“The More Things Change ...”

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Columbia Law School Human Rights Institute

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Cover photo: Woman pruning tea bushes at Nahorani estate, Assam.
Tea plantations in India employ more than a million permanent workers, and perhaps twice as many seasonal laborers. This makes the industry the largest private-sector employer in the country. But workers depend on plantations for more than just employment: millions of workers and their families live on the plantations, and rely on them for basic services, including food supplies, health care and education. Indian law has required plantation owners to provide these since the adoption of the Plantations Labour Act (PLA), soon after independence.

The Tata Group, one of India’s most powerful corporate entities, is also one of the most significant forces in the tea sector. Until recently, Tata operated a vertically integrated tea business, owning dozens of plantations, processing and packaging facilities, and major retail brands. In the mid-2000s, Tata reached out to the World Bank’s private investment arm, the International Finance Corporation (IFC), and devised a complicated plan that would create a separate company to operate its extensive plantation operations in the states of Assam and West Bengal. The plan for the new company, Amalgamated Plantations Private Ltd. (APPL), included employee share ownership and diversification “beyond tea”. Under the plan, Tata would continue to support APPL for a period of “hand-holding,” after which it would be spun off into a publicly traded company, allowing Tata to focus on marketing its existing retail brands and developing new ones.

This is a case study of APPL. It documents the conditions for APPL’s workers and their families on the plantations, evaluating them in the context of Indian law and international commitments. It is a detailed account of the persistence of abusive practices, and the failure to comply with the basic requirements of the PLA, 60 years after its passage. It is also a critical analysis of the transition from Tata Tea to APPL, and of the role played in that transition by the IFC and private organizations intended to promote decent labor standards.
This report focuses on APPL because of the significance of Tata in the sector, its outspoken commitment to corporate social responsibility and its engagement with the IFC. By partnering with the IFC, Tata committed itself to the development goals of the World Bank, taking APPL beyond a mere private business deal. Through its investment in APPL, the IFC has also assumed responsibility. Decades of activism from inside and outside the World Bank led the IFC to adopt elaborate rules, known as Performance Standards, which are intended to ensure that IFC projects are implemented in compliance with its social and development goals. APPL is a test of the IFC’s will and capacity to enforce its standards when faced with a real world investment.

As the report shows, the IFC’s rules should have led it to scrutinize Tata’s compliance with Indian law. Instead, it took that compliance for granted, relying largely on Tata’s reputation. In agreeing to support dramatic changes in the structure of the plantation operations, the IFC overlooked problems that should have been considered in advance and then ignored them as they occurred. Key elements of the transition which have obvious appeal on paper – the sale of shares to workers, and economic diversification into commodities other than tea – have actually exacerbated the hardship of workers.

This report is based on more than two years of research, which included visits to 17 of the 24 APPL plantations, many on multiple occasions. Researchers for the Columbia Human Rights Institute interviewed hundreds of workers as well as APPL management, IFC staff, government officials, and experts on plantation labor. As summarized below, the report covers four areas: (1) history and context, (2) living and working conditions on the plantations, (3) the transition to APPL and (4) the role of the IFC and private certification bodies in reaching its conclusions.

HISTORY AND CONTEXT

The abusive conditions for APPL workers are consistent with conditions in the sector as a whole. They are rooted in the colonial origins of plantation life which continue to define the extremely hierarchical social structure, the compensation scheme, and the excessive power exercised by management.

The tea workers of Assam and the adjacent area of West Bengal come from two marginalized communities – Adivasis (indigenous people) and Dalits (the so-called “untouchable” caste) – whose ancestors were brought from central India by British planters. They remain trapped in the lowest employment positions on the plantation, where they are routinely treated as social inferiors.

The compensation scheme originally developed for the colonial plantations and their migrant workers – low cash wages, supplemented with housing and social benefits – has remained unchanged. As in the colonial period, the plantations function as a parallel governance structure, with little active involvement by the state, whether in setting wages or in monitoring working and living conditions. This places workers and their families in a relationship of total dependence on the plantation.

Independent India’s response to the plight of the plantation workers was not to unravel the system in place but to formalize it, adopting legislation that obligated the plantations to provide social benefits, including housing, health care, subsidized food, crèches, sanitation and education. The Plantations Labour Act of 1951 – with occasional amendments – continues to define the employment relationship in this sector. In addition to detailing the benefits employers must provide, the PLA tries to set limits on employer control over workers, for example, prohibiting management from interfering with public access to the “labor lines” where workers live.

But, as is widely known to those who study the tea sector, the PLA was never aggressively
enforced. Scholars like Virginius Xaxa, who grew up on what is now an APPL plantation, describe vast gaps in compliance, many of which have only grown larger over time.

A visitor to any “labor line” on an Indian tea plantation will immediately identify flagrant non-compliance with the PLA. Dilapidated and overcrowded houses are common, as are overflowing latrines, poorly stocked medical facilities, and abandoned crèches. Some of the most damning evidence about the implementation of the PLA, however, comes not from observations on specific plantations, but from governmental surveys of the sector. Presumably, after 60 years of guaranteed health care, housing, sanitation and food support in a stable population, social indicators should be positive. But the opposite is true: the surveys reveal that tea plantation workers are an impoverished community living on the margins. Malnutrition is widespread, along with illiteracy. Tea plantation workers succumb to “diseases of poverty” such as tuberculosis and typhoid at much higher rates than the rural poor in the villages around them.

**LIVING AND WORKING CONDITIONS ON THE PLANTATIONS**

The conditions on APPL plantations bear out the known history and surveys of the sector. There are vast and visible gaps in the implementation of the PLA in addition to abusive practices that exploit and exacerbate the disempowered state of workers.

Violations of the PLA in relation to health care, housing and sanitation are widespread. Workers live crowded together in cramped quarters with cracked walls and broken roofs. The failure to maintain latrines has turned some living areas into a network of cesspools. APPL is failing to provide adequate health care, both in respect of quality and access. Medical staff are poorly-trained and frequently absent. Callous and inadequate medical care were cited by workers as the trigger for violent labor disputes on at least three plantations in recent years. Even where it had not erupted in violence, workers consistently described doctors who made cursory diagnoses, while taking great pains to avoid physical contact.

Furthermore, health care – along with other social benefits – is arbitrarily denied to many of those who are explicitly entitled to receive it under the PLA: temporary workers, retired workers, and the dependents of women workers at APPL have no access to free treatment. As a result, many older and infirm residents on plantations described foregoing treatment they could not afford, while, in other cases, healthy workers are paying up to a quarter of their take-home pay over multiple years to cover the health expenses of dependents.

These explicit violations of the PLA tell only a part of the story. There are other abuses that fall outside the scope of the legislation but highlight the unchecked power of management and absence of recourse for workers. This is true, for example, of work quotas and salary deductions. While APPL cannot be held directly responsible for low wages – since wage levels are set regionally through negotiation between the employers and the union – APPL is complicit in keeping wages low. Management offsets any small raises by assigning higher daily work quotas, and taking substantial and arguably unjust deductions from workers’ pay. For most jobs on the plantations, there are quotas or “task rates” that set a threshold for the daily wage; workers who fail to meet this quota face pay deductions of up to half the day’s wages. From 2007 to 2013, the quota for plucking tea-leaf, which is set by employers across the region, has increased by 40%. There has been no corresponding improvement in technology to enable workers to pick faster: workers must pick as they have always done, by hand or with shears. The task rates for pruning the tea bushes,
which is fixed at the plantation level, have also increased at APPL without any explanation. On many plantations, workers said that they were no longer able to complete the task on their own, and had to take on helpers whom they compensated out of their own pockets.

Besides eroding wages through high task rates, APPL also deducts substantial amounts from workers’ paychecks. The overall impact of the paycheck deductions, as analyzed in the report, is a loss of at least 30% from an already low daily wage of ₹89 (US$1.62) in Assam, and ₹91 (US$1.65) in West Bengal. While a couple of the paycheck deductions are set by law (such as compulsory contributions to a statutory retirement account, known as the Provident Fund), the most burdensome are controlled by the company. On some APPL plantations, the fee charged for electricity alone amounted to nearly 50% of the workers’ net pay. In almost all cases, all workers pay the same rate, regardless of individual consumption, for only a few hours of electricity per day.

APPL management has responded defensively to questions about working and living conditions on the plantations, insisting that any problems on the estates are promptly and appropriately addressed through government enforcement and trade unions. In reality – as the company knows and, at times, helps to maintain – both mechanisms are demonstrably dysfunctional. Even the government’s own statistics show that inspections are infrequent and fines are nonexistent. Almost no worker interviewed had ever even seen a government inspector.

With regard to unions, there are important differences emerging between Assam and West Bengal. In Assam, plantation managers have helped to maintain the monopoly of the Assam Chah Mazdoor Sangha (ACMS), a largely discredited union. The global union federation for plantations and agriculture, the International Union of Foodworkers, does not recognize the ACMS as an affiliate, and in fact, has characterized the ACMS as being “in league with management.” According to workers and experts in the field, the ACMS functions largely to implement management policy and discourage workers’ complaints. In return for this role, APPL deducts union dues from all workers at its plantations, without regard to individual choice, and passes them on to the ACMS. It refuses to negotiate with any other union.

In West Bengal, however, plantation managers have been forced to accept union diversity, including the presence of more vocal, representative unions, in part as a result of the rise of newly active separatist movements in the state. Although it is too early to be certain of the long-term impact of these new forms of unionism, it does appear that the last two years have shifted certain dynamics within the plantations. For example, union mobilization
in West Bengal forced tea plantations to raise daily wages by more than a third, which in turn forced plantations in neighboring Assam to raise wages as well.

As a general matter, however, it is clear that there are no meaningful avenues for APPL workers to articulate concerns and seek remedies. Beyond government inspectors and unions, management can typically count on the isolation of the plantations to ensure against visits by concerned journalists or NGOs. If visitors do come, management invariably intercedes, either directly with the visitors or with the workers, to bring an end to the encounter. APPL management obliquely accused the authors of this report – who experienced such interference – of trespassing, even though the Plantations Labour Act affirms the right of public access to and from workers’ homes.

In describing the endemic problems of the sector and the particular issues at APPL plantations, including violations of the Plantations Labour Act, this report does not idealize the regime created by the PLA. Many advocates have argued that plantation workers may be better off without the “protection” of the PLA in the long term. For instance, many of the “services” that the PLA requires the employer to provide, including water, healthcare and subsidized food, are available to the poor directly from the Indian state. But, even though plantation workers’ incomes are low enough for them to qualify as “below poverty line,” the legal and geographic framework of the plantation system makes it almost impossible for them to gain access to the benefits they are entitled to receive from the state.

Furthermore, the system of benefits provided to workers under the PLA – rather than higher wages – keeps them bound to the plantations, preventing them from building savings and seeking new opportunities. In the view of many advocates, even a well-implemented PLA would sustain this dependency. This is particularly clear when it comes to housing: though multiple generations of workers may have lived in a house, without any other family home, they have no rights over it at all, even to make their own repairs. This may not be an ideal situation for employers, either, but, as one APPL manager acknowledged, they are unwilling to contemplate an alternative. The planters recognize that control over housing is the major factor enabling them to exercise control over workers.

THE TRANSITION TO APPL

The transition from Tata to APPL was premised on building “greater land and labor productivity” for a more sustainable plantation model. Central elements of the plan included the sale of up to 30% of the shares to employees, and diversification “beyond tea” into other agricultural commodities and fisheries. Although most of the employee shares would go to staff and management, the credibility of the plan required that workers also buy in. The IFC treated the sale of shares to workers as a critical feature of its decision to invest.

Whatever the merits of the plan, its implementation has been extremely problematic. After desultory efforts to explain the complicated “no-interest loan” – which would involve seven years of paycheck deductions – for the purchase of shares, management gave up explaining anything to workers, and simply set about convincing them to buy. Workers did buy, in relatively large numbers, marking their thumb prints on largely incomprehensible documents written in English. The company and the IFC treated the high subscription rates as *ipso facto* proof of good communication and worker enthusiasm for the scheme. But at every plantation, workers recounted stories of deception, threats and exaggerations – by unions and by management – in order to convince or compel them to buy the shares. Managers and security guards visited the homes of reluctant workers; staff refused to pay them for the day’s work unless they signed up. A few workers did refuse, but on a number of plantations subscription rates were nearly 100%.
Now, more than three years after APPL workers signed on to the share plan, there is still widespread confusion among them about what the shares represent, and what their rights may be as shareholders. The company has utterly failed to communicate with this subset of its shareholders: across the APPL plantations, workers stated categorically that there had been no meeting called or newsletter distributed about the shares or the financial condition of the company since they signed up for shares. They have not even been provided access to the company’s annual reports, which in any event are not public documents and are only in English.

From a purely economic perspective, the benefits to the workers are uncertain, despite the optimistic claims of APPL and the IFC. Now that paycheck deductions have begun, workers are losing an additional 6-8% of their meager wages each pay period. For four years, workers are locked in, and during this time, the value of the investment is guaranteed, along with a rate of 6% interest. Although the interest rate is high by western standards, it barely tracks inflation in India, where commercial interest rates are currently more than 50% higher, on long-term savings accounts. After four years, workers’ shares vest, and the value of the investment will rise or fall based on market conditions. In other words, underpaid workers face the risk of the market without other benefits of share ownership.

One of the other “innovations” in the transition to APPL – diversification beyond tea – has had the perverse consequence of dispossessing workers of agricultural land they had cultivated for generations. APPL announced in 2010 that it had built “the largest corporate fish farming business across north and east India,” and claimed that it had done so using “fallow” land within the plantation area. However, worker interviews revealed that the plots of land in question had actually been allocated to workers’ families in colonial times for the cultivation of subsistence crops. This land had been offered as part of the compensation package to induce workers to uproot their families and move to the plantations. APPL management claimed that workers would receive “benefit” from the fisheries, but none are immediately apparent: the fish is sold at market value, with no concessional rate for workers, and no new permanent jobs.

THE ROLE AND RESPONSIBILITY OF THE IFC AND PRIVATE CERTIFICATION

The IFC proclaimed that its reason for approving this project was because it promised to “create opportunities for people to escape poverty and improve their lives.” In APPL, the IFC saw an opportunity to preserve and expand jobs, creating a model for the industry. From this perspective, the share plan and diversification were central. Worker ownership would change the incentive structure, leading to higher earnings and more job security. Diversification would reduce the company’s exposure to fluctuating prices of tea leaf, and would also reduce the environmental harms associated with the monoculture of tea.

From APPL’s perspective, the IFC investment of nearly $8 million may have been relatively small in dollar amounts, but it brought critical legitimacy and a necessary infusion of capital to a corporate restructuring project that had lost other outside investors.

The IFC’s elaborate Performance Standards and rules for implementation are intended to ensure the promotion of the World Bank’s goals for social and economic development. They include labor standards, as well as benchmarks for community health and safety, all of which are relevant to the APPL investment. The IFC’s rules require the IFC to exercise due diligence in advance of its engagement, in order to identify and mitigate potential problems, and require the company to comply with social and environmental standards throughout the project. In other words, APPL voluntarily
supplemented its statutory obligations under the PLA with additional contractual obligations to the World Bank.

There is little to show for the due diligence phase of the IFC’s work. From all appearances, its enthusiasm about partnering with Tata – portrayed in project documents as an innovator in worker empowerment, and a leader in social responsibility and workplace safety – led it to curtail appropriate scrutiny prior to approval. On the basis of a thin record that included visits to only three plantations in three days, its assessment was “positive without reservation,” as noted in an Appraisal undertaken by the IFC’s own Compliance Advisor/Ombudsman (CAO). The IFC failed even to identify the well-known problems related to living and working conditions that plague tea plantations as a whole. The CAO, which launched its own inquiry into this project in 2012, noted some of the problems which appropriate due diligence would have exposed, and raised serious concerns as to whether the IFC had “sufficient evidence” for its earlier conclusions.

With regard to the share plan, the IFC’s role has been particularly problematic. In early project documents, the IFC proposed to play the role of “honest neutral broker” in the sale of shares. This would have been an extremely valuable role for it to play, given the power dynamics at work on the plantations, and the difficulties associated with ensuring workers’ informed consent through the process. The IFC even identified gaps in the APPL plan that it could help to fill, such as the absence of any role for employees in corporate governance. The IFC proposed that it would help develop an “employee empowerment program” to address this. But none of this materialized. In fact, there is evidence that the IFC abandoned its neutrality and actively promoted the shares, even putting its name on promotional literature that depicted workers receiving unrealistically high dividends from the shares – enough to buy a car or a house – without mentioning risks.

As an ongoing matter, there is little clarity regarding the IFC’s supervisory role in this project. The IFC has declined to exercise its option to appoint a member to the APPL board, and has responded defensively to reports of problems from a wide range of sources.

Beyond its obligations under the PLA and to the IFC, APPL further committed itself to meeting the labor and environmental standards of two private organizations, Social Accountability International (SAI) and the Ethical Tea Partnership (ETP). SAI’s “SA8000” standard, in particular, includes important labor protections, which APPL fails to meet. The glaring gap between conditions on the APPL estates and the standards on paper highlights serious problems in the certification and monitoring process. Auditors responsible for certifying compliance are paid by
management, and are, to all appearances, more protective of management’s interests than those of workers. Audits are scheduled in advance with management, allowing facilities to be spruced up. The visits are subsequently carefully choreographed by management, excluding the possibility of any visits to the “labor lines” or unsupervised worker interviews.

As the report suggests, the proliferation of new standards, while offering the promise of multiple avenues for achieving social responsibility goals, seems, at least in this case, to serve as a diversion. The private standards provide the impression of compliance with labor standards, in defiance of reality.

**SUMMARY CONCLUSIONS AND RECOMMENDATIONS**

It is beyond the purview of this report to provide comprehensive recommendations to correct the problems on APPL plantations. In order to address the concerns legitimately, Tata, APPL, and the IFC must engage in a process that is transparent and genuinely participatory. Many of these problems are sector-wide, and will require sector-wide solutions.

At the same time, there are certain violations of law and policy at the 24 APPL tea estates that are entirely within the company’s power to remedy, and could be ended immediately. For example:

- **The discriminatory denial of benefits to plantation workers and their dependents.** Temporary workers, the dependents of female workers, and the parents of all workers are entitled to these benefits by law and should receive them.

- **Interference with workers’ rights of free movement, and their right to receive visitors in their own homes.** The law guarantees public access to the “labor lines,” and this right must be respected. This applies not only to workers’ friends and family seeking to visit them, but also more generally: anyone should be able to enter the labor lines, and enter workers’ homes if workers invite them to do so, without having to notify management. The direct or indirect surveillance of workers must also cease.

- **Restrictions on workers’ right to form and join a union of their choice.** APPL is currently complicit in maintaining the monopoly the ACMS, in the state of Assam. Management must allow workers to be represented by the union of their choice in any negotiation or dispute, and must end the practice of deducting dues from all workers at source to give to ACMS. Until such a time as there is a legitimate election, workers should be free to pay dues to the union of their choice, after receipt of their wages.

- **Erosion of wages through unfair deductions and high task rates.** Among the many factors that contribute to the impoverishment of workers at APPL, there are two that should be corrected immediately: electricity costs, and high task rates that require workers to perform unpaid overtime and/or share their wage with helpers. In the immediate term, the plantations must ensure that workers do not have to pay industrial rates for residential electricity connections, and should place no obstacles in the way of workers seeking to obtain subsidized “Below Poverty Line” electricity connections through the government. For tasks such as pruning and clearing drains, management must ensure that the work can be completed by a single worker within the eight-hour workday. There should be no wage deduction for workers unable to complete the task, and no uncompensated overtime.

- **Sale of APPL shares to workers through deception and coercion.** The plantations
must act immediately to enable workers to opt-out of the share ownership scheme, and return to the status quo ante. Failing a meaningful opt out mechanism, APPL must immediately convert the “share sale” plan to a share grant, refunding all paycheck deductions to date and ceasing any further deductions, given that most workers are ill able to afford them.

- **Seizure of workers’ agricultural land.** It will be difficult to reverse the confiscation of land, given that it has, for the most part, already been converted to fisheries. However, compensation should be paid at once, equivalent to the fair market value of the land, in order to enable those workers to purchase plots elsewhere if they desire.

The chronic violations of the Plantations Labour Act, related to housing, sanitation, medical care, education, occupational health and safety, and other entitlements for workers and their families, will require a thorough, objective and transparent review of compliance, and a clear timetable for implementing solutions.

Many violations associated with the share ownership plan will also require longer-term remedies. Worker participation in the governance of APPL, through proportional representation on the Board, must be put in place, along with a system of communicating with worker-shareholders, in local languages, about the performance of the company.

The IFC has an important role to play in developing long-term remedies and ensuring their implementation. While it would be hard to deny that the IFC failed to exercise due diligence prior to approving the project, this should not become an excuse for it to “cut and run” at this critical stage, and pull out its investment. Until the original stated goals of the project are achieved, in compliance with the Performance Standards, the IFC must maintain its investment level and stay fully engaged in resolving violations.

Finally, the IFC must act immediately to ensure that workers understand that they have a right to bring complaints before the Compliance Advisor/ Ombudsman (CAO), as well as other complaints mechanisms and grievance procedures. In particular, the IFC must acknowledge that there has been management surveillance of, and retaliation against, workers who have attempted to reach out to auditors and inspectors, including the CAO, and it must intervene promptly to ensure workers’ safety.