakos Brett* 1992 AIR 504, 1991 SCR Supl. (2) 129, held that in addition to the basic components of food, housing and clothing, minimum wage included fuel, lighting and other 'miscellaneous' items of expenditure, which should constitute 20% of the total minimum wage, as well as children's education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc., which should further constitute 25% of the total minimum wage.

union in Assam should have been uncovered through IFC's due diligence and should have been addressed from the outset of this project.⁴³

2. Illegal Wage Penalties

Workers are required to meet certain targets each day, known as "task rates," and their wages are halved if they do not meet those targets. The task rates have been increasing for plucking, pruning, and maintaining drains.⁴⁴ Workers in the Nahorani tea plantation reported an increase in workload targets from 19 kilograms to 25 kilograms of tea leaves for picking, and 180 to 480 plants for pruning.⁴⁵ Workers are relying on other family members, including children, to meet these targets. APPL is hence paying tea plantation families an individual's wage for the work of several people.

These wage penalties are not legal under the Payment of Wages Act, which provides exhaustively for the types of fines and deductions to wages that are allowed,⁴⁶ and there are no provisions in the PLA or Assam Rules that allow for such punishments. Further, the threat of non-payment of wages and other such financial penalties in order to exact work has been defined by the ILO as an element of forced labor.⁴⁷

3. Unpaid Overtime and Holidays

Many workers work beyond the legally mandated number of hours per week and on holidays, but are not compensated appropriately. Overtime is defined in the PLA as work in excess of 48 hours per week.⁴⁸ If a worker works overtime, he or she must receive twice the rate of their ordinary wages.⁴⁹ However, in the past three years, APPL has ceased to pay workers for their overtime.⁵⁰ The PLA also requires double pay when working during holidays.⁵¹ However, again, in the last three years, APPL has ceased paying double pay.⁵²

Workers may choose to work on their one allotted day of rest per week, "provided that in doing so a worker does not work for more than 10 days consecutively without a holiday for a whole

⁴³ See CAO Appraisal Report Jan 2013, p. 7 ("CAO considers it noteworthy that discussion of the history of complex union politics, labor unrest and ethnic tension around the tea plantations of India's Northeast is absent from the E&S review and Board documentation.")

⁴⁴ Meeting with Hattigor and Majuli workers, July 1, 2013 (notes on file), and Feb 2013 Complaint.

⁴⁵ CAO Assessment visit to APPL's Nahorani and Hattigor plantations on April 7, 2013 (hereinafter "CAO April Assessment Visit") (notes on file).

⁴⁶ See Sections 7 and 8, Payment of Wages Act, 1936 ([Annex 20](#)). Even if such penalties for failure to meet daily task rates can legally be considered a "fine" under Section 8, Payment of Wages Act, 1936 (which they are not), pursuant to Section 8(4), the total amount of the fine for the wage period cannot exceed 3 percent of wages payable for that wage period.

⁴⁷ International Labour Office, Geneva, *A Global Alliance Against Forced Labour. Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2005*, pp. 5-6 (hereinafter "ILO Global Report on Forced Labour 2005").

⁴⁸ PLA, s. 19(1).

⁴⁹ PLA, s. 19(2).

⁵⁰ CAO April Assessment Visit.

⁵¹ PLA, s. 19(3).

⁵² CAO Assessment Report Regarding Labour Concerns in Relation to IFC's Tata Tea Project (#25074) in Assam, India, November 2013 (hereinafter "CAO Assessment Report").

day intervening.”⁵³ However, many workers on the APPL plantations work in excess of this restriction and without overtime or holiday pay. Moreover, in such cases, even if workers get their cards punched for twelve days in a row of work, they receive only ten days’ wages, with two days deducted as absence.⁵⁴

Workers also report that line supervisors have a practice of reporting more workers than those present, and the workers present – mostly women – are made to fulfill the tasks of the non-existent workers without compensation for the extra time incurred.⁵⁵

4. Excessive Deductions From Payslips

Several deductions are made from workers’ wages each pay period. Deductions include mandatory union dues and ESOP payments, both of which are problematic and discussed in more detail in other sections of this document. Wage calculations include “deductions” for statutory benefits, such as rations, housing, education, healthcare, sick and maternity benefits, and earned leave, among others,⁵⁶ even though these are costs that should be borne by the employer.⁵⁷ Another contentious deduction is for electricity, discussed below.

Workers do not understand these deductions: their payslips are in English and APPL has not adequately informed them about the deductions. Additionally, in Nahorani, workers were required to turn over their payslips in order to receive their rations, leaving workers with no documentation of their wages.⁵⁸

5. Excessive Electricity Deductions

Most workers rely on APPL for the electricity in their housing. APPL provides electricity to the majority of its workers only at night, except on holidays.⁵⁹ Electricity costs charged by APPL are arbitrary: where individual meters are provided, workers are charged around Rs. 200 per month; individual meters are not provided in the Nahorani plantation, and workers are charged Rs. 400 per month,⁶⁰ and in some plantations, rates of well over Rs. 100 per week per family have been reported.⁶¹

The cost of electricity is divided among worker families, with the result that individual workers cannot ration their own consumption of electricity appropriate to their own financial

⁵³ PLA, s. 20.

⁵⁴ CAO Assessment Report.

⁵⁵ CAO April Assessment Visit.

⁵⁶ Wage breakdown from ABITA ([Annex 19](#)).

⁵⁷ Section 2(h) of the Minimum Wages Act, 1948, provides that the term “wages” ... does not include ... (i) the value of (a) any house-accommodation, supply of light, water, medical attendance, ... (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance.”

⁵⁸ Feb 2013 Complaint.

⁵⁹ Feb 2013 Complaint; CAO April Assessment Visit.

⁶⁰ CAO April Assessment Visit.

⁶¹ Feb 2013 Complaint.

constraints.⁶² Workers cannot plan financially around their electricity bill either, as there is a lack of clarity regarding the calculation of the bill and its relation to electricity usage.⁶³

In Majuli, APPL previously forced workers to cover back dues in electricity bills by making deductions from their individual Provident Fund accounts in amounts up to Rs. 4000.⁶⁴ As of June 2013, the electricity had been cut off entirely for two years in the housing areas Majuli plantation.⁶⁵

iii. Decrease in Permanent Worker Positions

The employment of workers as casual or temporary workers in order to deprive them of the status and privileges of permanent workers is regarded as an unfair labor practice and prohibited by Indian law.⁶⁶ However, APPL has been replacing permanent workers with temporary workers, and has not been creating more permanent positions.⁶⁷ Previously, each tea plantation family reported having at least two permanent workers; many families now only have one permanent worker or none at all.⁶⁸

Not only has the casualization of workers reduced the financial security of tea plantation families who are already in poverty,⁶⁹ it has also been a pretext used by APPL to avoid having to provide PLA benefits. According to a 2014 report by the Columbia Law School Human Rights Institute, there is a “well-established and apparently universal” practice in the industry of denying PLA benefits to temporary workers, notwithstanding that the PLA applies to most, if not all, of them (Annex 21).⁷⁰

Furthermore, APPL is “actively advancing the process of casualization” to deny PLA benefits to workers by “cycling through different groups of temporary workers” to avoid having to give permanent status to workers who meet the purported legal requirements to be considered permanent.⁷¹

As a specific example, as part of a diversification program, APPL built a fishery in Nahorani. The company took the land for the fishery from the paddy land of sixteen families and, as compensation, promised one job per family on the fishery. However, the fishery positions are

⁶² Feb 2013 Complaint.

⁶³ CAO Assessment Report, and Minutes of CAO Meeting With All Adivasi Student Association of Assam (“AASAA”) and Assam Tea Tribes Students’ Association (“ATTSA”), June 30, 2013 (hereinafter “AASAA/ATTSA Meeting, June 2013”) (meeting notes on file).

⁶⁴ Feb 2013 Complaint.

⁶⁵ AASAA/ATTSA Meeting, June 2013.

⁶⁶ Industrial Disputes Act, 1947, Sections 25T and 25U, read with Schedule V, Section 10.

⁶⁷ This is a trend across Assam tea plantations, with some estimates putting the temporary or casual workforce at 50%. See “FNV Company Monitor,” p.24. See also Dhar article.

⁶⁸ Study on the Implementation of the PLA by Peoples Action for Development (PAD) 2014, unpublished (on file).

⁶⁹ When temporary workers in Hatigor asked to become permanent workers, ACMS asked them for bribes of Rs. 2000 before speaking to management on their behalf. AASAA/ATTSA Meeting, June 2013.

⁷⁰ Columbia Law School Human Right Institute, *The More Things Change ... The World Bank, Tata and Enduring Abuses on India’s Tea Plantations* (2014), pp. 60 (hereinafter “Columbia Report”).

⁷¹ Columbia Report, p. 66.

designated as “regular temporary employment in perpetuity”:⁷² workers work seven days a week with no sick leave, no days off, and no benefits except basic medical facilities and “labor tea;” they receive the same wages as regular plantation workers but receive no rations and no payslips.⁷³ Most of these workers are, pursuant to the PLA’s criteria, entitled to the PLA’s protections.⁷⁴ APPL is circumventing the protections of the PLA through its arrangement of designating *de facto* permanent workers as “temporary” workers.

iv. Excessive Working Hours

The PLA does not allow workers to work for more than 9 hours on any day or for more than 54 hours in any week, including overtime.⁷⁵ Workers must also receive breaks and cannot work for more than five hours without at least one thirty-minute break.⁷⁶

On APPL plantations, workers have been made to work for more than 9 hours a day in order to meet their daily targets and avoid wage cuts. In the past they were allowed to take a one-hour lunch break; however, that has now been reduced to thirty minutes, or less for those who weigh in last before lunch.⁷⁷ In peak season, many women harvesters start from home as early as 5 am, have a maximum of two tea breaks of fifteen minutes and a thirty-minute lunch break, and return home after 5 pm in the evening.

v. Inadequate Health Benefits

Plantation employers are required to provide medical facilities for workers and their families.⁷⁸ As workers are far from state-run medical facilities, they are dependent on their employers to provide such facilities. In Assam, employers must provide two types of hospitals: Garden Hospitals and dispensaries, which are to deal with routine medical issues, and Group Hospitals, which “shall be capable of dealing efficiently with all types of cases normally encountered and referred from the Garden Hospitals.”⁷⁹

However, on the Hattigor, Nahorani, and Majuli plantations, when a worker or family member falls sick, workers face a number of obstacles in exercising their PLA-guaranteed health benefits, described in greater detail in the following sections. Not only are health benefits grossly inadequate, expenses for medical facilities, sickness benefit, and maternity benefit are used to justify wages below the state mandated minimum.

1. Insufficient Medical Staff

⁷² Columbia Report, p. 91-92 (quoting and reproducing a letter from management to fishery worker at Nahorani Tea plantation dated September 7, 2011).

⁷³ Feb 2013 Complaint.

⁷⁴ PLA, s. 2. See footnote **Error! Bookmark not defined.** above for the relevant criteria.

⁷⁵ PLA, s. 19(2).

⁷⁶ PLA, s. 21.

⁷⁷ CAO Assessment Report.

⁷⁸ PLA, s. 10.

⁷⁹ Assam Rule 35.

Under the PLA and Assam Rules, each Garden Hospital must have at least one full-time qualified medical practitioner for every 1750 workers. There must also be at least one trained nurse for every 300 workers, one trained midwife for every 1750 workers, one qualified pharmacist for every 1750 workers, and one trained health assistant for every 2100 workers. These medical staff must all be full-time staff, and their services should be readily available during all hours.⁸⁰

In contrast, the number of doctors on the plantations does not meet the minimum standards, and has decreased in recent years. On one plantation, there is only one doctor and two nurses to serve the workers, who number over four thousand.⁸¹ Moreover, medical facilities are frequently closed after 4 pm, making it difficult to access their services at all.⁸²

2. Poor Quality Medical Treatment

The Assam Rules require that patients be treated well, and have access to observation, treatment, preventative care such as vaccines, free provision of all drugs, dressings as may be necessary, and anti-natal, natal and post-natal advice. In-patients must be provided with a bed, food, maintenance, and medicine.⁸³

The medical care provided on the plantations is poor and does not reflect the training and qualification requirements under the PLA. Doctors and nurses have refused to touch their patients because of their *adivasi* identity, in a practice derived from caste-based discriminatory beliefs; they diagnose workers without properly checking them.⁸⁴

Workers complain that the same medication is prescribed for every kind of illness. Additionally, a midwife, who is also a worker, spoke of the need for improvements in the treatment of care for pregnant women. Often the same syringe is used for numerous women, which carries the risk for infection and complications.⁸⁵ Pregnant women are often referred to public health facilities because the Garden Hospitals lack staff and supplies to assist in deliveries.⁸⁶

Workers admitted to the hospital are often forced to leave after two or three days and return to work, regardless of their condition.⁸⁷ Workers also spoke of the non-availability of medicine at the hospitals, resulting in the need to purchase medicine and supplies from outside vendors.⁸⁸

3. Substandard Medical Facilities

The Assam Rules requires 15 beds for every 1000 workers in each Garden Hospital. Garden Hospitals must be close to the workers' homes.⁸⁹ Transport facilities must be provided for

⁸⁰ Assam Rule 36(5)-(6).

⁸¹ Feb 2013 Complaint.

⁸² CAO Assessment Report.

⁸³ Assam Rule 40(a)-(b).

⁸⁴ Feb 2013 Complaint.

⁸⁵ CAO April Assessment Visit.

⁸⁶ CAO April Assessment Visit.

⁸⁷ Feb 2013 Complaint.

⁸⁸ CAO April Assessment Visit.

carrying patients to and from Group Hospitals free of charge.⁹⁰ The Assam Rules also carry further hospital requirements regarding sanitation, piped water supplies, and many different departments including maternity wards and isolation wards for communicable diseases.⁹¹

However, very few of these requirements are met on the plantations. The Garden Hospitals are often closed after 4pm and thus workers are required to procure transport to public health facilities.⁹² In some cases, public clinics are more than two kilometers away from workers' homes.⁹³

Workers have reported that doctors at Garden Hospitals have refused to provide adequate treatment for anything but the most basic procedures, requiring transport to a regional public hospital for most procedures. Though APPL provides an ambulance, it is sometimes not available and patients are instead transported by cart, and when it is available, poor road conditions and distance put extra stress on patients. Adequate healthcare with qualified health professionals would address these issues.

4. Cost of Medical Care Borne by Workers

Every worker is entitled to a sickness allowance or maternity allowance under the PLA for medical issues certified by a qualified medical practitioner.⁹⁴

In reality, workers suffer economically when they or a family member become ill. In order to claim their sickness allowance, APPL requires workers to report to the Garden Hospital three times a day. This hospital may be more than two kilometers from the worker's home. If sick workers are referred to a public hospital outside the plantation, the workers must pay the initial costs themselves and APPL only partially reimburses them for the expense.⁹⁵ This is particularly challenging when the workers are treated for complicated illnesses or are in need of blood. For example, workers spoke of paying Rs. 3000 for blood at a government hospital and being reimbursed only Rs. 1300 for the expense.⁹⁶ Additionally, when workers are admitted to a hospital, APPL deducts their food expenses from their wages,⁹⁷ despite the PLA requirement to provide in-patients with food.⁹⁸ The result is often that the sick worker's household has insufficient funds to purchase their own food.⁹⁹

⁸⁹ Assam Rule 36(7)(a).

⁹⁰ Assam Rule 36(7)(e).

⁹¹ Assam Rule 36(7)(b)-(d).

⁹² CAO April Assessment Visit.

⁹³ Feb 2013 Complaint.

⁹⁴ PLA, s. 32(1).

⁹⁵ Feb 2013 Complaint.

⁹⁶ CAO April Assessment Visit.

⁹⁷ CAO April Assessment Visit.

⁹⁸ Assam Rule 40.

⁹⁹ Feb 2013 Complaint.

The PLA further requires that APPL cover the medical costs incurred by the children of workers.¹⁰⁰ However, when these children become ill, the cost of their medical care is deducted from the workers' pay.¹⁰¹

5. Lack of Accommodation and Treatment for Pregnant Workers

The Assam Rules prohibits the allocation of work to pregnant women that is “arduous or which requires long hours of standing at one place or that may in any way interfere with her pregnancy and is likely to cause miscarriage or adversely affect her health and interfere with the normal development of the foetus.”¹⁰² Further, female workers are entitled to a maternity allowance of four weeks prior to the expected date of delivery and eight weeks after delivery.

Pregnant workers report that they are forced to continue regular, heavy work throughout their pregnancy and told that light work is not available.¹⁰³ They are also made to work seven to ten hours a day.¹⁰⁴ They are not offered maternity leave prior to delivery, and new mothers are then denied full maternity leave after the delivery.¹⁰⁵ Women also spoke of the challenges that lactating women face, with mothers often unable to breastfeed their newborns during working hours because of a lack of accommodation.¹⁰⁶

vi. Discriminatory Denial of Benefits to Dependents of Women Workers

A 2010 amendment to the PLA made the definition of “family” gender neutral, so as to remove the distinction between the family of male and female workers for accessing dependents' benefits.¹⁰⁷ APPL is, however, denying dependency benefits to female workers who are supporting male spouses and their families; such denial is systematically applied across plantations.¹⁰⁸ Male dependents and their families, particularly parents and widowed sisters, cannot access these benefits, which include medical care. Instead, the cost of the dependents' care is deducted from the female workers' wages.¹⁰⁹

vii. Water and Sanitation Related Health Hazards

1. Poor Sanitation

Employers are required to provide latrines and urinals for workers in housing and work areas.¹¹⁰ They must be provided separately for males and females, be conveniently situated, and be

¹⁰⁰ PLA 2010 Amendment, s. 10(1).

¹⁰¹ AASAA/ATTSAA Meeting, June 2013.

¹⁰² Assam Rule 76(3).

¹⁰³ Feb 2013 Complaint; CAO April Assessment Visit.

¹⁰⁴ CAO Assessment Report.

¹⁰⁵ AASAA/ATTSAA Meeting, June 2013; CAO April Assessment Visit.

¹⁰⁶ CAO April Assessment Visit.

¹⁰⁷ PLA 2010 Amendment, s. 2.

¹⁰⁸ Columbia Report, pp. 46-49.

¹⁰⁹ Feb 2013 Complaint.

¹¹⁰ PLA, s. 9.

maintained in a clean and sanitary condition.¹¹¹ Additionally, under the Assam Rules, piped water or water in suitable receptacles must be provided in sufficient quantities near the latrine for washing.¹¹² All drains carrying wastewater must be regularly flushed, with the effluent disposed of either by a drainage line or in a manner satisfactory to the Health Officer.¹¹³

The level of sanitation in Hattigor, Nahorani, and Majuli stands in stark contrast to these requirements and represents a serious danger to worker health. There are no latrine facilities in work areas, which is particularly hard on women, even more so when they are working long hours. In the housing areas, some families do not have latrines at all. Where provided, latrines and water drains are not cleaned for years at a time. The latrines become broken or unusable, creating hardships for female workers in particular. The water in the drains stands and stagnates. Workers have fallen into the open and overflowing sewers, especially when there is no electricity.¹¹⁴

The lack of attention to sanitation results in contamination of the water supply and leads to frequent cases of waterborne diseases, including cholera, dysentery, typhoid, diarrhea, which lead to malnutrition. Many have died from these diseases, but workers report that APPL records the cause of death in these situations in such a way as to hide the actual cause of death.¹¹⁵

2. Lack of Access to Clean Water

Under the PLA, employers must provide and maintain a sufficient supply of clean drinking water for all workers on the plantation.¹¹⁶ According to the Assam Rules, this supply must be available at all times during working hours and available everywhere.¹¹⁷ If clean drinking water is not coming from a public water supply, then it must be kept in suitable containers and renewed at least daily. Employers must take all practicable steps to preserve the water from contamination and must keep the containers scrupulously clean.¹¹⁸ Drinking water must not be supplied from any open well or reservoir, unless such water is free from the possibility of pollution and sterilized periodically.¹¹⁹

APPL has not provided sufficient access to clean water for its workers. When water pumps do not work, APPL has supplied drinking water to the labor lines using water tanks previously used to mix pesticides, which happens a few times per year.¹²⁰ In an even more extreme example, a decomposing dead cow was found in a water tank in Majuli, but workers were forced to continue drinking from the tank due to lack of alternatives.¹²¹

¹¹¹ PLA, s. 9.

¹¹² Assam Rule 17.

¹¹³ Assam Rule 20.

¹¹⁴ Feb 2013 Complaint.

¹¹⁵ Feb 2013 Complaint.

¹¹⁶ PLA, s. 8.

¹¹⁷ Assam Rule 7.

¹¹⁸ Assam Rule 9.

¹¹⁹ Assam Rule 10.

¹²⁰ Feb 2013 Complaint.

¹²¹ Feb 2013 Complaint.

Household access to water varies across the plantations, and is very limited with pipes often choked and water supply offered for only one hour in the morning, one hour around noon, and one hour in the evening.¹²² In Hattigor, the water tank ran dry, and access to tanker water is irregular in many areas.¹²³ Some workers have had to dig their own ring wells or tube wells to provide their households with water. Where a pump is provided, it serves upward of four families.

viii. Housing Concerns

The PLA requires APPL to provide and maintain housing for its workers free of cost.¹²⁴ However, APPL has failed to provide sufficient housing and has failed to maintain its existing housing. Again, part of the justification for below minimum wage remuneration is housing facilities provided by the company, but for the following reasons these “deductions” have not ensured adequate housing.

1. Overcrowded Living Quarters

Under the Assam Rules, employers must provide one house per working family.¹²⁵ However, there are not sufficient quarters for the number of workers on the plantations. In many cases, two or three families are living together in only two rooms.¹²⁶ In some cases, where workers have made extensions to these quarters at their own cost, APPL has torn down the extensions and charged workers for the cost of tearing them down.¹²⁷ Workers waiting for new housing are made to wait for ten or more years.¹²⁸

2. Housing in State of Disrepair

The employer must, at its own expense, maintain all houses provided for accommodation of workers in a fit and safe condition and must execute annual and such other repairs as may be necessary from time to time.¹²⁹ Such housing must also include safe drinking water, lighting arrangements, and maintenance of sewers and drains.¹³⁰ A worker can bring any defects to the attention of the employer, which the employer must then rectify immediately if they are dangerous to the health and safety of the worker.¹³¹

APPL has not been providing the necessary repairs to workers’ homes, and in some cases has not done so for years. Workers’ roofs leak due to extensive unrepaired cracks and holes, doors and

¹²² CAO April Assessment Visit.

¹²³ Feb 2013 Complaint.

¹²⁴ PLA, s. 15, and Assam Rule 64.

¹²⁵ Assam Rule 65(1).

¹²⁶ CAO April Assessment Visit. A roll call of permanent workers who were not provided with housing was taken during the visit.

¹²⁷ Feb 2013 Complaint. It should be noted that Assam Rule 65(2) does not allow occupants of houses to make unauthorized additions to their houses; however many workers are forced to do so when APPL does not provide sufficient housing or provide repairs.

¹²⁸ CAO Assessment Report.

¹²⁹ Assam Rule 63(1).

¹³⁰ Assam Rule 60.

¹³¹ Assam Rule 63(2).

windows are missing or broken, and their houses are vulnerable to damage caused by wildlife. Open drains and unpredictable water supplies and electricity cause hazards. However, APPL ignores workers' complaints and does not allow workers to make repairs on their own.¹³²

ix. Inadequate Education

Under the Assam Rules, employers must provide education on plantations where there are more than 25 children aged six to twelve. Such primary education must include one teacher for every 40 children, who teaches the standard curriculum approved by the State Education Department.¹³³ No fees may be charged for the education of workers' children.¹³⁴ The employer must provide the necessary educational and other equipment, and where adequate space is available, an open-air playground must be provided.¹³⁵

Education provided on APPL plantations, however, is extremely inadequate. On some plantations, only the children of permanent workers are permitted to attend school, while children of temporary workers are excluded.¹³⁶ Some children have classrooms, while others learn outside. Drop out rates are high. Girls often drop out to care for younger siblings, as the crèche closes at 1pm on plantations where there is a crèche.¹³⁷

In Hattigor and Nahorani, only one teacher instructs the 200 to 300 students between the first and fourth standards, and each standard only receives one hour of instruction a day.¹³⁸ Once students complete the tenth standard, they must find a way to commute to a more distant school. Instead, many drop out because they cannot afford forty rupees per day on transportation.¹³⁹

Though workers' children should not be charged for educational services, wages are garnered in part to pay for educational facilities, in violation of the PLA and Assam Rules.

These poor education standards not only violate the PLA and therefore IFC PS2 – they are also an example of how APPL is in violation of PS7 and the requirement to respect and protect indigenous peoples, discussed in further detail below.

x. Lack of Childcare

Where there are fifty or more female workers or twenty or more children on a plantation, the PLA requires that the employer provide and maintain a crèche for the care of children.¹⁴⁰ There must be one crèche for every 25 hectares of tea for children under two years of age, and one crèche in each main garden and outgarden for children aged two to six.¹⁴¹ The crèches must be

¹³² Feb 2013 Complaint.

¹³³ Assam Rule 55(1), 56.

¹³⁴ Assam Rule 57.

¹³⁵ Assam Rule 54, 53(3).

¹³⁶ AASAA/ATTSAA Meeting, June 2013.

¹³⁷ CAO Assessment Report.

¹³⁸ Feb 2013 Complaint; and CAO April Assessment Visit.

¹³⁹ Feb 2013 Complaint.

¹⁴⁰ PLA, s. 12(1).

¹⁴¹ Assam Rule 46(1).

conveniently accessible to the children's' mothers, supervised, spacious, adequately lit and ventilated, well constructed, sanitary, and furnished, with a playground if there is adequate space.¹⁴²

However, the Majuli, Hattigor, and Nahorani plantations do not have adequate crèche services, where available at all, for workers' children. Workers are therefore forced to leave children under the age of six at home alone or under the care of other children, who themselves are often only a few years older than six. When older children are required to stay home to care for younger children, they cannot attend school, leading to illiteracy and dropout.

D. Child Labor

IFC PS2 prohibits economically exploitative employment of children and prohibits children below the age of 18 years from being employed in dangerous work. The PLA similarly prohibits all children from working on plantations.¹⁴³

However, there are children working on APPL plantations. In Hattigor, workers spoke of teams of children being assigned to particular line supervisors, and forced to work long hours under challenging conditions.¹⁴⁴ A major factor indirectly contributing to child labor on the tea plantations is the overly high daily task rates required of each worker. In order to meet their quotas for plucking, pruning, maintaining drains, and other tasks, workers are forced to rely on other family members, including children.¹⁴⁵

E. Occupational Health and Safety

PS2 requires APPL to "provide the workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the client's work areas, including physical, chemical, biological, and radiological hazards." Further, APPL is expected to "take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimizing, so far as reasonably practicable, the causes of hazards."¹⁴⁶

However, APPL has not provided a safe and healthy working environment for its workers and has not taken sufficient steps to prevent injury and disease. The areas in which APPL has failed to meet its occupational health and safety requirements are detailed below.

i. Inadequate Protection Measures for Sprayers

¹⁴² PLA, s. 12(2) and Assam Rule 46.

¹⁴³ PLA 2010 Amendment, s. 24.

¹⁴⁴ CAO April Assessment Visit.

¹⁴⁵ Feb 2013 Complaint.

¹⁴⁶ PS2, para. 16.

PS2 requires “the identification of potential hazards to workers, particularly those that may be life-threatening,” and “provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances.”¹⁴⁷

The 2010 amendments to the PLA reflect this language closely: “[i]n every plantation, effective arrangements shall be made by the employer to provide for the safety of workers in connection with the use, handling, storage and transport of insecticides, chemicals and toxic substances.”¹⁴⁸ The PLA requires every employer to provide protective clothing and equipment, as well as washing, bathing, and cloakroom facilities, for every worker engaged in handling insecticides or other toxic substances.¹⁴⁹

However, APPL has not provided sufficient protective equipment for its sprayers. Sprayers must often work with no protective equipment or purchase their own equipment.¹⁵⁰ When protective equipment is provided, it is of poor quality and insufficient to protect workers from the dangerous chemicals with which they work.¹⁵¹ This has included: a cloth mask, plastic or cloth shoes, and flimsy plastic goggles.¹⁵² Some spray workers reported being given goggles, a mask, an apron and boots once a year; however, they were made from poor materials and only lasted two to three months.¹⁵³ Distribution of this protective equipment is arbitrary. Moreover, it is often brought out during audits but then removed afterward.¹⁵⁴

One basic preventive measure is to rotate sprayers. However, APPL does not do so, and the same sprayers are called upon whenever spraying work is required.¹⁵⁵ Workers spoke of the impact of extended exposure to the agrochemicals, including blurred vision and headaches.¹⁵⁶

ii. Lack of Training

Under the PLA, employers must ensure that workers employed in handling, mixing, blending, or applying insecticides and other toxic substances receive training regarding the hazards involved and must ensure that various safety measures are in place, including those to avoid spillage of such chemicals.¹⁵⁷ However, sprayers on APPL plantations receive no training despite the dangerous nature of their work.¹⁵⁸

¹⁴⁷ PS2, para. 16.

¹⁴⁸ PLA 2010 Amendments, s.18A.

¹⁴⁹ PLA 2010 Amendments, s. 18A.

¹⁵⁰ CAO April Assessment Visit.

¹⁵¹ On Hattigor and Nahorani, these dangerous chemicals include Endosulphan (Feb 2013 Complaint), a pesticide that is dangerous for both human health and the environment, and is being globally phased out. *See* “United Nations targets widely-used pesticide endosulphan for phase out,” *available at* <http://chm.pops.int/Convention/Media/Pressreleases/Widelyusedpesticideendosulfanphaseout/tabid/2216/language/en-US/Default.aspx>.

¹⁵² Feb 2013 Complaint.

¹⁵³ CAO Assessment Report.

¹⁵⁴ Feb 2013 Complaint.

¹⁵⁵ Feb 2013 Complaint.

¹⁵⁶ CAO April Assessment Visit.

¹⁵⁷ PLA 2010 Amendments, s. 18A.

¹⁵⁸ Feb 2013 Complaint.

iii. Lack of Medical Attention

The PLA requires every worker who is exposed to insecticides, chemicals and toxic substances to be medically examined periodically.¹⁵⁹ Additionally, both the PLA and PS2 require “documentation and reporting of occupational accidents, diseases, and incidents; and emergency prevention, preparedness and response arrangements.”¹⁶⁰

Worker injuries include negative impacts on vision after prolonged spraying work and back pain after carrying heavy cylinders, among others.¹⁶¹ Though workers report that skin and eye exposure to chemicals is common, there is no structure in place for them to report workplace accidents. Workers are not compensated when they are injured while working, food is not provided for their families while they cannot work or in the hospital, and workers are sometimes released from the hospital before recovering from their injuries. If their injury persists or returns, they are not allowed to take sick leave.¹⁶²

F. Flawed Employee Share Program

A primary goal of IFC’s financing of APPL is to create a “worker-shareholder” model of business, in which management and employees hold significant shares in the company and participate actively in its direction. However, APPL’s implementation of the Employee Stock Ownership Program (“ESOP”) has had the effect of disenfranchising workers from the benefits of the program for three key reasons: first, the program has not been effectively explained to the workers; second, APPL has used threats, intimidation and coercion to pressure workers into buying into the program; and third, the implementation details of the program are not appropriate for a marginalized workforce.

i. Poor Communication of Share Program

When the program commenced, workers reported that APPL management held one formal meeting at each plantation. Workers were told about the program as if they were required to purchase shares, and APPL management explained only the advantages and none of the risks of the program. Workers were confused and did not understand what the share program was.¹⁶³ Plantation management informed some workers that the shares were a loan to be withdrawn from their Provident Fund.¹⁶⁴ Workers were reluctant to agree to what appeared to be an additional deduction from their already below-minimum wage earnings. However, management and union staff did not attempt to make the program more accessible or explain the concept further.¹⁶⁵

Further, APPL has not organized meetings or attempted to communicate to workers who invested in the share program about the progress of the company or the value of their shares. Most report that they have not been given any documentation for their shares; documentation

¹⁵⁹ PLA 2010 Amendments, s. 18A.

¹⁶⁰ PS2, para. 16.

¹⁶¹ CAO Assessment Report.

¹⁶² CAO Assessment Report.

¹⁶³ Feb 2013 Complaint.

¹⁶⁴ Feb 2013 Complaint.

¹⁶⁵ AASAA/ATTSAA Meeting, June 2013.

that APPL has provided as evidence of their communication workers about ESOP is not written in a way that is accessible to workers.¹⁶⁶ They do not know their shares' worth and do not understand the dividends they are meant to receive.¹⁶⁷

These communication issues not only violate PS2 obligations to provide workers with information about wages and benefits, but also undermine the development purpose of the ESOP: if workers remain entirely ignorant of the details of their share ownership and do not willingly make the choice to invest, then the APPL plantations are worker-owned in name only.

ii. Threats, Intimidation and Coercion

Management and union staff put severe pressure on workers to invest in the share program.¹⁶⁸ Tactics included:

- Giving workers who invested in the share program easier tasks and giving those who refused harder labor.¹⁶⁹
- Getting staff and the union to ply the workers with alcohol in order to convince them to buy shares.¹⁷⁰
- Making individual threats against workers, such as telling pluckers their leaves would not be weighted and they would not be paid, telling a worker on the Majuli plantation that her complaints would not be responded to in the future if she did not buy shares, and telling a worker on the Nahorani plantation that she would be beaten if she did not buy the shares.¹⁷¹
- Making false promises and exaggerated claims regarding share benefits, such as telling workers that their shares would be worth ten or even one hundred times more when they mature in seven years.¹⁷²

iii. Implementation of Share Program

The ESOP has not been designed with its members' needs in mind. Workers on the tea plantations subject to this complaint come from marginalized *adivasi* groups and are dependent on every rupee of their paycheck. However, in order to collect dividends, worker shareholders were told they must open an account in a specific bank far from the plantation where they reside, requiring them to locate and provide certain documentation, take multiple days off work in order to go to the bank, and pay for their transportation. These endeavors cost as much as the dividend provided.¹⁷³

¹⁶⁶ APPL Response to [Columbia] Report, p.6, *available at* http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/appl_response_to_report_.pdf (hereinafter "APPL Response to Columbia Report").

¹⁶⁷ Feb 2013 Complaint.

¹⁶⁸ Feb 2013 Complaint.

¹⁶⁹ AASAA/ATTSAA Meeting, June 2013.

¹⁷⁰ Feb 2013 Complaint.

¹⁷¹ CAO April Assessment Visit.

¹⁷² Feb 2013 Complaint.

¹⁷³ Feb 2013 Complaint, and AASAA/ATTSAA Meeting, June 2013.

Therefore, APPL must not only make an effort to communicate the purpose and details of the ESOP to workers, but it must also modify the implementation of the program in order to make participation more accessible for workers. The share program is capable of becoming beneficial for workers, however the current reality is very different.

G. Inactive Grievance Mechanism and Worker Fear of Retribution

Per IFC PS2, para. 13:

The client will provide a grievance mechanism for workers (and their organizations, where they exist) to raise reasonable workplace concerns... The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution. The mechanism should not impede access to other judicial or administrative remedies that might be available under law.

In contrast to these requirements, the Welfare Office, the PLA-mandated grievance mechanism in place at APPL plantations, has a history of routinely ignoring or overlooking worker complaints.¹⁷⁴ Even when the Welfare Officer is responsive, they are not able to get the resources from APPL management to address worker concerns. Moreover, whether workers are accessing this grievance mechanism or other judicial remedies, such as the ongoing CAO complaint, they fear retribution if they register their complaints.¹⁷⁵

The local civil society organizations supporting the workers in this complaint have previously informed the CAO about instances of retaliation. In summary, when APPL management learned that workers had met with local groups, the CAO, or other entities, retaliation against workers included threats, interrogations, building a negative record in workers' files, demotions, and transfers to unfamiliar jobs.¹⁷⁶ In a fourth APPL plantation, not part of the February 2013 Complaint, when workers complained following the death of a spray worker, temporary workers were denied work, permanent workers were terminated, and several families were bribed to withdraw complaints.¹⁷⁷ APPL management has also physically assaulted at least one worker who is involved in this ongoing complaint to the CAO.¹⁷⁸

The biggest threat used to intimidate and silence worker complaints is a rumor that if they pursued their grievances, funding, including IFC funds, would be withdrawn and the plantations would be forced to shut down, as many other plantations have had to do in recent years. Workers fear a repeat of what occurred in 2012, where 22 people died of starvation following a shutdown of other plantations in the region.¹⁷⁹

¹⁷⁴ Feb 2013 Complaint.

¹⁷⁵ Feb 2013 Complaint.

¹⁷⁶ NGO Meeting, June 2013.

¹⁷⁷ Feb 2013 Complaint.

¹⁷⁸ Feb 2013 Complaint.

¹⁷⁹ NGO Meeting, June 2013. *See also* FNV Company Report, p.21 ("Ever since the onset of the tea crisis at the end of the 1990s, many tea estates in India have been closed or abandoned because they were found to be unprofitable or not profitable enough. The ensuing restructuring of the tea sector caused great misery in the plantation community.

The CAO facilitated a joint meeting between the three local NGOs and APPL management in July 2013 in order to address these retaliation concerns. Unfortunately, no agreement was reached between the parties. To date, no action has been taken by APPL to address the retaliation concerns.

H. Violations of Fundamental ILO Conventions

India is party to the ILO Convention on Forced Labor (No. 29), the ILO Abolition of Forced Labor Convention (No. 105), the ILO Equal Remuneration Convention (No. 100) and the ILO Discrimination (Employment and Occupation) Convention (No. 111), all of which are in force.¹⁸⁰ Clients of the IFC must comply not only with the Performance Standards, but also the host country obligations under international law.¹⁸¹ This section shows how the treatment of the workers, as detailed above, constitutes violations of the standards in these conventions.

i. Forced Labor

According to the ILO's definition of forced labor, two elements must exist: the work or service is exacted under the menace of a penalty, and such work is undertaken involuntarily.¹⁸² The first element is often shown in practice by the actual presence or credible threat of financial penalties, dismissal from current employment, physical violence against worker and family, or shift to even worse working conditions.¹⁸³ The element of involuntariness is identified in practice by birth/descent into "slave" or bonded status; psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance; or the withholding and non-payment of wages.¹⁸⁴

Both elements under the ILO's definition of forced labor are met in this case. APPL plantation management uses threats and imposition of wage penalties if workers do not meet their onerous daily quotas or task rates. Further, the use of threats, intimidation and coercion on workers in relation to the ESOP and the incidents of retaliation against workers for bringing their complaints to the CAO, are telling of APPL management's ability to resort to coercion and the subjugation of workers in the plantations.

The involuntary nature of the work is evident in the generational indentured servitude of the tea plantation workers, their isolation from the Assam mainstream due to their *adivasi* identity, and the abusive working and living conditions prevailing on APPL plantations as described above.

ii. Discrimination against Women Workers

Heartbreaking reports of hundreds of people dying of hunger on tea estates that had been abandoned or closed continued to surface up to 2007.”).

¹⁸⁰ ILO website, “Ratifications for India,” *available at*

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102691.

¹⁸¹ IFC Performance Standards on Social and Environmental Sustainability, 2006, Introduction, para. 3.

¹⁸² ILO Global Report on Forced Labour 2005, p. 5.

¹⁸³ ILO Global Report on Forced Labour 2005, p. 6.

¹⁸⁴ ILO Global Report on Forced Labour 2005, p. 6.

The ILO Equal Remuneration Convention requires the payment of equal remuneration for work of equal value,¹⁸⁵ and the ILO Discrimination (Employment and Occupation) Convention requires “equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”¹⁸⁶

Both these principles are violated on APPL plantations with respect to female workers. Women face discrimination from plantation management, and suffer disproportionately as a result of various violations. As described earlier in this document, although a 2010 amendment to the PLA entitles female workers to benefits for their dependents, APPL is still systematically denying these benefits to women workers who are supporting male spouses and children, and deducting dependents’ medical costs from the female workers’ wages.¹⁸⁷ Additionally, when line supervisors report the presence of more workers than there in fact are, it is usually the women workers who make up the work of the extra absent “workers.”¹⁸⁸

III. Impact on Indigenous Peoples and Cultural Identity

The workers at the heart of this complaint all fit the definition of indigenous peoples under IFC Performance Standard 7 (“PS7”). PS7 defines “indigenous peoples” as those who “self-[identify] as members of a distinct indigenous cultural group” with “recognition of this identity by others,” possessing “customary cultural, economic, social, or political institutions that are separate from those of mainstream society or culture,” and “a distinct language or dialect, often different from the official language or languages of the country or region.”¹⁸⁹

The workers on the APPL plantations come from various *adivasi* tribes, such as the Munda, Oraon, Ho, and Santhal groups of present day West Bengal, Jharkhand, Orissa, Chhattisgarh, and Andhra Pradesh, and are officially recognized as members of “scheduled tribes” in those states.¹⁹⁰ Each *adivasi* group speaks a distinct language and organizes their society differently from the caste-based system of the dominant culture.¹⁹¹ The workers’ forebears were forcibly migrated to the plantations under British colonial rule in the mid 19th century, and worked under harsh conditions for decades.¹⁹² Many elements of those harsh conditions continue today.

¹⁸⁵ ILO Equal Remuneration Convention (No.100), 1951, Article 2.

¹⁸⁶ ILO Discrimination (Employment and Occupation) Convention (No. 111), 1958, Article 2.

¹⁸⁷ Feb 2013 Complaint; Columbia Report, p. 46-49.

¹⁸⁸ CAO April Assessment Visit.

¹⁸⁹ IFC Performance Standards on Social and Environmental Sustainability, 2006, Performance Standard 7: Indigenous Peoples, para. 5 (hereinafter “PS7”).

¹⁹⁰ Due to the dynamics and politics of scheduled status, these same groups may not be classified as “scheduled tribes” in Assam, though are advocating for recognition as such. See, e.g., Borah, Amarjyoti, “Hectic lobbying for ST status to tea community in Assam,” *India Tea*, July 10, 2013, available at <http://www.indiatea.co.in/hectic-lobbying-for-st-status-to-tea-community-in-assam/>.

¹⁹¹ These communities are recognized as “Schedule Tribe” (ST) or *adivasi* communities by central Indian states, but due to political dynamics in the state of Assam, tea plantation workers, also known as “tea tribes,” do not have government recognized ST status. They are, however, recognized to be *adivasi*.

¹⁹² Though they at one time possessed “collective attachment to geographically distinct...ancestral territories,” another defining characteristic of indigenous people under PS7, they were forcibly stripped of their lands and resources in order to become workers on the tea plantations.

Workers and their families continue to be isolated from the rest of the world, dependent on APPL for their families' housing, health, food, and education. With particularly poor education systems on most plantations, including those run by APPL, many children stay on the plantation and become workers themselves, creating the next generation of a marginalized workforce.¹⁹³

Therefore, due to the identity and history of its workers, as well as the structure of the plantations as communities where workers and their families are born, live, and seek education and medical care, APPL not only has a responsibility to meet the standards of PS2 and the PLA, but must also act in accordance with PS7.

PS7 recognizes that “private sector projects may create opportunities for Indigenous Peoples to participate in, and benefit from, project-related activities that may help them fulfill their aspiration for economic and social development.”¹⁹⁴ It encourages companies to engage with indigenous peoples as “partners in development.”¹⁹⁵

However, merely employing *adivasi* workers does not create opportunities for them to fulfill their economic aspirations. While the ESOP in theory could assist *adivasi* workers to share in the management of the plantations, in reality the workers remain vulnerable and disenfranchised.

The poor working conditions in Hattigor, Nahorani, and Majuli threaten more than workers' health and survival: they threaten to destroy their culture and way of life. The “languages, cultures, religions, spiritual beliefs, and institutions” of *adivasi* peoples may also be under threat.¹⁹⁶ This exposes *adivasi* workers “to different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease.”¹⁹⁷

A. PS2 and PS7 Combined Violations

The result of the extensive PS2 violations detailed above is that workers and their families struggle daily to survive, with little care and no protection afforded to them by the company. Under such conditions, *adivasi* cultural identities and activities are disappearing.¹⁹⁸

As one individual expressed, “[w]orkers spend their whole lives in the gardens. They are born, they work, and they die in the tea gardens. They have access to nothing else.”¹⁹⁹ Workers and the local NGOs who work with them and their families have expressed their concern that they are losing their culture, language, and identity because of the brutal nature of plantation life.

¹⁹³ NGO Meeting, June 2013. See also Saikia and Behal articles.

¹⁹⁴ PS7, para. 2.

¹⁹⁵ PS7, para. 2.

¹⁹⁶ PS7, para. 1.

¹⁹⁷ PS7, para. 1.

¹⁹⁸ AASAA/ATTSAA Meeting, June 2013. This includes the disappearance of plantation recreation centers, which used to be centers for cultural activity. Assam Rule 50 requires employers to provide one recreation center for every 175 families.

¹⁹⁹ AASAA/ATTSAA Meeting, June 2013.

In this way, the PS2 violations themselves also go against the objectives of PS7: “to respect and preserve the culture, knowledge and practices of indigenous peoples.”

B. PS7 Specific Violations

APPL is failing to provide a space for *adivasi* culture, and is in effect implementing policies aimed at stripping workers of their heritage and identity. This is in violation of requirements in PS7 for APPL to take into consideration specific impacts of the project on indigenous peoples, and to avoid or minimize that impact.²⁰⁰ Rather than improving the situation for indigenous workers, the situation has actually grown worse over time. In the past, plantation management provided support and facilities for workers to engage in cultural activities, such as dance, music and sport, but these facilities have disappeared since IFC’s investment and the restructuring of Tata Tea and the creation of APPL.²⁰¹

For example, many workers have complained that doctors in a number of medical facilities have refused to touch patients because of their *adivasi* identity, derived from caste-based discriminatory beliefs. However, plantations are far removed from state based healthcare services, and workers must rely on healthcare provided by APPL.

Similarly, APPL has been providing food rations to workers, but workers report that the supplies they receive are substandard and far less than what is necessary to survive. Poor education standards on plantation schools violate PS7, as they prevent *adivasi* children from fulfilling their aspirations for social and economic development. APPL also provides housing, but it is not sufficient in quantity to house all the workers, requiring many families to share a single shelter or use their meager resources to construct new homes on land to which they have no title. Other basic services, like electricity and childcare, are either overpriced or nonexistent.

By ensuring that subsequent generations of *adivasi* workers remain dependent on the tea plantations, APPL is failing to engage *adivasi* as partners in development, and is instead perpetuating their historic marginalization.

IV. IFC’s Due Diligence Failures

A. The Red Flags

The high risks of non-compliance with IFC Performance Standards and violations of international human rights occurring in Assam tea plantations were identifiable from several red flags prior to and during the investment.

First, tea plantations in Assam are well-known to be characterized by poor human development conditions, historical subjugation of the tea plantation workers who are mostly *adivasi*, weak compliance with and enforcement of laws seeking to protect plantation workers, non-representative unions, and consequent labor unrest.²⁰² Further, there have been high-profile

²⁰⁰ PS 7, para. 7-8.

²⁰¹ NGO Meeting, June 2013 and AASAA/ATTSA Meeting, June 2013.

²⁰² See Columbia Report, pp. 28-30, and CAO Appraisal Report Jan 2013, p. 7, fn. 3.

incidents speaking to the human rights risks, such as the 2007 warning by the Assam government to tea plantation managers that criminal proceedings for manslaughter would be initiated if tea plantations continued to do nothing to prevent water-borne diseases,²⁰³ 2007 violence in Guwahati against *adivasi* protestors from tea plantations,²⁰⁴ and a 2008 rally by hundreds of tea plantation workers in Guwahati demanding the implementation of the PLA and MWA in tea plantations.²⁰⁵ Notably, these occurred well before the date of the IFC's 2009 investment agreement with APPL.

Second, the collapse of a pregnant worker in the APPL Nowera Nuddy tea plantation while at work in 2009, and the death of a worker after being assigned pesticide spraying duties in the APPL Powai tea plantation were red flags directly brought to the IFC's attention.

Third, the 2013 complaint, the 2011 complaint submitted to the CAO by the International Union of Food Workers, and the Columbia Report are also indicators of severe and systematic problems on the plantations. IFC must diligently investigate the matters set out in these submissions, and, pursuant to the IFC's 2006 Policy on Social and Environmental Sustainability, take action commensurate with the serious nature of these risks and violations to ensure these issues are addressed on all APPL plantations. To do otherwise would be an egregious due diligence failure by the IFC.

Finally, APPL's flat denials of the abuses recorded in the Columbia Report are concerning and an indication that these violations will continue to go uncorrected.²⁰⁶

B. Over-reliance on Tata's Reputation and Private Industry Certifications

In conducting its due diligence, IFC has relied on Tata Tea's face-value commitment to improve its plantations, rather than its track record in doing so. It was only in 2005, when Tata Tea had initiated plans to divest from its plantations with the assistance of the IFC, that it initiated the process of obtaining SA8000 certification.²⁰⁷ There was no indication in IFC's environmental and social due diligence of what Tata Tea had in fact done prior to 2005 to address the well-known industry-wide problems at the tea plantations.

IFC's reliance simply on a commitment to obtain SA8000 certification of APPL as proof of the reliability of APPL's management systems is highly questionable. First, while APPL had a goal of obtaining SA8000 certification by 2006,²⁰⁸ it appears to have obtained such certification only in 2011.²⁰⁹ This should have been taken into account in determining the challenges to obtaining

²⁰³ Subir Bhaumik, "Tea bosses warned on water deaths," *BBC News*, October 30, 2007, available at <http://news.bbc.co.uk/2/hi/south_asia/7069266.stm>

²⁰⁴ See, e.g., "Adivasis, locals clash in Guwahati," *The Hindu*, November 24, 2007, available at <<http://www.hindu.com/2007/11/25/stories/2007112560781200.htm>>; Sushanta Talukdar, "Tribal Turmoil," *Frontline*, (Vol. 4, Issue 24) available at <<http://www.frontline.in/static/html/fl2424/stories/20071221501301800.htm>>.

²⁰⁵ Saikia article, p. 320.

²⁰⁶ APPL Response to Columbia Report.

²⁰⁷ IFC Environmental and Social Summary, 2006, p. 4 (hereinafter "IFC E&S 2006").

²⁰⁸ IFC E&S 2006, p. 4.

²⁰⁹ SA8000 Certified Facilities List, as of June 30, 2013.

certification and the robustness of measures needed to ensure compliance with SA8000 standards. Second, the scope of the SA8000 certification eventually obtained is not clear. Social Accountability Accreditation Services' public list of certified facilities describes the scope of the certification only as relating to "child certificates."²¹⁰ Third, the quality of the audits conducted by APPL's certification body, Det Norske Veritas (DNV), cannot be assumed. Besides being unforthcoming with information when contacted by the authors of the Columbia Report, which was contrary to SA8000 standards of public disclosure,²¹¹ DNV did not address a question on what issues were found during the audits, except to state that no issues of child labor were found.²¹²

In addition, APPL's membership with the Ethical Tea Partnership ("ETP") is far from an assurance of APPL's compliance with laws and international standards. ETP relies largely on companies' self-assessments; it analyzes these assessments and identifies key areas of risk and priorities; there are no rules for when third party audits are required; and hence, there is no meaningful enforcement in the ETP process.²¹³

V. Conclusion

We request that the CAO compliance team take into account the numerous and systematic violations of IFC policy, domestic and international law in their investigation.

In the long term, workers are seeking to be partners in the APPL tea plantations. In order to achieve this, APPL must be more transparent, and support workers to better understand company goals and objectives, allowing workers to make an informed choice about becoming shareholders. In turn, APPL management must understand workers' needs and ensure that company practice bolster worker welfare.²¹⁴ This requires APPL compliance with PS2 and PS7, as well as compliance with the PLA and Assam Rules, and other relevant legislation. Workers must be able to provide for their families and be secure in their own survival, safe against retaliation. Only then will they be able to grow into partners in development, capable of pursuing their economic and social goals.

We appreciate your attention to this important matter.

Sincerely,

Stephen Ekka, Director, Promotion & Advancement of Justice Harmony and Rights of Adivasis (PAJHRA)

Wilfred Topno, Secretary, People's Action for Development (PAD)

Israel Sanga, Diocesan Board of Social Services (DBSS)

²¹⁰ IFC E&S 2006, p. 4.

²¹¹ Columbia Report, p. 103.

²¹² Sarah Saadoun, "Private and Voluntary: Are Social Certifications Standards a Form of Backdoor Self-Regulation?" *Columbia Human Rights Law Review*, vol. 45 (2013), p. 310 (Annex 22).

²¹³ Columbia Report, p. 104.

²¹⁴ NGO Meeting, June 2013.