Chapter 3: Corporate Accountability: The Elephant in the Room for Assam's Tea Industry

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Hathikuli in Assamese means a place frequented by elephants. It is the name of the flagship tea plantation of Amalgamated Plantations Private Limited (APPL), the largest tea producer in Assam. Stretching for 12 kilometres along the National Highway near the Kaziranga National Park, Hathikuli is home to roughly 4000 people and has been described as the largest organic plantation of its kind in Asia.[ii]

Natural beauty aside, Hathikuli makes for interesting viewing from a corporate accountability lens. Its major owners are two powerhouses in global sustainability: the Tata Group, prized for its Tetley tea brand and commitments to ethical business, owns 65 per cent; and the International Finance Corporation (IFC), which is mandated to reduce poverty, owns 16 per cent of the company. A decade ago, in 2009, Tata and the IFC established an employee-owned plantation model at APPL with the stated rationale of empowering workers by offering them the opportunity to make decisions in the company and share in its profits. The IFC's Performance Standards were expected to raise living and working conditions for over 1,55,000 people living and working on APPL's 25 plantations. This was supposed to result in increased sustainability of APPL's tea operations and be a leadership example to initiate change in the Assam tea industry.

Unfortunately, APPL has posted losses for four years running and meaningful changes to conditions facing workers are wanting. Meanwhile, the Tata Group celebrates Hathikuli's organic tea cultivation as an example of its contribution to the Sustainable Development Goals (SDG), specifically SDG 12 on responsible consumption and production.[iii] The plantation is well known domestically as its tea is sold in Starbucks outlets in India and it is now Fairtrade-certified, which has further raised its profile in international markets.

For the Assam tea industry, the elephant in the room is the continuing grim reality for tea workers living and working on Hathikuli. Why have workers not seen the SDGs realised in the context of their lives and livelihoods despite the plantation's profile in the global marketplace, its Fairtrade certificate, and the IFC's investment?

Conditions facing Assam's tea workers far from 'decent or fair'

Most present-day tea workers in Assam are descendants of Adivasis who were forcibly brought from central India under British rule in the 1800s. Although companies have now taken over the reins, the colonial plantation model remains.

At the root of workers' continuing generational exploitation is the system of dependence and the barriers they face in asserting their rights. Workers are dependent upon their employers for nearly every aspect of their lives, from housing, sanitation, and drinking water, to education and medical care, which their employers are required to provide under the Plantations Labour Act, 1951

(PLA). With housing tied to their job, workers are practically hostage to their employer. The upshot is that most workers fear speaking out given the grave implications to their livelihoods.

While there are several unions offering membership in Assam, most have close relationships with both tea plantation management and the political establishment. The Assam Chah Mazdoor Sangh (ACMS), which has been the dominant union in recent times, has a clear track record of undermining workers' interests and consistently allowing cash wages to be set at a rate well below the living wage in so-called collective bargaining negotiations.

Moreover, many plantation managers exert tight control over workers by restricting access to non-residents and non-workers, even in the labour quarters where workers live. Workers who meet with outsiders have been questioned and some threatened or punished with higher workloads. These restrictions have hindered the ability of workers and workers' representatives to meet freely, for instance, with the purpose of raising awareness about their legal rights.

It is in this context that the roughly 1,55,000 strong Adivasi community live and work on APPL's 25 tea plantations. Workers endure backbreaking, long hours of work in the harsh sun for six days a week, sometimes seven. Tea pickers are required to pick 24 kilograms of tea leaves a day or can face possible wage penalties. At the end of the day, most workers come home to dilapidated housing, unhygienic drinking water, and inadequate healthcare. Due to the absence of functioning toilets, many defecate in the open, exacerbating disease, which along with malnutrition, is disproportionately high on the plantations.

In exchange for their efforts, workers receive abysmally low wages. Today, across the state of Assam, tea workers receive a cash wage of Rs 167 per day. This wage is significantly below the state mandated minimum wage of Rs 250 for unskilled agricultural workers. It is also less than half the daily living wage of Rs 350, which grassroots movements in Assam advocate for.

APPL, like other companies in the Assam tea

industry, claims that when the 'in-kind' services they provide to workers under the PLA are accounted for, the overall wage (cash and in-kind) rises above the minimum wage. This reasoning is logically flawed because the company has not adequately implemented many of the statutory PLA benefits in keeping with the requisite standard. For instance, based on interviews at Hathikuli in all three divisions (Hathikuli, Rangajan, and Deering) in August 2019, it was found that basic requirements for housing and sanitation were not being met. Many houses are still without toilets, and where they do exist, many are unhygienic and otherwise unusable. Many workers complain of not having ready access to drinking water, and have had to either make their own makeshift tube wells or share taps with as many as 15-20 other families. Across the board, workers describe a broken grievance handling system, with repairs to houses not being completed after years of following up with the welfare officer. Workers also complained that there had been no doctor in one of the garden hospitals for over three weeks.

Moreover, APPL's practice of employing large numbers of temporary workers for many years to deny them key PLA benefits also prevails at Hathikuli. According to APPL's website, Hathikuli has 836 permanent employees and an additional 1200 temporary workers during the peak season. [iv] Yet, several temporary workers interviewed at Hathikuli had worked for several years consecutively (in contrast to the 'peak season' clause put up on the website). These workers have had to make their own houses using makeshift materials and were not entitled to medical care.

Worker shareholder programme mired in limited information and coercion

In 2009, the IFC invested in APPL to enable the company to implement a sustainable 'worker-shareholder' model aimed at strengthening the agency of plantation workers. Soon after the investment, the IFC's independent accountability office, known as the Compliance Advisor Ombudsman (CAO), initiated an investigation following several serious incidents on the plantations. One such incident involved a 25-year-old worker at the Powai estate in Assam who collapsed and died at work in May 2010 after allegedly being assigned to pesticide spraying duties. Later that day, workers protested and clashed with the police, resulting in two protesters being shot dead and at least 18 others injured.[v]

In February 2013, three local civil society organisations, Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA), People's Action for Development (PAD), and Diocesan Board of Social Services (DBSS), filed a separate complaint to the CAO raising concerns about inhumane labour and working conditions at three different plantations – Hattigor, Majuli, and Nahorani. The complaint cited long working hours, inadequate compensation, poor hygiene and health conditions, coercion and pressure of workers, and a lack of freedom of association. They alleged that these conditions violated the IFC's Performance Standards. The complaint also raised concerns about the worker-shareholders programme.[vi]

In November 2016, the CAO released a scathing investigation report which found that living and working conditions (including housing, drinking water, sanitation, medical facilities, and the manner of pesticide use) were hazardous, and the wages on APPL plantations were so low that they were jeopardising the health of workers. In particular, the CAO found that the IFC's labour standard, which requires upholding "workers' fundamental rights while paying them a decent and fair wage", was being violated.[vii]

With respect to the shareholder plan, the CAO found APPL workers were not given proper information about their rights as shareholders. From the outset, workers describe that the share programme was presented in an overtly positive way, with limited discussion of the risks of participation. Workers were offered 800 preference shares for Rs 10 each. Initially, workers were guaranteed their capital and an annual dividend of 6 per cent, but in February 2014, the preference shares were converted to ordinary shares, without any of the guarantees to capital or dividends. Workers own roughly 10 per cent of the company.

Though the programme was intended to provide workers with greater agency in the company, many workers were instead pressured into buying shares, often without information on what it meant to be a shareholder or the risks of investment especially once they converted to ordinary shares. Some workers describe management resorting to coercion to ensure shares were purchased. As a result, the majority of worker-shareholder today, including at Hathikuli, do not understand what shares are, the value of their shares, and their rights as shareholders.

Most workers are also kept ignorant about their right to attend APPL's annual general meeting (AGM), either in person or via proxy, and to vote on important aspects of corporate governance, including electing directors, and approving their pay packages, all of which are crucial to holding the board accountable. Every year, APPL handpicks workers from each plantation to attend the AGM in Kolkata, but these workers have struggled to understand what goes on. Some workers describe farcical electronic voting processes, where they are asked to say yes or no with little information on the purpose of the vote.

Fairtrade certification

Despite these well-documented problems at APPL, in 2017, the Hathikuli plantation was deemed to have met Fairtrade's minimum requirements and was awarded a Fairtrade certificate. As a result, Hathikuli plantation now has the right to sell produce as Fairtrade if it can find a buyer that will pay a fair price and a premium for community projects.

But, should a plantation company known to have paid workers below the state-mandated minimum wage and put workers at risk through hazardous conditions be Fairtrade-certified? The shortcomings of Fairtrade certification in the Assam tea sector has been recently well documented by the University of Sheffield in its study on the Global Business of Forced Labour, which found no difference in labour standards, including wage levels, between Fairtrade-certified and non-certified tea plantations in Assam.

One of the central problems with certification is that it relies upon audits, essentially interviews with workers, which are not appropriate in a captive plantation context given workers may fear speaking out and would do so at great risk. Audits are also regularly orchestrated by tea garden management, including by taking auditors to the best facilities and to workers who have been instructed and coached on what to say, wear and act. As the University of Sheffield's study notes, "Workers told us that they are instructed to alter their working practices (e.g. in relation to safety equipment) to meet standards during annual audits by certifiers, but are then asked to revert to breaking standards the following day, suggesting that producers are cheating audits and inspections.[viii]

Another problem with certification in this context is that the minimum standard for certifying plantations is too low. This allows tea plantations to use certification as a shield to justify that conditions are adequate, since tea buyers and consumers are likely to assume certification is evidence of compliance while workers are unlikely to speak up during audits. In order to regain credibility and create the right incentives, Fairtrade must raise the minimum standard for certifying plantations and conduct more rigorous and transparent audits.

On the ground, the majority of workers interviewed at Hathikuli in August 2019 had no knowledge of Fairtrade while others were confused about how the system worked. The few workers that did know of the system were part of the worker-management Fairtrade premium committee comprising 21 workers, (seven from each division) tasked with deciding how the premium should be spent. Despite the two years that had passed, these workers indicated that community benefits had not yet been decided upon.

Conclusion

If nothing else, the experiences of the IFC and Fairtrade at Hathikuli plantation serve as a reminder that bringing about corporate responsibility must always involve meaningfully listening to the voices of the people affected by a project.

In January 2019, the CAO released a monitoring report which confirms that conditions on APPL plantations continue to be poor, including with respect to:

- living conditions, including housing, drinking water, sanitation, and medical facilities;
- pesticide use, and past impacts of highly hazardous chemicals on workers;
- ensuring workers earn fair wages,
- grievance handling;
- the shareholder program, including ensuring workers can understand and assert their rights as shareholders;
- consultation generally; and
- APPL failing to investigate the root cause of serious incidents of death and injury.[ix]

The CAO report made it plain that APPL requested resources from its shareholders in October 2016 to address issues facing workers. This funding will be crucial to any locally-determined solutions going forward. Illness and disease that presently arise out of poor housing, sanitation, and occupational exposure to pesticides are contributing to lost productivity, staff absenteeism, and medical costs at APPL plantations. Investing in these areas will increase the productivity of APPL's tea workers so they can decently work, live, provide for their families, and contribute to the global marketplace, with tangible improvements for the company's bottom line.

i. Human rights lawyer and Communities Co-Director for Accountability Counsel; Accountability Counsel supports communities to defend their environmental and human rights and is supporting the efforts of Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA) and People's Action for Development (PAD) through technical advice on the CAO complaint process.

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ix. CAO Monitoring Report of IFC Investment in APPL, January 23, 2019, available at: http://www.cao-ombudsman.org/cases/document-links/documents/CAOComplianceMonitoringReport_APPL2019.pdf