

April 27, 2018

Daniel Adler
Office of the Compliance Advisor Ombudsman
2121 Pennsylvania Avenue,
NW Washington, DC 20433,
USA
Sent via electronic mail: DAdler@ifc.org

Re: IFC's failure to address non-compliance findings in relation to its investment in Amalgamated Plantations Private Limited

Dear Mr. Adler,

We, the undersigned civil society organisations, submit this letter in support of our complaint to the Compliance Advisor / Ombudsman ("CAO") regarding the IFC's investment in Tata Tea / Amalgamated Plantations Private Limited ("APPL") in Assam, India.¹ We are writing to provide input into the CAO's monitoring process following non-compliance findings reached in your investigation report.²

Under section 26 of the IFC Policy on Social and Environmental Sustainability of 2006, if a client fails to comply with social and environmental commitments, the IFC must work with the client to bring it back into compliance. In this investment, instead of addressing the non-compliance findings reached by the CAO, the IFC has chosen to disagree with many of its findings. Relying upon an audit commissioned by Tata Global Beverages Limited (TGBL) in 2014, the IFC stated in its response, that it "has no reason to doubt the integrity of the third-party audit carried out by Solidaridad... which did not cite any non-compliances with Indian law in respect to workers' organizations, wages, avoidance of child labour, and disclosure/consultation".³

This response goes against the spirit of the IFC's Sustainability Framework, and undermines the CAO's important role in improving social and environmental outcomes of IFC projects as an independent recourse mechanism. The IFC's reliance on the 2014 Solidaridad audit⁴ is especially problematic because the audit was not aimed at assessing compliance with the Performance Standards, and has not been released to workers or the complainants. This calls into question the IFC's stated role in this investment as an honest neutral broker between the workers and other shareholders.

¹ This letter was prepared with assistance from Accountability Counsel, a US-based civil society organisation supporting the complainants. Information for this document was provided by workers on APPL plantations, the complainant organisations, and supporting organisation Nazdeek.

² CAO Compliance Investigation Report on IFC's Investment in Amalgamated Plantations Private Limited, September 6, 2016, available here: <http://www.cao-ombudsman.org/cases/document-links/documents/AppraisalReportCAOAPPLFeb2014.pdf>.

³ IFC Management Response to the CAO Compliance Investigation Report on IFC's Investment in APPL, India (Project #25074)', October 17, 2016, p.2 ('IFC Response'), accessible here: <http://www.cao-ombudsman.org/cases/document-links/documents/IFCResponsetoCAOInvestigationReport-APPL.PDF>.

⁴ 2014 Solidaridad Audit Summary, available here: <http://www.tataglobalbeverages.com/docs/default-source/default-document-library/solidaridad-recommendations.pdf?sfvrsn=0>.

In this letter, we document that the IFC has failed to take action commensurate with the serious violations found by the CAO to bring APPL into compliance with the Performance Standards. The letter addresses the CAO's findings, and provides an update of developments since our previous submission in September 2015.⁵

This letter is based on interviews with workers from the three complaint plantations (Hattigor, Majuli, and Nahorani) during visits in September 2016, July 2017, February 2018, and April 2018. This included interviews with permanent and temporary workers, including sprayers, pluckers, supervisors, line *chowkidars* (guards) and workers engaged in maintenance work. We also interviewed a current APPL Manager from a non-complaint plantation. Most interviews were conducted off the plantations, and with the assistance of the All Adivasi Students' Association of Assam (AASAA),⁶ due to heightened surveillance by management of 'outsiders' visiting worker labour lines, and increased fear from workers of possible retaliation. Throughout this letter and its annexes, the identities of workers and the APPL Manager have been withheld to prevent against possible retaliation.

I. Consultation and Information Disclosure

The IFC has failed to adequately respond to the CAO's findings on consultation and information disclosure. It has failed to ensure: a credible consultation process with respect to its draft action plan; disclosure of key documents as required under Performance Standard 1; and that workers have sufficient information about the worker shareholder program.

a. Failure to consult on the IFC's draft action plan

In its response to the CAO's findings, the IFC endorsed a 5-year action plan – that TGBL and APPL formulated in response to the 2014 Solidaridad audit – known as Project *Unnati*. Referring to Project *Unnati* as a “draft action plan”, the IFC stated that APPL would publicise it, and solicit feedback from workers through appropriate mechanisms, including Employee Engagement Councils (EECs).⁷

Based on our interviews with workers at Hattigor, Majuli, and Nahorani, these consultations have not happened. Across the board, workers we interviewed did not know about the draft action plan, or the measures proposed in it, and had not been provided an opportunity to express their views on it.

Workers also stated they had not received the 2014 Solidaridad audit, upon which the draft action plan is based. We have requested this document from the IFC on multiple occasions, including in writing, to no avail. The only document that is public is a summary. This contravenes Performance Standard 1, which requires that any action plan be developed in

⁵ Letter from Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA), People's Action for Development (PAD), and Diocesan Board of Social Services (DBSS) to the CAO, 'Re: Additional information on IFC's investment in Tata Tea / Amalgamated Plantations Private Limited', September 18, 2015 ('Complainants Submission of September 2015'), accessible here: <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/9.18.15-Letter-to-CAO.pdf>.

⁶ AASAA is a grassroots organisation active in organising workers on the ground, including on campaigns around living wages and Scheduled Tribe status. Consisting of mainly young men, AASAA members' family connections on tea plantations make it relatively easy for them to move in and out of plantations.

⁷ APPL describes EECs as monthly forums with management, involving 20-30 workers and union representatives.

consultation with project-affected communities and that consultation be based on the prior disclosure of relevant and adequate information. The summary does not make clear the basis upon which findings were reached, and there is no way of verifying that the summary is a true depiction of the full report.

While the majority of workers we interviewed had no knowledge of EEC meetings, a few workers had attended in the past. These workers expressed that management selected workers for EEC membership, and that workers who spoke in favour of the company were more likely to be selected, including supporters of the Assam Chah Mazdoor Sangha (ACMS), the dominant union operating on the plantations. Workers shared that they were prevented from discussing issues relating to worker welfare and that EEC discussions were limited to improving productivity. A worker from Majuli, for instance, felt she was removed from the meetings because she had tried to raise her grievances about living conditions (see row 12 of Annex 1). Workers shared that those who attend EECs rarely communicate what takes place afterwards with others.

The complainants submit that EECs in their present form are not a suitable method of consultation due to the presence of management and ACMS, and because management selects workers. The powers of EECs are unclear, grievances have been suppressed, and members do not receive training from an independent third party. Furthermore, there are no systems in place to ensure workers have the ability to gather concerns from others before meetings, and then report back afterwards.

b. Failure to select an independent third party

In its response to the CAO's report, the IFC stated that it would supplement its supervision efforts by commissioning an independent third party to engage directly and extensively with workers (including complainant workers) to seek their feedback on the effectiveness of the measures being implemented by APPL, and to annually audit the status of Action Plan implementation.⁸ Although the IFC's draft action plan states that it would commission a third party by November 2016, there have been significant delays.

In June 2017, the IFC verbally indicated during a phone call that it was considering Solidaridad for the purposes of the consultations. Nevertheless, the IFC stated it was open to receiving the complainants' concerns about Solidaridad in writing and alternative suggestions of third parties. In July 2017, after screening numerous organisations globally against objective criteria, the complainants wrote to the IFC proposing an organisation, with specific expertise in participatory processes, lead and conduct the consultations. We suggested that a renowned academic, with deep knowledge of the plantation labour context, take an advisory role to help design the process.

We also outlined our concerns regarding Solidaridad. We stated that Solidaridad is not an appropriate choice for a consultation process with workers. Firstly, there are perceptions of bias and a conflict of interest due to Solidaridad's past and current engagements with TGBL. As mentioned, in 2014, TGBL funded Solidaridad to conduct an audit of APPL plantations. While the document has not been disclosed, the summary suggests Solidaridad reached conclusions material to the consultation process. In particular, Solidaridad made certain recommendations in that report, which are part of the action plan that it would be

⁸ IFC Response, p. 3.

consulting on. Workers are concerned that Solidaridad may be predetermined by its former conclusions, rather than approaching these matters with an open mind. Additionally, TGBL is presently retaining Solidaridad to implement the Trustea program, a tea sustainability code, including on APPL tea plantations. There is a concern that Solidaridad's responsibilities under the Trustea program may bias it to depict the situation at APPL in a more positive light, so as to suggest it is successfully implementing the standard. The risk here is that Solidaridad will preference its financial interests, tied to securing further work with TGBL, over the need to accurately elicit and capture worker views.

Secondly, we expressed concerns that Solidaridad may not be competent at designing a participatory process. Solidaridad failed to consult the complainants in both the 2014 audit and again in 2017, when it undertook another audit of two estates, including Nahorani, a CAO complaint plantation. The executive summary of the audit, which was uploaded on APPL's website in October 2017 (see Annex 2), casts serious doubt over workers' informed participation in the audit. In the document, Solidaridad states that while management "were fully on the loop regarding the Draft Action Plan targets...other stakeholders like workers could not share if they have accessed the full Action Plan" (see page 10 in Annex 2). The summary also suggests that Solidaridad did not employ robust sampling methods, with only 50 households selected from two estates (Nahorani and Namrup). Using numbers from APPL's website, Nahorani alone has a total of 1468 permanent workers and during the peak season employs an additional 900 temporary workers.⁹ This does not include spouses and other dependants, which would increase the number significantly.

In November 2017, after significant delay, the IFC informed us in writing that it had selected Solidaridad as the independent third party. The IFC stated that it did not believe that Solidaridad had not carried out its work with the necessary and high degree of professionalism required. Although the Terms of Reference for the consultations provided by the IFC envisaged a bidding process (see the section entitled "Instructions to bidders" in Annex 3), there was no indication from the IFC that other organisations were considered or that a bidding process even took place.

The IFC's claims about Solidaridad's professionalism are undermined by its failure to be transparent. We have made multiple requests to the IFC for disclosure, in full, of these past audits, to no avail.

c. Shareholder program lapses

The IFC's failure to provide information to workers, and in an accessible manner, extends to the worker shareholder program. This is undermining the very rationale of the IFC's investment, which was to empower workers and make them stronger stakeholders through their part ownership of the company.

Across the board, our interviews with workers in Hattigor, Majuli, and Nahorani revealed that the majority of worker-shareholders are unaware of the very nature of shares, including their risks and benefits. They are also unaware of the current value of their shares, how to retrieve dividends, their rights as shareholders, and the procedure for selling their shares.

⁹ Website of APPL, 'Nahorani Tea Estate', available at: <http://amalgamatedplantations.co.in/plantations/assam-estates/nahorani-tea-estate>.

Most worker-shareholders we interviewed had not heard of training being conducted on the share program beyond what had been initially conducted. Very few worker-shareholders, for instance, knew that they were able to participate in APPL's Annual General Meeting (AGM). Although shareholders have received APPL annual reports, they are in English. An invitation page setting out the right to attend the AGM, in person or via proxy (see Annex 4) and accompanying instructions for electronic voting (see Annex 5) are in English. Of course, these written materials are difficult for workers to understand because literacy is low, and workers are most comfortable in the Sadri language. Some worker-shareholders in Nahorani did take part in farcical electronic voting processes. They described being asked for their account numbers, being told to say yes or no, and a button being pressed by management. They described not knowing for what purpose they were voting.

The only documents workers have with respect to their share ownership are bank books, which are in English. These documents reveal that workers received dividend payments from the company initially but seemed to not have received dividends in the past three years (see Annex 6). Despite the claims made in the draft action plan, workers we interviewed had not received separate dividend intimation slips.

During our visit in February 2018, workers had heard rumours that APPL was being sold, but stated that management had not shared any details of a potential sale or its impacts on their shareholding. The majority of workers were frustrated, as they did not understand what benefit the shares had provided them, and some reiterated they had been pressured into buying them in the first place.

d. Grievance mechanism and retaliation

Interviews with workers on Hattigor, Majuli, and Nahorani revealed significant problems with the grievance redress system. Across the board, workers described that the system of approaching the welfare officer for repairs was not working. After making a complaint, workers described having to follow-up multiple times, which often did not result in any action. Some issues had not been repaired despite the passage of three or four years. Even when a welfare officer is responsive, the APPL Manager we interviewed described not receiving adequate resources from APPL management to address worker concerns.

In Hattigor, workers complained in September 2016 that there had been no welfare officer on either Hattigor or Khoirabari divisions for the past three months so there was no one to complain to.¹⁰

According to APPL's Project *Unnati* update of 2016, "a structured docket-based system for recording complaints relating to house repairs, sanitation and water supply and other social issues has now been implemented with actions taken and timelines duly recorded" (see page 18 in Annex 7). Few workers had heard of such a system in place. In Nahorani, some workers had received a slip noting their house number after making a complaint. In Hattibari¹¹ division, workers also described that management had put a box in each of lines in the first house, where all complaints are to be submitted. Workers thought these boxes were of limited

¹⁰ Hattigor plantation has 2 separate divisions with separate labour lines: Hattigor division and Khoirabari division.

¹¹ Nahorani plantation has 2 separate divisions with separate labour lines: Hattibari division and Nahorani division.

utility because many workers are unable to write.

Workers accessing this grievance mechanism or others, including the ongoing CAO process, fear retribution if they are seen to be too vocal. One way APPL management is silencing workers is to prevent them from speaking to outsiders. The APPL Manager we interviewed shared that line *chowkidars* continue to be told that if anyone from outside enters the plantation, they should inform management. In Hattigor, for instance, a worker shared an earlier incident, where somebody saw her speaking to one of the complainant organisations, and informed management. Management then questioned her husband.

The complainants have raised issues relating to retaliation in the past. However, access to the plantations and to workers was even more challenging in the last two years. Management continues to allude to potential job losses and the closure of plantations as a threat to workers that raise their voice. When it emerged in January 2018 that TGBL may sell its stake in APPL,¹² a tactic used by management to silence workers was to suggest that funds, including from TGBL and the IFC, were being withdrawn because workers had raised their grievances to the CAO. Workers report rumours spreading that only Hattigor, Majuli, and Nahorani plantations were being sold because of the CAO complaint.

Another tactic that APPL has used to silence workers in the past two years is to co-opt supporters. APPL has engaged as contractors for various types of work, key advocates of workers in Nahorani and Hattigor, who were previously active supporters of the CAO process. These include members of local unions and student organisations. After accepting these engagements, the advocates have had limited involvement in supporting the process.

II. Freedom of Association and Wages

a. Developments related to tea worker wages

Since making our previous submission in September 2015, there have been some developments in relation to wages for tea workers in Assam. Under the wage agreement reached in February 2015 between ACMS and Assam's tea industry associations, the daily wage for tea workers was set at Rs. 115 in 2015, Rs. 126 in 2016, and Rs. 137 in 2017.

On July 29, 2015, the Government of Assam issued a draft notification proposing an increase of the daily minimum wage for tea plantation workers to Rs. 177.19, comprising a cash wage of Rs. 143. The payment of this higher wage was thwarted by Assam tea associations who filed litigation in the Guwahati High Court to prevent the Government from doing so. They ultimately succeeded when the Court stayed the matter (see Annex 8).

In mid 2017, civil society groups in Assam, including unions, student organisations, women's organisations and intellectuals, came together to launch a wage campaign, calling for a wage of Rs. 350, asserting this would allow tea workers to meet their basic daily needs (see Annex 9).

¹² Livemint, 'Tata Global Beverages may sell stake in Amalgamated Plantations', January 12, 2018, accessible at: <https://www.livemint.com/Companies/SINxNAfkEGtwhayEBDWSyI/Tata-Global-Beverages-may-sell-stake-in-Amalgamated-Plantati.html>.

On September 15, 2017, the Government of Assam constituted a Minimum Wages Advisory Board under the Minimum Wages Act, 1948 to revise the minimum wage for tea plantation workers. The Committee has representatives from the Assam tea industry, unions, and the Assam Government (see Annex 10).

The three-year wage agreement expired at the end of 2017. However, at the time of writing this submission, workers at APPL are still paid Rs. 137 (see Annex 11). This is far below the state mandated minimum wage for agricultural workers, which was revised to Rs. 240 for unskilled workers and Rs. 280 for skilled workers in November 2015, with additional allowances made for inflation in May 2017 (see Annex 12).

b. Freedom of association

The IFC disagreed with the CAO's findings on freedom of association. In its response, it asserted that APPL meets the workers' organisation requirements under Performance Standard 2 since ACMS is a lawfully formed union, and APPL complies with the current collective bargaining agreement in place.

Many workers do not feel ACMS fairly or adequately represents their interests. ACMS is historically affiliated with the Congress party and has built up a strong base for the party to bring it to power in parliamentary and assembly elections over the decades. ACMS also has close relationships with and support from plantation management. It is the only union allowed to participate in wage negotiations with the tea industry. Yet, ACMS has a history of compromising workers' interests in negotiations with tea producers, and allowing workers' minimum wage to be set at a rate well below the state-mandated minimum wage for agricultural workers. As a result, the wage agreement negotiated by ACMS on behalf of workers does not represent the standard set under Performance Standard 2 of being collective bargains by unions of workers' own choosing and made under workers' delegated authority. As already mentioned, the agreement has also expired.

In May 2016, the Bharatiya Janata Party (BJP) won Assembly elections in Assam. Despite this political change, ACMS continues to be the dominant union enjoying influence and membership in tea plantations across Assam. The Bharatiya Chah Mazdoor Sangha – the union affiliated to the BJP – has also seen some rise in prominence.

In September 2016, we requested the IFC in writing to address the lack of genuine freedom of association and the faulty wage-setting framework in Assam by anchoring a multi-stakeholder process involving the necessary stakeholders (government, industry, CSOs) in order to initiate a reform process. There is unfortunately no indication the IFC even attempted to do this. As mentioned above, the EECs do not help to counter a lack of freedom of association in Assam due to the undemocratic manner in which workers are selected, and the lack of EEC powers; training for members; and systems in place to ensure workers can prepare and report back to fellow workers.

c. Fair and minimum wages

On the issue of fair wages, the IFC's response was silent regarding the CAO's finding that the IFC had not ensured that APPL paid wages consistent with the commitment to support jobs which offer a "way out of poverty" or "protect and promote the health" of workers.

The IFC did commit to seek a fresh legal opinion to determine whether wages paid by APPL meet legal minimum wage requirements.¹³ The CAO found that a robust review of this issue would require independent valuation of non-cash benefits, analysis of the non-gazetted status of the tea sector wage agreement post-September 30, 2013, and consultation and disclosure.¹⁴ At the time of writing, the IFC had neither publicly reported on any fresh legal opinion nor consulted with us on this issue. In its Project *Unnati* Progress Report, 2016, APPL provided details of the wage break-up for the 2016 calendar year (see page 17 of Annex 7). It states that the wage provided to workers was Rs. 266.96, comprising a cash wage of Rs. 132 and Rs. 134.96 by quantifying the value of various non-cash benefits.

There are a number of flaws in APPL's reasoning. First, as will be discussed below, APPL has not adequately implemented many of these statutory benefits and its record of implementation varies considerably across its plantations. Second, from a legal standpoint, the Minimum Wage Act, 1948 expressly excludes many of the cited non-cash benefits from the definition of "wages," so not all of these benefits can be used in calculating whether a wage meets minimum wage standards. Third, the numbers provided cannot apply equally for all workers, since many of them are sharing non-cash benefits. For instance, when a husband and wife both work, they are given only one house, so at least one of them has to be considered not to be receiving that benefit in full. 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 as a wage 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. As mentioned, Assam civil society groups working with tea workers have assessed that this wage should be at least Rs. 350 and have been pushing for this in a state-wide wage campaign. A 2014 study, based on the cost of necessities for workers in Assam's tea sector and using wage calculation standards developed by the Supreme Court of India, calculated a living wage to be Rs. 330 per day.¹⁵

d. Pay slips and wage deductions

The CAO found that the IFC has not ensured APPL is presenting information in a clear, easily understandable, and accurate way, and in the language of the worker, and that the IFC has not responded adequately to the concerns raised by workers with regard to deductions for electricity or failure to meet task rates. In its response, the IFC states that "APPL is issuing bilingual pay slips (English and Assamese), and ensuring that in low yield season workers are paid the task rate even if they collect a lesser quantity than is required."¹⁶

This response is at odds with reality, and fails to acknowledge the exorbitant deductions workers have been charged for electricity and for failing to meet plucking quotas during the low yield season.

To begin with, while some workers do receive pay slips in Assamese, many workers still receive pay slips in the English language. In its Project *Unnati* 2016 Progress Report, APPL states that, "The office copy is in English and the copy given to the worker is in Assamese.

¹³ IFC Response, p. 14.

¹⁴ CAO Report, p. 55.

¹⁵ The study was carried out in June 2014 by the Department of Economics of the Indian Institute of Technology in Guwahati.

¹⁶ IFC Response, p. 14.

Bilingual payslips were started from May 2014” (see page 17 in Annex 7). Yet, when we met workers in 2017 in Hattigor, they were receiving pay slips in only English (see Annex 13).

Workers in Hattigor and Majuli plantations have repeatedly expressed concerns regarding high electricity bills despite low consumption. They complain electricity meters exist, but that bills for households with a single fan and light bulb are equivalent to bills for houses with televisions and refrigerators.

On the other hand, in Nahorani plantation, electricity was cut on the labour lines on both divisions since approximately November 2015. As a result, there was total darkness in the lines in the evenings, with negative repercussions for workers’ mobility and safety. Despite this, workers were being charged for electricity (see Annex 14). Workers were told that the plantation was in debt to the electricity provider and that they would only get power if they allowed more money to be deducted from their wages to repay the debt. The complainants informed the IFC of this in writing in a documentation report (see row 8 of Annex 1) sent to IFC management on September 30, 2016, so the IFC was put on notice. However, electricity was reportedly only resumed on Nahorani division in around November or December 2017. Meanwhile, workers in Hattibari division report that they still do not have electricity, other than in one labour line.

The plucking quota for tea pluckers is presently 24 kilograms per day. An agreement signed on July 11, 2016, between ACMS and the Assam Branch of the Indian Tea Association revised the incentives and penalties that apply when workers pluck above or below that target in a day during the plucking season, generally from June to October. While the new agreement provides for greater incentive rates for workers based on three brackets, the agreement also makes the “disincentive” great for workers that fail to pluck 24 kilograms per day, applicable as a mirror image of the incentive structure (see Annex 15). This has intensified pressure on workers to meet work quotas.

In November 2016, a concerning incident took place in Majuli plantation. Workers report being pressured by management to prune 500-600 tea bushes daily, instead of the regular 250-300 bushes per day. Following this incident, a plantation lockout was called after more than 2000 or so workers, trade union members and members of student organisations started protested and demanded the immediate transfer of senior management for their alleged misbehaviour and coercion of workers. This incident was reported by a local journalist (see Annex 16).

III. Occupational Health and Safety and Healthcare

The IFC has not taken nearly enough adequate steps to safeguard the health of APPL workers, including a safe working environment, and access to decent healthcare. With respect to the CAO’s findings on the use of pesticides at APPL, the IFC’s response stated that WHO class II pesticides would be undertaken only by appropriately trained personnel wearing protective equipment, and that APPL had strengthened IT systems to ensure sprayers are rotated to other jobs after three months. The IFC also stated that improvements have been made in distribution and use of Pesticide Protective Equipment (PPE), along with provision for an adequate number of wash stations.¹⁷

¹⁷ IFC Response, p. 14.

These claims are at odds with our documentation on the ground, which points to the IFC's continued failure to ensure APPL sprayers are trained, wear adequate protective gear, are rotated, and regularly subjected to medical testing and the results. Many sprayers we interviewed on Hattigor, Majuli, and Nahorani stated that they had not received training, without which workers do not fully appreciate risks of the work and the need to take precautions.

According to a current Manager at APPL, management ensures paper compliance with respect to sprayers, not actual compliance. Managers know they are only supposed to employ sprayers that are medically certified to spray and to rotate sprayers every three months. However, as these medical checks are expensive, in reality, management often only obtains medical certification for around 30 sprayers per division and provides these documents for auditors, even though on any given day there may be many more sprayers than that. The Manager at APPL explained how management will change names on the I.T. system, without actually rotating sprayers on the ground, as a way to ensure paper compliance for auditing requirements.

Some sprayers complain that there is not enough PPE. On some divisions, PPE is kept in the storeroom and handed out to sprayers when visitors or auditors come. Other sprayers have more ready access to PPE, but do not wear it because it is ill-fitting, uncomfortable, unsuitable for the hot weather, or damaged. The APPL Manager we interviewed stated that a protective vest lasts for only around six months, but staff are given little budget to replace or repair equipment. Even where there is a wash station, there is often no provision of soap to clean off chemicals after spraying. Further, it was reported that often the same drum used to mix the pesticides is also used for washing. Many sprayers complain that the fumes from pesticides are overpowering, and causes dizziness, itching, problems with eyesight, loss of appetite, vomiting, and wounds on the back. Sprayers shared that they are not rotated out of spraying jobs and some of them have been doing pesticide spraying duties for 15 years. (see Annex 17, which contains photos and a video of sprayers and mixers working without adequate protective equipment, as well as photos of wounds caused by spraying).

Some sprayers revealed that while their blood samples had been taken by the company a few times, they are never provided any medical results or explained what the tests are for. On one of the plantations, workers asserted that there had been no medical testing for pesticide sprayers for over two years, and that earlier, when medical tests were done, the workers were never provided their medical reports. The APPL Manager we interviewed confirmed that cholinesterase tests were conducted to determine whether sprayers were in the normal range, however, it was only sprayers who had abnormal results that would be pulled out of the spraying squad, while other sprayers were not provided with their medical results at all.

As in the past, workers complain of poor quality medicines at the plantation hospitals as well as poor healthcare from doctors. The system of reporting at the hospital for sick leave is unduly onerous. Workers report having to reach the hospital by six o'clock in the morning in order to be granted a sick leave certificate for the day. If workers are late, they are not granted sick leave. In July 2017, a female worker from Majuli explained that when workers fall sick, they have to go back to the hospital in the afternoon to report that they are ill and prove that they are not being truant.

In April 2018, the complainants documented a series of injuries and deaths of workers, which demonstrate the abysmal state of healthcare that workers face. Seven incidents we

documented follow. This information is based on speaking to the families of these workers.

1. On March 19, 2016, a worker died in the Hattigor tea plantation hospital at the age of 40. He had been a pesticide sprayer for many years and had tuberculosis, which was known to the Hattigor plantation hospital. According to his family, he was riding his bicycle while carrying pesticide cans one day, when he became dizzy, and fell to the ground, injuring his head and neck. He was taken to the garden hospital where it was suggested that he be referred to an external hospital. His family took him to a local hospital, called Mangaldai Hospital, where blood tests were conducted on 17 March 2016, but little done by the way of effective treatment. He was brought back to the Hattigor tea estate and died two days later in the Hattigor garden hospital. (See Annex 18 for a death certificate and tuberculosis treatment card, which was signed by the senior medical officer at Hattigor Tea Estate).
2. On August 18, 2016, a worker died in Nahorani tea plantation at the age of around 25, after falling down and injuring himself at work. He attempted to go to the Nahorani hospital for one week but his health deteriorated, and he was unable to eat, drink, or urinate. He was referred to Tezpur Medical College Hospital (TMCH) and then to a hospital in Guwahati where he was admitted for 10 days before passing away. The cause of death was found to be septicemia with acute kidney injury (see Annex 18 for death certificate and cause of death).
3. On October 2, 2017, a worker died in the Hattigor tea plantation hospital at the age of 32. In August 2017, he was using a machine for plucking tea leaves, when he fell and severed off the last two fingers of his left hand. After being taken to a hospital in Guwahati, he was admitted into the Hattigor tea plantation hospital and discharged in September 2017. Soon after, his health deteriorated. He complained of pain in his hand and fever, and passed away. His family received about Rs. 140,000 (~USD 2,120) in compensation (see Annex 18 for his death certificate and X-ray of his hand).
4. On October 23, 2017, a worker from Nahorani died at the age of 25 at TMCH. He had been a pesticide sprayer for several years, and his health deteriorated suddenly. The cause of death was attributed to liver problems, which his family attribute in part to pesticide exposure (see Annex 18 for a death report).
5. On December 14, 2017, the baby of a worker from Majuli plantation died during birth. In her eighth month of pregnancy, she had requested a vehicle to conduct an ultrasound but her request was denied, allegedly asking, “Why are you so eager to see your baby?” After the initiation of labour, nurses at the Majuli plantation hospital were unable to perform the delivery and referred her to a hospital in a nearby town. The delivery took place on the way to the hospital, and the baby died. The cause of death was recorded as cardio-respiratory arrest (see Annex 18 for a cause of death certificate).
6. On January 24, 2018, a worker from Nahorani died at the age of 39 in TMCH. Three days prior, she had come home from work with severe abdomen pain. After being given medicine from the plantation hospital, she was referred to TMCH and passed away two days later. The cause of death was found to be septicemia with acute kidney injury. She had been working on the plantation for 20 years, most recently in the

plantation nursery, and had pre-existing low blood pressure (see Annex 18 for a death certificate and cause of death report).

7. In January 2018, a young worker in Majuli injured her left hand while pruning tea bushes with a knife. She was taken to the estate hospital and given sick leave, but her fingers became deformed after the injury. She is restricted to use of one hand for work (see Annex 18 for photos). She has been assigned plucking duties and struggles to achieve the plucking quota with one hand.

These cases highlight that the IFC and APPL have failed to monitor workers' health condition, ensure they are given suitable work, and ensure workers have access to decent health care. Many of the deaths taking place are preventable. It seems that only in one of the above cases did a worker receive compensation for a work-related injury.

The IFC's Environmental and Social Review Procedure (ESRP) 5 on "Managing Eventualities in Investment Projects" guides APPL and IFC staff on how to respond to serious incidents. In the case of serious incidents or fatalities linked to a project, the client is required to inform the IFC within three days of the incident and the ESRP provides that the IFC will "follow up with the client to ensure that the root cause of the incident is being investigated and appropriate corrective action is taken to prevent recurrence."¹⁸

It is unclear whether these root-cause analyses have taken place in response to the above incidents. In any case, the continued prevalence of these deaths raises serious questions about whether the IFC has learned from previous incidents particularly as the CAO found that the IFC failed to require a root cause analysis in response to three earlier incidents of fatalities that occurred in Nowera Nuddy in 2009, Powai in 2010 and Borhat in 2011.¹⁹ It is also not clear if APPL management informed the police for the purposes of a Magisterial inquiry for deaths caused by accident or machinery, under section 174 of the Indian Code of Criminal Procedure.²⁰

It is notable that we documented seven cases of deaths and injuries at Hattigor, Majuli, and Nahorani with limited access to workers. Given the restrictions we face with access, and fears around retaliation, the number of undocumented injuries and fatalities are likely considerably higher.

IV. Housing, Sanitation, Education, and Childcare

In July 2017, we met with workers in Hattigor, Majuli, and Nahorani to verify whether the limited commitments under Project *Unnati* were being fulfilled. The IFC had committed to

¹⁸ IFC ESRP 5 (Version 4, 2009).

¹⁹ CAO Report, p.45.

²⁰ Section 174(1) of the Code of Criminal Procedure states: "When the officer in charge of a police station... receives information that a person has ... been killed by another or by an animal or by machinery or by an accident, ... he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, ... shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

ensuring a number of matters by March 2017. The exposé – called Project AccountabiliTEA – documented, through photographic evidence, that the IFC failed to fulfil most of the commitments it set (see Annex 19).

Workers reported that there had been some repairs made to houses, however these were primarily to houses that are located along access roads and on the periphery, that is, areas of the plantations where auditors pass. In its draft action plan, the IFC and APPL committed to provide working toilets to all permanent workers by March 2017. While some efforts were made to build new toilets and repair existing ones, many homes were still without them, and existing toilets were unhygienic and otherwise unusable. Some toilets did not have septic tanks, and where septic tanks did exist, many had not been cleaned and would overflow during heavy rainfall.

Workers also reported that APPL had taken some steps to provide access to piped water. Again, these efforts were limited mainly to houses most visible to auditors. Many workers did not have access to company-provided water, and made their own makeshift tube wells. Families that do have piped water often share their tap with three other families. Some workers report that the water quality is poor and the supply intermittent. For some, the supply is less than one hour per day. While water filters were earlier given to workers, many report that the devices have stopped working and they were never given replacement filters. The majority of drains in the plantations remain dirty and are not cemented. Once again, workers report that the drains are occasionally cleaned before auditors visit. Workers we interviewed stated that the majority of major repair and construction work had stopped in late 2016, and although there was some work done in 2017, it was minor in scope.

The standard of education and childcare continues to be poor, with inadequate teacher-student ratios, poor infrastructure, and low quality food provided in creches.

V. Temporary Workers and their Housing

The IFC has failed to adequately respond to the the CAO's findings with respect to protecting and promoting the health of temporary workers. The majority of temporary workers we interviewed continue to be deprived a *pucca* (proper) house despite having worked for many years. These workers often have to make their own house using makeshift materials or are given *kaccha* (makeshift) houses by the company.

This is a violation of the Plantations Labour Act, 1951 (PLA). Under section 2, workers are defined to include those who are contracted for more than 60 days in a year. Yet it has become common practice for APPL to employ large numbers of temporary workers for many years, and to deny them key PLA benefits. As a result, temporary workers are compelled to stretch the daily cash wage to include all the services they need.

There have been two recent incidents that illustrate APPL's treatment of temporary workers and its failure to provide them with adequate and secure housing. On 1 January 2018, a fire at a line of bamboo houses in Hattigor, known as *Bhuniyan basti*, burned the entire line of around 17 houses to the ground (See Annex 20). Workers lost all of their possessions. While unsure of the cause of the fire, some workers suspected a short circuit due to faulty wiring. The workers were initially moved to the plantation's school, and were then moved to houses that were constructed by APPL on the periphery of the plantation. While the houses are better in structure, workers fear that being on the periphery makes their houses vulnerable to

breakage by elephants, and submergence in the monsoon season due to an adjacent stream. These workers continue to have temporary status despite having worked on the plantation for a number of years. In fact, they were brought to live and work on the plantation in 2012 and 2013. A supporter of the workers and local journalist wrote letters to APPL management at Hattigor and the Government of Assam regarding financial help and a permanent solution (See Annex 20).

When the CAO conducted its compliance site visit in 2015, it visited a line of temporary workers in Majuli who were living in makeshift houses made of bamboo. These workers had been brought around five years ago from different places to work on the plantation. In the last three months, this line of houses was removed by management. Workers report that after a tussle took place, management brought bulldozers and the houses were removed with little notice. The workers have been moved to other abandoned houses on the plantation, but remain temporary workers. It is not clear if their housing situation has improved. When we visited in April 2018, the area had been cordoned off and was being used to grow plants (see Annex 20).

VI. Systemic Nature of Violations across APPL Plantations

While the preceding analysis has for the most part focused on documentation of conditions on Hattigor, Majuli, and Nahorani plantations in Sonitpur and Udalguri districts of Assam, there is evidence to suggest these violations span across APPL plantations. In May 2016, the Global Network for the Right to Food and Nutrition published a report finding numerous violations after visiting tea plantations in Assam and West Bengal, including two APPL plantations in West Bengal, Nowera Nuddy and Damdim. In March 2018, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations documented poor water and sanitation conditions on APPL plantations in both Assam – Achabam, Nahorkutia, Borhat – and West Bengal – Nowera Nuddy, Rungamuttee, and Batabari (see Annex 21).

VII. Discrimination Based on Indigenous Identity and Gendered Roles

The IFC disagreed with the CAO on the issue of applying Performance Standard 7 on Indigenous Peoples in this investment. As the CAO's finding on this issue made clear, while Adivasi tea workers do not have ancestral attachment to Assam, that is not determinative. They have maintained their own language, have a distinct cultural identity, and self-identify as members of an ethnic group recognised as a Scheduled Tribe (ST) in neighbouring West Bengal, where APPL has four tea plantations.

Since our last submission in 2015, tea workers in Assam have continued to demand for ST status. Several workers we interviewed described feeling discriminated against for being Adivasi. At plantation hospitals, for instance, workers are given medicines that are already opened, expired or in poor condition. Doctors do not pay attention to them, are busy on their phones, and workers are not given seats while waiting. Yet, when non-Adivasi staff visit the plantation hospitals, they are provided proper medicine and treated with attention and respect.

APPL is failing to provide a space for Adivasi culture, which invokes in violation of requirements in Performance Standard 7. The CAO found that expert analysis on this issue was required, including qualified social scientists using a mixture of ethnographic and

participatory approaches.²¹ But instead of committing this expertise, the IFC chose to disagree.

The intersectional impact of discrimination based on indigenous identity and gender exacerbates oppression against women at APPL. Assam has one of the worst maternal mortality ratios in India, and as the studies cited by the CAO indicate, literacy rates among women are disproportionately low. Leadership positions amongst unions operating in APPL and amongst staff are male-dominated, which results in women's voices being under-represented in decision-making processes.

Although the IFC's draft action plan commits to building mobile toilets for women in the plantation areas, across the board workers reported that has simply not happened, which creates health and safety challenges for the predominantly female tea pluckers.

During our visit in February 2018, workers in Majuli reported an incident of sexual harassment where a temporary worker was asked by a *sardar* (supervisor), perceived to be from another part of India, to work at a distance from the other workers. The *sardar* then molested her, until her shouting brought others to her aid. The *sardar* was allegedly suspended for 2 or 3 days but returned to work thereafter. APPL states that it has established a Sexual Harassment Committee and that no complaints have been filed in 2015-2016 (see pages 27-28 of Annex 22). Measures need to be taken to ensure workers understand the functioning of this Committee and to protect workers against retaliation if they complain.

VIII. Lapses in IFC Supervision

The IFC has failed to exercise its leverage to ensure the successful implementation of the action plan, including ensuring that budgets are appropriately directed towards worker welfare issues. The IFC's draft action plan states that, "Project *Unnati* implementation is the responsibility of a dedicated team at APPL and is closely monitored and reviewed by the APPL Board of Directors at every Board Meeting as well as at Operating Management's internal weekly reviews." Yet, the IFC has elected not to have a seat on the Board of Directors and is also not part of a Committee established to implement the action plan (see page 12 in Annex 2).

The IFC's response to the CAO report stresses the financial realities that APPL, as with other industry players, face. It notes that all parties will need to be realistic about progress given these financial limitations.²² Yet, the remuneration of key managerial personnel at APPL has significantly increased over the last two years. For instance, the salary of the Managing Director of APPL increased from over Rs. 9 million in 2016 to over Rs. 14 million in 2017 (see Annex 23). Meanwhile, the APPL Manager we interviewed reiterated that APPL has not allocated sufficient budget to welfare officers to both build and repair housing, sanitation and other infrastructure at a satisfactory pace.

IX. Recommendations to the IFC

This letter demonstrates that the IFC has failed to take the necessary steps and commit the required expertise to bring APPL into compliance with the Performance Standards.

²¹ CAO Report, p.75.

²² IFC Response, p. 3.

While media reports suggest that Tata may sell its shares in the plantations, the complainants urge the IFC to remain invested and work towards a safe, healthy, and secure future for workers. The complainants make the following recommendations for the IFC to bring the project into compliance:

- Ensure workers are consulted on the IFC draft action plan by a legitimate third party;
- Provide complainants access to the full methodology and findings of Solidaridad's past audits to allow workers to assess the IFC's claims about Solidaridad's integrity;
- Seek clarity on the health of APPL tea workers through a study in order to develop informed health interventions;
- Supervise the use of pesticides by APPL workers, including ensuring regular health check-ups, the use of protective equipment, and rotation of sprayers as required by law;
- Take steps to ensure worker-shareholders are trained on financial literacy, understand the value of their shares and rights as shareholders, including decision making opportunities and voting during AGMs, and have a genuine voice by providing workers a directly elected seat on APPL's Board of Directors;
- Take steps to ensure APPL remedies the current arrangement that denies workers the right to freely choose their representative organisation and the right to collective bargaining;
- Pay workers a wage of Rs. 350, which would allow tea workers to meet their basic daily needs;
- Supervise improvement works by APPL on plantations to ensure they are accelerated, including improving housing and sanitation, the quality of education, medical care and child care;
- Take steps to prevent retaliation of workers who complain or raise grievances, and provide free access to supporters of workers;
- Commit relevant expertise to assess the impact of the investment on Indigenous Peoples and the application of Performance Standard 7, as well on as the overlapping issue of gender-based discrimination.

In the event the IFC were to sell its shares before making improvements, it cannot be allowed to profit from this investment. The complainants demand that any financial gain earned on the back of workers risking their lives must be fully channelled into protecting worker health and safety.

Sincerely,

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

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