



**A life without dignity –  
the price of your cup of tea**

**Abuses and violations of human rights  
in tea plantations in India**



## IMPRINT

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The Global Network for the Right to Food and Nutrition is an initiative of public interest civil society organizations and social movements (peasants, fisherfolk, pastoralists, landless people, consumers, urban people living in poverty, agricultural and food workers, women, youth, and indigenous peoples) that recognize the need to act jointly for the realization of the human right to adequate food and nutrition. The Network opens a space for dialogue and mobilization of its members to hold States accountable for their obligations to realize this right; it supports the struggles of social movements and groups fighting against the violation of this right; it supports and does its best to protect human rights defenders against repression, violence and criminalization; and it moves to end the impunity of state-condoned violations and of non-state human rights abusers.

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**Fact Finding Mission Report**

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# List of Acronyms

ACMS	Assam Chah Mazdoor Sangha
APL	Above Poverty Line
APPL	Amalgamated Plantations Pvt. Ltv
Art	Article
ASHA	Accredited Social Health Activist
BPL	Below Poverty Line
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social, and Cultural Rights
CFS	Committee on World Food Security
CIB	Central Insecticides Board
CID	Criminal Investigation Department
CRC	Convention on the Rights of the Child
CSM	Civil Society Mechanism of the CFS
ELP	Extra leaf picking
FAO	Food and Agriculture Organisation
FFM	Fact Finding Mission
FSSAI	Food Safety and Standards Authority of India
GI	Geographical Indication
GNRTFN	Global Network for the Right to Food and Nutrition
HHPs	Highly Hazardous Pesticides
HLPE	High Level Panel of Experts on Food Security and Nutrition
IAY	Indira Avas Yojana
IBFAN	International Baby Food Action Network
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICDS	Integrated Child Development Services/Schemes
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers
IFC	International Finance Corporation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
ILO	International Labour Organisation
INR	Indian Rupee
ISO	International Organization for Standardization
LARR	Land Acquisition and Rehabilitation and Resettlement
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
MoU	Motion of Understanding
MRL	Maximum Residue Limit
NFSA	National Food Security Act
NOC	No Objection Certificate
NRHM	National Rural Health Mission
PAN	Pesticide Action Network
PBKMS	Paschim Banga Khet Majoor Samity
PLA	Plantation Labour Act
PHE	Public Health Engineering
PPE	Personal protective equipment
PUCL	People's Union for Civil Liberties
RC	Registration Committee
RTFN	Right to Food and Nutrition
SAD	State Agriculture Departments
SAU	State Agriculture Universities
UK	United Kingdom
TRA	Tea Research Associations
TNCs	Transnational Corporations
UN	United Nations
UDHR	Universal Declaration of Human Rights
WHO	World Health Organisation
WHA	World Health Assembly

### Executive Summary

As one of the world's leading producers and exporters of tea, India's tea industry employs more than 1,2 million people. Two regions, Assam and West Bengal, together produce over 70% of India's tea and are also home to the worst working conditions for tea plantation workers in the country. In sharp contrast to the images of tranquil, lush, green tea gardens, with which consumers are presented, tea plantation workers are paid poverty wages and endure appalling working conditions. Women, who make up 70% of the workforce, are especially affected.

This report is the outcome of a fact finding mission conducted in Assam and West Bengal on behalf of the Global Network for the Right to Food and Nutrition (GNRTFN). It investigates and analyses allegations of serious abuses of human rights on India's tea plantations, in particular how poor working conditions undermine the human right to food and nutrition (RTFN) and related rights.

### History and context

In Assam and West Bengal, tea plantation workers are mostly from Adivasi and tribal communities. They are descendants of poverty-stricken peasants and landless people from the neighboring states, who were recruited and brought by colonial planters more than 150 years ago to work exclusively on the plantations. Once in the tea plantations, workers' mobility was heavily restricted to the vicinity of the tea garden and factory; they were completely isolated from the outside world and had barely any contact with the local population; they were deliberately made dependent for all their needs on the basic facilities provided by the tea estate; and single men and women were forced to pair, thus creating generations of tea plantation workers. The need to "populate" the labour force combined with the stereotypes of women as more able to engage in quality picking of tea leaves, resulted in a higher proportion of

women being recruited and subjugated. Many studies describe the living conditions of the workers under the colonial rule as akin to slavery as workers were flogged, abused, and discarded inhumanely upon death. The housing, medical facilities, and food supply provided to the workers were completely inadequate and workers' living conditions were miserable.

While legal provisions barely existed during the 19th century, independent India, instead of responding to the structural causes of the plight of tea plantation workers, formalised the system with the adoption of the Plantations Labour Act of 1951 (PLA) – which continues to define the employment relationship in the tea plantations. While the PLA attempts to set limits on the control of employers over employees and defines the benefits to which workers are entitled, it has never been properly enforced, resulting in rampant violations of Indian and international human rights law.

### Methodology

With the primary aims of verifying cases of violations of the RTFN and related human rights of tea plantation workers – as documented by GNRTFN members – and gathering additional information to be used to analyse and give visibility to the cases and hold the government of India accountable at the national and international level, the GNRTFN engaged in a fact finding mission in Assam and West Bengal in November and December 2015. The fact finding mission team visited 17 plantations, interviewed approximately 300 workers, and met with relevant actors, including representatives from local groups supporting workers, academia, trade unions, tea plantation companies, and local, state and central government. The information in this report is the result of the information obtained during these meetings and builds on the work done over many years by the International Union of Food Workers, the Right to Food Campaign in India, and the trade union Paschim Banga Khet Majoor Samity at local and national levels.

## Conceptual framework for analysis

The conceptual interpretation of the RTFN within the framework of food sovereignty and of the full realization of women's rights, adopted by the GNRTFN, allows for a much more holistic understanding of the indivisibility and interconnectedness of all human rights, especially between the RTFN and the human rights to self-determination, health, education, natural resources (land, seeds), work, water and sanitation, culture and housing, among others. Indeed, a violation of one right is intimately linked with and/or leads to violation(s) of other human right(s).

The full realization of the human right to adequate food and nutrition implies more than being free from hunger and ingesting a healthy nutritious diet. It is achieved when human beings are able to transform this diet into the highest possible level of nutritional wellbeing - into an active and participatory life, an enhanced immune system, physical and cognitive growth and development, the capability to interact and apprehend the world, the capability to work, and the capability to reproduce, among others.

## Key findings

### *Insecurity of tenure*

The plantation workers' security of tenure is neither guaranteed in the PLA nor in the state rules relating to standards of housing. The land on which the plantation workers reside is "owned" by the management, and it changes hands if and when the company that manages the estate changes. Despite workers and their families having had a house as their living quarters which had been lived in by their past family members for the last two hundred years, it is the management that controls their house and their homestead. The tenure right of the tea workers is entirely attached to the labour they provide; as long as one person in the family is working in the

plantation, the family can reside in the house. Put another way, with workers having no legal tenure right, any management staff has the power to evict any worker currently out of work. This has meant that workers continue to work for pittance wages and under horrible working conditions just so that they can maintain their house. This is especially true of women, as men migrate for better wages, but women, the elderly and children continue to stay on, keeping a toehold on the only house that they possess, having lost over the last 200 years their ties to their actual homeland. The workers therefore continue to work in a state of bondage, at times discouraged to organize and fight for better working conditions, as protests can mean eviction from their homes.

Enlargement of the family over generations has also led to a housing crisis, as management is not keen to provide houses or land for the next generation, and at the same time does not even allow the legal purchase of land by those who can afford it.

The abandonment of 16 plantations owned by Duncans in March 2015 led workers to seek their own solution to this problem, where 300 workers occupied about 90 hectares of estate land that had been lying unused for many years. While growing food to deal with the hunger caused by the closure is one of the reasons for occupying the land, another reason is to build houses for sons and daughters who can no longer be accommodated in the company-provided homestead.

### *Violations of women's rights and gender discrimination*

Violations of women's rights and discrimination on the basis of gender in violation of international and Indian law, were found in virtually all tea gardens that were visited. As a party to Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), India has a duty to ensure women's equal enjoyment of the right to work; however, unlike men who dominate better paid clerical and management positions in the plantations, women

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who work almost exclusively as tea pluckers are barred from any promotional opportunities. This inability to perform other tasks results in the lack of opportunities for higher wages for women, thus severely impeding the realization of women's RTFN and related rights. Similarly, in some tea gardens that were visited, there were a disproportionately high number of female casual workers as compared to males – this is significant because in practice casual workers are not entitled to the same benefits as permanent workers. In the case of tea plantation workers, this status has an impact on every aspect of their lives, including their ability to access basic social services. This lack of equal work opportunities for both men and women in tea plantations seems to also impact the professional personnel in the tea gardens. Women often complained that there are very few women supervisors and hardly any women doctors in the tea gardens and further said that those women who engage in activities to protest the management often suffer from retaliation.

Women in virtually all tea gardens reported violations of their maternity protection rights, in particular those related to the protection of the health of the mother during pregnancy, maternity leave benefits, breastfeeding breaks, and pre-natal and post-natal care. Women workers have to continue performing the same tasks throughout their pregnancy, typically right until their eighth month of pregnancy, in spite of some women specifically requesting a lighter work load. Maternity leave was widely reported to be 12 weeks long at best and non-existent for casual workers. In violation of international as well as Indian law, breastfeeding breaks are not provided to women once they return to work and there were even reports of harassment by management of breastfeeding mothers. Furthermore, while both male and female workers complained of the long waits during lunch time and after work hours to weigh the tea leaves that have been picked, these long waits often have a disproportionate impact on breastfeeding women and their children as women tea pluckers are left with insufficient time to breastfeed their children during the breaks. While crèches are supposed to be

available to women workers, women from a number of plantations complained of these being inadequate, unsanitary and in the worst cases, simply unavailable. Pre-natal and post-natal care was also reported to be inadequate and inaccessible in the tea gardens. Physicians in government hospitals reported that a large number of pregnant women from tea gardens suffer from nutritional anemia and eclampsia and a high number of them die due to labour complications. Furthermore, teenage pregnancy was reported to be common amongst this population and to exacerbate the already precarious situation of these pregnant women as the young women's growing bodies compete with their fetus' development with dire results for both. Exposure to pesticides by pregnant and lactating women, while not directly observed by the FFM team, was also perceived by experts from the team as potential causes for labour complications and birth defects.

The lack of access to potable water was also found to have a disproportionate burden on women and girls in tea plantations as it is often them who are responsible for fetching the water, a journey which some reported starts at dawn (around 2.00-3.00 a.m.) and usually takes several hours until early morning. Similarly, the lack of access to adequate sanitation facilities both at home and at work also has a particular impact on women as women are physically and socially unable to urinate and defecate with the same ease as men and often are victims of gender-based violence.

Finally, one of the alarming social effects of the closure of one tea garden in West Bengal is the increase of forced migration, primarily of women. In fact, the FFM team was told that some 600 - 700 women had already migrated in search of work.

### ***Insufficient wages and debt***

As a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), India has the obligation to ensure "the right of everyone to the enjoyment of just and favourable conditions of work" (Article 7, ICESCR); however, this is far



from reality in all of the plantations visited. Without adequate and sustainable alternative means of survival, tea plantation workers are solely dependent on their abysmally low wages (average daily wage amounts to INR 122) to feed themselves and their families. Alleged management malpractices (e.g. wage payment on the basis of task work, alleged weight deduction of the leaves plucked) lead to additional wage deductions, delay and under-payment of wages thus further undermining the capacities of the workers to sustain their livelihood. Most tea workers therefore turn to money lenders and subsequently find themselves highly indebted. Poverty wages and a cycle of indebtedness have a detrimental impact on tea workers' RTFN. An average daily meal is composed of rice and chapatti, partially provided as food rations by the management and by the State, and very occasionally supplemented with dal and vegetables. Meat intake is sparse (or almost non-existent). The food rations provided are insufficient and inadequate. Poor purchasing power compels the workers to buy only low-cost vegetables (e.g. potatoes) available on the market and to skip meals when necessary. Workers often have to choose between buying food or paying for medication or their children's education.

Lack of food items and nutritious food is most severe in one tea plantation, which has become a closed garden since the management abandoned it in August 2015. Most families in closed gardens only eat food once a day, and their regular meal consists mainly of rice and salt, mixed also with tea flowers and leaves foraged from the plantation. Wages have often not been paid since before the plantation's closure. In sum, with hardly any alternative means for livelihood, and having no place to go, tea plantation workers continue to live in destitution.

***Working and living conditions – abuses and violations of related economic, social, and cultural rights***

Right to Health – Most of the tea workers and their families live in a situation very similar to bonded labour, in precarious housing, many times exposed

to extreme weather conditions, and to contaminated water, in different degrees of food and nutritional insecurity. Both tea garden and domestic work are hard, extensive and unsafe, in particular for pregnant and lactating women. All these conditions increase the vulnerability to diseases, which in turn place an added nutritional burden and lead to further loss of working days and income. In breach of Indian law, medical facilities are either not available within the plantation or inadequate. Plantation hospitals and dispensaries are under-staffed, run-down, and do not provide proper treatment. Free medication is not provided to all the workers, and especially casual workers are discriminated against in accessing medical facilities. Due to the non-availability of medical facilities within the plantation (or within the vicinity of), workers are forced to visit state-owned hospitals which are usually far-distanced, thus paying extra money for the journey and medication and further exhausting their subsistence. These situations further affect the ability of the workers to feed themselves, and therefore lead to further aggravation of health status.

Right to Education – The majority of the families are unable to send their children to secondary school and higher education due to their inability to pay for costs associated with schooling. Children who are able to go to school have their learning capacity reduced by the high prevalence of stunting and thus perpetuating poverty and dependence of work at the plantations. Furthermore, when schools are available, parents complained of their inadequacy.

Right to Work – On the one hand, malnutrition reduces the capacity to work and increases the risk of diseases, reducing even further the capacity to work. On the other hand, aside from the lack of adequate remuneration which allows dignified living conditions for the workers and their families (as explained above), in the absence of any alternative livelihood opportunities, aggregated by poverty, indebtedness, and lack of education, the right to freely choose or accept work is a distant prospect for most tea plantation workers. Non-provision of protective

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clothing and equipment as well as lack of washing facilities (water) in the field for those workers who are engaged in pesticides spraying do not only constitute a breach of the PLA provisions, it has adverse and severe health impacts on the workers and therefore inevitably on the enjoyment of the workers' RTFN.

Right to Water and Sanitation – Very often, there is either a lack of adequate potable water (both in quality and quantity) or a total lack of potable water at the labour lines as well as at the plantations. In some plantations, the burden of fetching water falls disproportionately on women and girls. The management often fails to provide toilet/latrines at the labour lines and at work. Mixing of chemicals is done near the tube well/water pumps, thus eventually contaminating the sources of drinking water, jeopardizing not only the right to water of the workers, but also their RTFN.

### ***Abuses and violations of the human right to food and nutrition***

The report reveals that most planters do not fully abide by the provisions of the PLA. Non-fulfillment of the PLA has – as already mentioned above – detrimental implications on the lives of plantation workers and their ability to feed themselves and families adequately. Nutritionally unbalanced diets – especially of women throughout their life spans – affect not only the nutritional well-being of the girls' growing bodies, but also that of their children, creating an inter-generational cycle of undernutrition. Insufficient breastfeeding breaks affect the growth of infants and young children, and low wages hinder the workers' ability to buy nutritious and balanced foods, thus nutritional well-being is not guaranteed as a prerequisite for workers to be healthy, to be able to work, to raise their children, to learn and to be capable to lead a healthy social life. Worse still, the decades-long existence of the PLA, even if the provisions of the PLA are half-heartedly ensured, has in fact created generations of a dependent labour force on the plantations, perpetuated by the lack of alternative livelihood (work and education) opportunities, indifference on the part of

management/owners, and the failure/inaction of the Central and State Governments in taking necessary action, constituting thus violations of the RTFN.

As a state party to several international human rights instruments, especially the ICESCR, in which the RTFN is enshrined, India (e.g. State Governments of Assam and West Bengal) has obligations under human rights law to respect, protect, and fulfill the RTFN, as well as related human rights of the workers and their families. As a state party to CEDAW, India also has the obligation to ensure women's equal enjoyment of the range of human rights, including the right to health, which includes adequate nutrition throughout the woman's lifespan. The State Governments of Assam and West Bengal failed to meet its obligation to protect the RTFN of the workers by not enforcing the implementation of the provisions of the PLA as well as not imposing penalties to those plantation managers/owners that have breached provisions of the PLA. While chronic violations in tea plantations require a structural change within India that can only be achieved with the central involvement of the tea workers themselves and those who support their struggles on the basis of human rights, in relation to closed gardens, the State Government of West Bengal has the obligation to provide immediate relief to the workers and their families to prevent further deaths.

## **Key recommendations**

### ***Recommendations to the Government of India***

- Take immediate actions to guarantee all human rights of tea workers, especially, the RTFN, housing, water, sanitation and education for tea workers and their families, in line with international and national law, upon close consultation with the concerned workers.
- Pay urgent attention to closed tea gardens that are abandoned by the owners.
- With immediate effect enforce the PLA and prosecute tea garden owners who fail to comply,

also ensuring adequate remedy for workers affected by non-compliance.

- Conduct with the full participation of tea workers and their unions an assessment of the PLA to measure how effectively it respects, protects, and fulfills the RTFN of the tea workers and their families.
- Ensure that wages of tea workers are in line with the Minimum Wages Act and are duly paid with full transparency by the owners of the tea gardens.
- Take immediate actions to put an end to all forms of discrimination against women and guarantee all women's human rights, in equal standing to men, including equal rights to the highest attainable standard of health, sexual and reproductive health and the special rights of pregnant and lactating women and their children.
- Ensure employers provide protection against exposure to insecticides, chemicals and toxic substances which could impact the health of women, especially pregnant and lactating women and young children.
- Provide comprehensive universal social security to all rural workers as to enable them regardless of work status to have access to a basic standard of rights.
- Ensure that any decisions in relation to the future of tea gardens, including any structural alternatives are taken with the involvement of the concerned tea workers during the entire process.
- For those tea plantations for which share ownership schemes are in place, immediately provide options to withdraw from such a scheme, in consultation with concerned tea workers.
- Immediately implement measures to ensure security of tenure, including the right to adequate housing, for tea workers and their families.
- Guarantee free and compulsory education to all tea workers' children between 6 and 14 years in accordance with the Right of Children to Free and Compulsory Education Act.



Violations of women's rights and discrimination on the basis of gender in violation of international and Indian law, were found in virtually all tea gardens that were visited. Photo: Alex del Rey / FIAN International

# 1. Introduction

## 1.1. Background

Under the framework of the Global Network for the Right to Food and Nutrition (GNRTFN)<sup>1</sup>, an international fact-finding mission (hereafter referred as FFM) was dispatched to ten<sup>2</sup> tea plantations situated in Assam (Sibsagar, Tinsukia and Dibrugarh districts) and West Bengal (Darjeeling district and Dooars region), India, from November 27 to December 4, 2015. Headed by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the mission team consisted of members of the GNRTFN, such as FIAN International, International Baby Food Action Network (IBFAN), and Right to Food Campaign India. Other participating organizations were Pachim Banga Khet Majoor Samity (PBKMS), Pesticides Action Network–Asia, Right to Food Network Nepal, FIAN Nepal, and Right to Food and Social Protection Network Bangladesh.

Since the beginning of 2000, IUF together with the Right to Food Campaign India and PBKMS—a union of agricultural labourers—have been raising concerns regarding the living and working conditions of tea plantation workers in Assam and West Bengal, and published numerous reports in the following years.<sup>3</sup> An initial report on hunger and starvation deaths in closed gardens resulted in the Supreme Court of India taking cognizance of the situation there and in the State

Government of West Bengal taking corrective steps. After that, there was an effort to regularly monitor the situation in closed gardens by PBKMS and IUF and to bring out lacunae in the implementation of government programmes to combat hunger. A study on the nutritional situation was also conducted, showing near starvation conditions even in open gardens. IUF has regularly monitored conditions in estates owned by companies such as Amalgamated Plantations Private Limited (APPL) that are part of the global supply chain, and conducted studies on the wage, Provident Fund and other dues in closed gardens. The IUF's writ petition before the Supreme Court resulted in an order in 2010 against the defaulting tea plantation owners and the governments for not ensuring payment of wages, Provident Fund and gratuity to workers. The order remains unimplemented to date and the case is still before the Supreme Court in an appeal for contempt of court.

The main objectives of the FFM were the following:

- To verify the cases of violations of the human right to food and nutrition (hereafter the RTFN), and related human rights, of tea plantation workers in Assam/West Bengal documented by IUF, the Right to Food Campaign in India, and PBKMS.
- To gather additional instances of violations of the RTFN, and related human rights of tea plantation workers, in particular information related to health status, wages, impact of pesticide exposure, and access to drinking water, and how these issues impact the RTFN of tea plantation workers.
- To give visibility at national and international levels to the cases (by linking the cases in Assam and in West Bengal), as well as the overall situation of tea plantation workers.
- To hold the Indian Government accountable for its human rights obligations by taking immediate measures to ensure the realization of the RTFN and related rights of tea plantation workers in light of the Government's review of the Plantation Labour Act (PLA).

<sup>1</sup> The Global Network for the Right to Food and Nutrition (GNRTFN) is a network of public interest civil society organizations and social movements (peasants, fisherfolk, pastoralists, landless people, consumers, urban people living in poverty, agricultural and food workers, women, youth, and indigenous peoples) that recognize the need to act jointly for the realization of the right to adequate food and nutrition.

<sup>2</sup> The actual number of plantations visited was ten; however, the FFM spoke to a total of 300 workers from 17 plantations.

<sup>3</sup> West Bengal Advisor to the Commissioners of the Supreme Court, "Report On Hunger In Tea Plantations In North Bengal", January 2004; A. Talwar, D. Chakraborty and S- Biswas, "Study on Closed and Re-opened Tea Gardens In North Bengal", September 2005; IUF, PBKMS and American Jewish World Service, "Nutritional Survey Of Tea Workers On Closed, Re-Opened, And Open Tea Plantations Of The Dooars Region, West Bengal, India", October 2005; Right to Food And Work Campaign–West Bengal, "Ignoring Hunger: Report on the Situation In Duncans Tea Estates in North Bengal", September 2015.

- To hold accountable the governments of countries on the basis of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.<sup>4</sup>
- To contribute to current international processes and dialogues relevant to the RTFN (e.g. drafting processes related to the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, UN Treaty for Transnational Corporations and Human Rights, UN Human Rights Treaty Bodies' General Comments and Recommendations).
- To contribute to continuing discussions about plantation workers' rights that take place within the Committee on World Food Security.

## 1.2. Methodology

The tea plantations visited during the FFM were jointly selected by IUF, the Right to Food Campaign India, and PBKMS on the basis of the three organizations' previous engagement on the ground and on which numerous studies and various documentations regarding tea plantation workers in Assam and West Bengal were produced (see footnote 3). The FFM was preceded by two in-person preparatory meetings. The first was held in Kathmandu in June 2015, with the participation of IUF, the Right to Food Campaign India, PBKMS, FIAN, and several additional members and friends of the GNRTFN. The second meeting was held in New Delhi in November 2015, shortly before the FFM team was dispatched. During the first preparatory meeting in Kathmandu, concrete cases of tea plantation workers from Assam and West Bengal were presented, preliminary objectives of the FFM were defined, a timeframe of the FFM was

presented, and the planning committee for the FFM was established. Subsequently, there were regular virtual meetings involving different members of the FFM planning committee to draft the FFM programme, fine-tune it, and compile and update information related to the plantations to be visited. During the second in-person preparatory meeting, the FFM team reviewed again the objectives of the FFM, readjusted the programme, and approved the programme. The FFM team (see annex 4 for the list of FFM team members), consisting of three groups (Assam, Darjeeling, and Dooars) conducted semi-structured interviews (qualitative methodology) with both male and female tea workers residing in the targeted tea plantations. Approximately 300 plantation workers were interviewed from 17 plantations. Various techniques and tools for data collection in the field were applied to local situations: structured, semi-structured, small and large groups, and individual and family interviews.

All the interviews were conducted in local languages, translated to English by interpreters with extensive knowledge about the tea sector and the tea plantation workers. The interviews were conducted in settings that were pre-discussed and decided upon by the tea workers, in an environment that was familiar to them (e.g. labour lines,<sup>5</sup> private homes, or local "town gatherings")<sup>6</sup>. In Assam, while labour lines are open to the public, often ingress and egress of non-workers are monitored and reported to the plantation management. Thus, in order to gain independent views as much as possible, the FFM team did not inform management prior to entering the labour lines. Furthermore, in order to protect personal security, the names of those interviewed and plantations visited remain unmentioned and unspecified for Assam in this report, at the request

<sup>4</sup> The Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights are a set of normative principles which aim at defining and clarifying the extraterritorial human rights obligations of States in an era of economic globalization. For more information on the Maastricht Principles, please see [www.etoconsortium.org](http://www.etoconsortium.org)

<sup>5</sup> Labour lines are rows of houses that were built by the management some 150 to 200 years ago on the premises of the tea garden to accommodate indentured workers brought from other parts of India. Workers and their families have continued to live generation after generation in these houses that are still owned by the management.

<sup>6</sup> An exception here is the closed meetings (open, semi-structured discussions) which were conducted between the FFM group Assam and 42 workers, both men and women from eight plantations, in a local hotel in Dibrugarh on 29 November.

of the tea plantation workers interviewed. Aside from meeting with the tea plantation workers, the FFM team met with the following stakeholders: APPL, Amit Mitra (Industries Minister, Government of West Bengal) and Moloy Ghatak (Labour Minister, Government of West Bengal), Arijit Raha (Secretary General, Indian Tea Association), Santosh Sarangi (Chairman of Tea Board of India), Stephen Ekka and Pradeep Kawah (Promotion and Advancement of Justice, Harmony and Rights of Adivasis - PAJHRA), Drs. Rima Moni Doley and Pares Shyam (Assam Medical College in Dibrugarh), Professor Virginus Xaxa (Tata Institute of Social Sciences, Guwahati), a Dibrugarh labour inspector, a staff person from the Chief Labour Commissioner's office (Guwahati), and several members of the following trade unions: Progressive Plantation Workers Union (Dooars) and Darjeeling Terai Dooars Plantation Labour Union<sup>7</sup>. The discussions that took place during these meetings and individual views are expressed throughout the respective sections of this report. Unless otherwise specified, all the information, observations and testimonies were collected on the ground during the FFM. However, the FFM report does draw on extensive research, reports and studies already published on the topic. Furthermore, the FFM report deals solely with hired labour on tea plantations. Therefore, smallholders—the existence of which constitutes a significant change in the tea industry since the late 1990s—and plantation workers hired by them remain out of the scope of the FFM and thus of this report.

## 2. Tea, tea industry and tea plantations

### 2.1. India's tea industry

India is the second largest tea producer—after China—in the world, with the production of 1.2 million metric tons in 2014.<sup>8</sup> It was ranked fourth in terms of tea exports in 2014–15, with a value of US\$ 619.96 million. At the same time, India is also the world's largest consumer of black tea, with a domestic market consumption of 911 million kg of tea in 2013–14. Nationwide, there are 563.98 thousand hectares of tea plantations (as per figures from December 2013). Among the total amount of tea produced in 2013–14, around 243.71 million kg were produced in South Asia, whereas 965.07 million kg were produced in North India, including Assam and West Bengal.<sup>9</sup> Tea production in 2013–14 was led by Assam (304.40 thousand hectares), followed by West Bengal (140.44 thousand hectares), Tamil Nadu (69.62 thousand hectares) and Kerala (35.01 thousand hectares).<sup>10</sup>

Tea comes from the tea plant *Camellia Sinensis*, which grows best at high altitudes. More than five years are required for the tea shrub to start to produce leaves that can be commercialized, and the plant can stay productive for over 100 years. In general, tea can be harvested all year round, but there are peak seasons during which time high quality tea is plucked.<sup>11</sup> The supply chain of tea from production to consumption is long and complex and involves several controlling intermediaries who add value along the line. The simplified diagram below (Figure 1: Supply Chain of Tea) shows how harvested tea reaches consumers.

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<sup>8</sup> World News, "India's Domestic Consumption", 3 February 2014. Available at <http://worldteanews.com/news/indias-domestic-consumption>

<sup>9</sup> [www.teaboard.gov.in/pdf/stat/Area.pdf](http://www.teaboard.gov.in/pdf/stat/Area.pdf)

<sup>10</sup> India Brand Equity Foundation, "Tea Statistics". Available at [www.teacoffeeandspiceofindia.com/tea/tea-statistics](http://www.teacoffeeandspiceofindia.com/tea/tea-statistics)

<sup>11</sup> For example, Darjeeling tea is plucked in April. M. Groosman: "Sector overview Tea", in *The Sustainable Trade Initiative*. (Decaan Herald, 2011), p.1.

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<sup>7</sup> GNRTFN would like to acknowledge the support of the Progressive Plantation Workers Union (Dooars), the Darjeeling Terai Dooars Plantation Labour Union, and the IUF Assam team for the invaluable assistance they provided to this mission and report.

**Figure 1: Supply chain of tea**

Once plucked, tea leaves are delivered within a few hours to an estate processing factory often situated within the compound of a tea garden.<sup>12</sup> Processing of tea has to be done immediately after plucking in order to retain quality. After processing, “made tea” is sent either for direct selling or to a warehouse for auction.<sup>13</sup> An average of half of total production is sold through auction. There are a total of nine auction centres in India.<sup>14</sup> In auction, tea is bought by buyers who then market it after blending and packaging. On average, it takes 20 to 30 weeks for tea to reach consumers. The reality of the situation is that the supply chain involves many more individuals and organizations at every part of the process briefly explained earlier, thereby bringing together some of the world’s most influential transnational corporations.

For example, once tea producers send their tea to the registered warehouses prescribed by the brokers, producers no longer are involved in the tea supply chain, as auction takes place solely between brokers

and buyers.<sup>15</sup> Tea is then sold at the price decided at the auction. According to Choudhury, many industry insiders have commented on how some large buyers cartelize with brokers to keep the tea price low,<sup>16</sup> thereby allowing big buyers (who buy almost 80 percent of the auctioned tea) not only to influence tea prices but also to be involved in blending, packaging, advertising, wholesaling and retailing of tea, thus monopolizing the downstream sector.<sup>17</sup>

As with other agricultural outputs, value addition of tea takes place at the downstream part of the tea supply chain.<sup>18</sup> At each stage of processing, value is added to tea leaves, and downstream stages such as blending, packaging, and marketing are most lucrative, and are mainly done by the tea brands in the buyer countries.<sup>19</sup> Here the profit margins are collected by the large corporations.<sup>20</sup> Around 85 per cent of world tea production is sold by a few multinational corporations which have enormous marketing skill and influence. In a market

<sup>12</sup> In the case of smallholders, tea leaves are sent to a Bought Leaf Factory for processing.

<sup>13</sup> In India, out of 800 millikilograms (mkg) of bulk packaged tea, 500 mkg (62.5 per cent) is sold through public auction annually. See A. K. Das: Sustainability in tea industry: An Indian perspective (New Delhi, The Social Scanner and Akansha Publishing House, 2009); apud K. Hazarika: “Changing Market Scenario for Indian Tea,” in International Journal of Trade, Economics and Finance (Vol. 2, No. 4, 2011), pp. 285–287. Made tea is also sold privately directly from the estate to the merchant exporter or directly exported by the producer to the consumer. See T.K. Datta: Darjeeling Tea, India. (Calcutta, Institute of Management) p. 142. Available at: [www.fao.org/docrep/013/i1592e/i1592e03.pdf](http://www.fao.org/docrep/013/i1592e/i1592e03.pdf)

<sup>14</sup> New Trade Union Initiative (NTUI): Campaign for a Just Wage for Tea Plantation Workers launched. Available at <http://ntui.org.in/media/item/campaign-for-a-just-wage-for-tea-plantation-workers-launched>

<sup>15</sup> According to Hazarika, sometimes tea producers receive prices lower than their production costs. See K. Hazarika: Tea Supply Chain; Its Impact on Garden Development: A study on selected Tea Gardens of Assam, India (March 2013), p. 86.

<sup>16</sup> Dr. R.K. Choudhury (2006): Indian Tea Industry and Assam, in K. Hazarika, *ibid.*

<sup>17</sup> M. Groosman: “Sector overview Tea”, in The Sustainable Trade Initiative. (Decca Herald, 2011), p.1. See also: Tropical Commodity Coalition for sustainable Tea Coffee Cocoa (TCC): Tea Barometer 2010 (Utrecht, The Netherlands, 2010), p. 4 ff. Available at [https://issuu.com/spanhuysen/docs/tea\\_barometer\\_2010\\_tcc](https://issuu.com/spanhuysen/docs/tea_barometer_2010_tcc)

<sup>18</sup> Das, *ibid.*

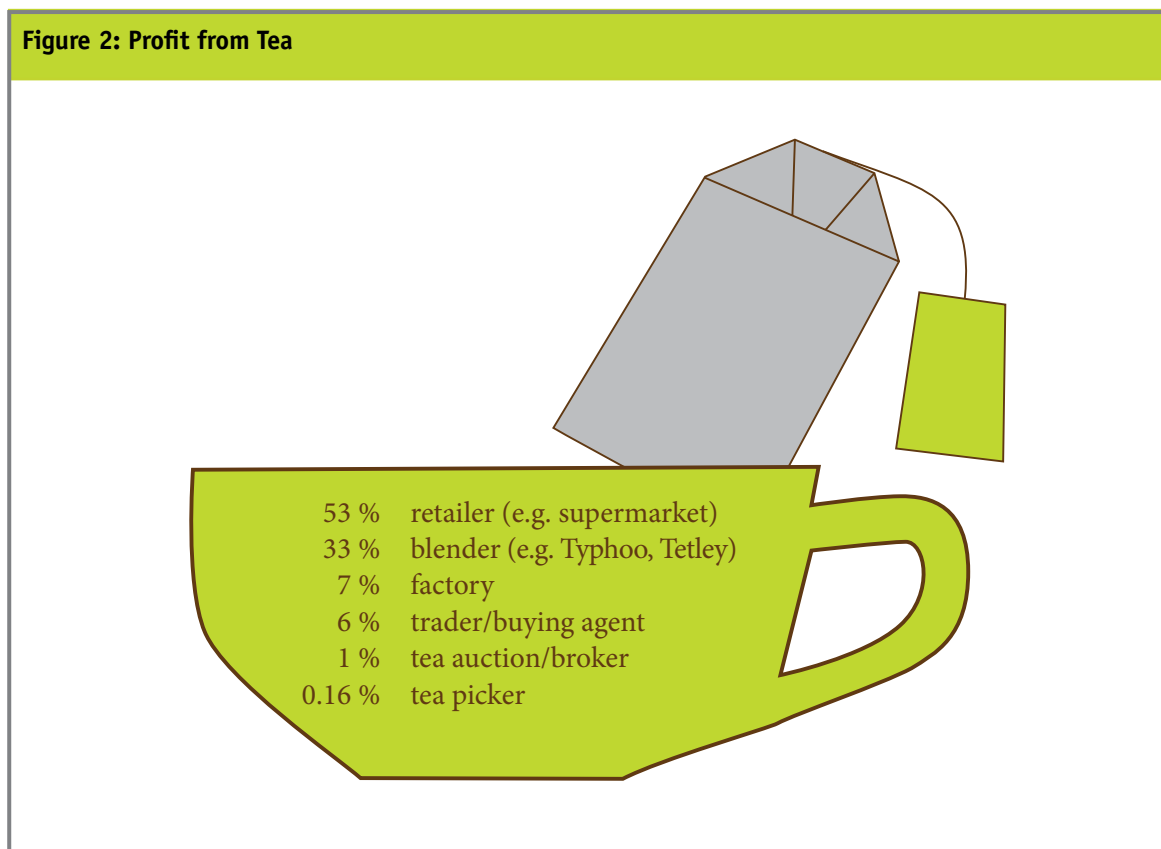
<sup>19</sup> IUF: “A Bitter Cup–The exploitation of tea workers in India and Kenya supplying British supermarkets”, in Unite the Union. War on Want (July 2010), p.2.

<sup>20</sup> Dr. P. Baruah: The Tea Industry of Assam, Origin and Development (Guwahati, India, Eastern Book House Publishers, 2008), apud K. Hazarika: “Changing Market Scenario for Indian Tea,” in International Journal of Trade, Economics and Finance (2011, Vol. 2, No. 4), pp. 285–287.

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littered with middlemen and dominated by few big corporations, tea workers remain the most vulnerable in the tea supply chain with little or almost no bargaining power. As a result, although global prices for tea are at peak levels, the wages received by tea plantation workers are “barely level with, or are even below, where they were 30 years ago”.<sup>21</sup> At present, global tea trade is dominated by the following four corporations: Unilever (which produces Lipton and PG Tips), Tata Tea (which produces Tetley), Van Rees (a tea trading company) and James Finlay (a tea packing company).<sup>22</sup> The figure below (Figure 2: Profit of Tea)<sup>23</sup> shows who profits from tea.

According to estimates, the tea industry is India’s second largest employer. It employs over 3.5 million people across some 1,686 estates and 157,504 smallholdings, most of the workers being women. In Assam and West Bengal, the two main tea growing regions of India, tea plantation workers are mostly Adivasis,<sup>24</sup> who are descendants of workers forcefully recruited and brought by colonial planters more than 150 years ago from neighbouring states such as Jharkhand, Bengal, Bihar, Odisha, and Madhya Pradesh (states with densely populated agricultural districts)<sup>25</sup> to work exclusively on the plantations.



<sup>21</sup> “Why We’re Still Not Paying Tea Workers Enough”, in Ethical Consumer. Available at [www.ethicalconsumer.org/ethicalreports/tea-industry-report.aspx](http://www.ethicalconsumer.org/ethicalreports/tea-industry-report.aspx)

<sup>22</sup> IUF, op. cit.

<sup>23</sup> Value added in the tea supply chain, adapted from van der Wal: Sustainability Issues in the Tea Sector (SOMO, 2011). The number 0.16% was calculated by PBKMS.

<sup>24</sup> The Adivasis (original inhabitants) is the collective name used for the many tribal peoples of India.

<sup>25</sup> B. Gupta and A. Swamy: Unfree Labour: Did Indenture Reduce labour supply to Tea Plantations in Assam?, 14 October 2012. p. 6.



## 2.2. The creation of tea plantations: subjugation of landless peoples

Studies on the history of tea plantations refer to push and pull factors which led to large-scale migration of workers. In the aforementioned states, famine, drought, flood and epidemics were prevalent and compounded by factors compounded by excessive exploitation of poverty-stricken peasants and landless labourers by the large landlords and zamindar.<sup>26</sup> Empty promises such as easy tasks, ideal work conditions, good pay

and unlimited land available for cultivation were made, which motivated workers throughout various states to migrate. Private contractors or “Arkattis” were usually deployed to hire labourers for tea estates.<sup>27</sup> The long journey—sometimes covering a distance of 800 km—often caused sickness and high mortality rates.<sup>28</sup> After the migrant labourers reached the tea estates, their mobility was limited to the vicinity of the tea garden and factory. They were completely isolated from the outside world and had barely any contact with the local inhabitants. The labourers were deliberately made dependent on the basic facilities provided by the tea estate, and



Tea plantations were established on the basis of empty promises such as easy tasks, ideal work conditions, good pay and unlimited land available, which motivated workers throughout various states to migrate. Photo: Alex del Rey / FIAN International

<sup>26</sup> P. Baruah, op. cit., apud M. Duara and S. Mallick: *Tea Industry in Assam (India): Issues of Migration and Gender Discrimination*, p. 175.

<sup>27</sup> There were different employment systems. See M. Bhadra: *Gender Dimension of Tea Plantation workers West Bengal*, pp. 51–53.

<sup>28</sup> According to Phukan, the first group of workers from Jharkhand was completely wiped out owing to disease. See U. Phukan: *The Ex-Tea Garden Population in Assam* (Delhi, India, B.R. Publishing, 1984), p. 6, in G. Bharati: *Seminar on Labour and Employment Relations in Plantations in a Globalising Economy*; V.V. Guwahati: *Giri National Labour Institute and OKDISC* (9–10 March 2004); *Labour Unrest and Social Insecurity of Plantation Workers: A Case Study*.

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single men and women were forced to pair, thus creating offspring of workers. Many studies describe the living conditions of the workers under colonial rule as akin to slavery: workers were flogged and otherwise abused; stories were even told as to how bodies of dead workers were simply thrown into the river. Housing, medical facilities and food supply were inadequate and workers' living conditions were miserable. During the nineteenth century, legal provisions barely existed, and if they did, they mostly favoured the planters.<sup>29</sup>

### 2.3. The creation of tea plantations: subjugation of women

Women's labour has remained central to tea production since the creation of the tea plantation workforce in India. Employment of women in plantations historically was sought in order to "contain the male labour force" and to "ensure steady reproduction of 'cheap' labour".<sup>30</sup> Women were also perceived as more able to engage in "quality" picking of tea leaves, which, combined with the need to "populate" the tea plantation workforce, resulted in a higher number of women being recruited as tea plantation labourers than men.<sup>31</sup> This disproportionately higher number of women in the tea plantations in India—and the accompanying subjugation of this workforce—is a phenomenon that continues today. The tea industry is one of the few industries today that is family-based and depends mainly upon women to work the tea beds. Unlike men, who dominate positions that are often better paid (such as factory workers and supervisors),



Employment of women in plantations historically was sought in order to "contain the male labour force" and to "ensure steady reproduction of 'cheap' labour".  
Photo: Alex del Rey / FIAN International

<sup>29</sup> For example, the Workman's Breach of Contract Act XII of 1859 was introduced in Assam in 1861 and amended in 1865 to ensure the perpetuation of economic coercion and allow the planters a free hand in matters related to workers' justice and welfare. See S. Barbora; S.N. Singh et al. in paper presented by G. Bharali: The Tea Crisis, Health Insecurity and Plantation Labourers' Unrest, at the seminar "Society, Social Change and Sustainable Development", organized by the department of sociology, North Bengal University, 11– 13 April 2007.

<sup>30</sup> R. Rasaily. Women's Labour in the Tea Sector: Changing Trajectories and Emerging Challenges. (2014). Available at <http://cds.edu/wp-content/uploads/2014/07/NRPPD31.pdf> P. 8-9.

<sup>31</sup> Ibid.

women tea workers—comprising more than half of the worker population—are mostly field workers engaging in the labour-intensive task of plucking tea leaves, since this task is considered as needing more “care”, and as such the gender stereotype of women as more “caring” than men continues to play a role.

Women in these positions provide the Indian tea industry with cheap labour. Relying on daily wages, these women are paid according to the task work for which a minimum quantity is fixed. While this wage arrangement is not optimal for any of the women tea plantation workers in India, the wage situation in Assam and West Bengal is particularly dire. To contrast, in Tamil Nadu and Kerala, two other tea growing states, tea plantations are part of scheduled employment under the Minimum Wages Act, and thus wages are set by the minimum-fixation committee. The workers in these states receive an average of 301 Indian rupees (INR) per day.<sup>32</sup> However, in Assam and West Bengal, the wage is determined through collective tripartite bargaining involving the state, the tea planters’ association, and workers’ unions,<sup>33</sup> which results in a current average daily wage of 115 INR in Assam and 122 INR in West Bengal. By comparison, the minimum wage for an unskilled agricultural worker in India is 222 INR, almost twice as much as what female tea workers are paid. Furthermore, on average, a tea plantation has around 30 to 40 per cent of permanent workers, and the rest are casual workers—which are also made up of a higher proportion of women—who receive daily wages but little or almost no benefits.<sup>34</sup> While

extremely low wages—fueled by gender stereotypes and the subjugation of women—served to establish and maintain the entire Indian tea industry, this is just the tip of the iceberg in regards to the structural violence against women that is really at the root of the maintenance of such an industry.

## 2.4. The continuing maintenance of tea plantations: subjugation of peoples and their bodies

Today, 70 years after India’s independence, tea workers are still entirely dependent on plantations and planters for their sustenance and basic needs, for example, for food, water, and housing, as they live and work in an enclave. They can be described as bonded laborers. While the Plantation Labour Act (PLA) (1951) guarantees related welfare provisions, many studies imply that very few tea plantation managers fully implement it. These tea plantation workers—more than half of them women—exclusively depend on wage payment (cash and food ration) and welfare schemes (such as housing, medical facilities, schools, etc.), which are provided by plantation owners, in order to sustain their livelihoods and ensure their limited access to food and nutrition.

Despite generations having lived in the same estate and same house during a span of 200 years, tea workers have still not been given any right to their homestead. They can be evicted at any moment by the management from their houses if they protest about their conditions of work or if they refuse to work for the pittance wages that the employer pays. Thus, while men may migrate to better paid jobs, one or more of the women in a family will continue to work on the estate, just to retain possession of the house. This means that the workers are actually working as bonded labourers. The lack of alternative employment near the estate makes this situation of bondage even worse.

Tea workers are also in many ways considered “second class” citizens of the country. Till very recently (1989),

<sup>32</sup> Workers in Kerala and Tamil Nadu have been demanding that minimum wages be fixed at 500 INR/month. See Press Trust of India: UPASI terms demand for Rs 500 daily wage as impractical (September 2015). Available at <http://indiatoday.intoday.in/story/upasi-terms-demand-for-rs-500-daily-wage-as-impractical/1/486289.html>

<sup>33</sup> S. Dhar: Tea Industry in Eastern India—How the Interests of Plantation Workers Were Sacrificed. Plantation workers interests sacrificed to keep owners happy (21 March 2015). Available at <http://sanhati.com/articles/13144/>

<sup>34</sup> S. Saikia, S. Misra, B. Misra: Tea Garden Labours and Their Living Conditions: A study on Sarusarai Tea Garden of Jorhat District of Assam. Available at [www.internationalseminar.org/XV\\_AIS/TS%205B/8.%20Mrs.%20Sangeeta%20Saikia.pdf](http://www.internationalseminar.org/XV_AIS/TS%205B/8.%20Mrs.%20Sangeeta%20Saikia.pdf) P. 509.



Tea plantation workers struggle to secure their access to food and nutrition.  
Photo: Kai Horstmann

they were not allowed to vote in local elections for their “Panchayats” (village self-governments). Even today, any development work that the “Panchayats” want to take up in the area of an estate has to first get a No Objection Certificate (NOC)<sup>35</sup> from the management. Moreover, workers are often denied access to many government schemes. For example, a rural housing scheme, Indira Awas Yojana, is never extended to them because their houses are on “company land”; water points, roads and even schools are never developed because they are the “company’s responsibility”. With the “company” not fulfilling its side of the bargain and the government turning a blind eye, workers always end up being overlooked and deprived of their basic rights.

### 3. The human right to adequate food and nutrition

#### 3.1. Holistic framework of the right to food and nutrition and interconnectedness of human rights<sup>36</sup>

While the understanding of what constitutes the RTFN has advanced with the issuance of CESCR General Comment 12 as well as with the adoption of the FAO Right to Food Guidelines (See Annex 1 for the

<sup>35</sup> In order for the Government, or any private party, or even for a worker to engage in any type of construction or development work, a No Objection Certificate (NOC) must be given by the tea management.

<sup>36</sup> For a table detailing a holistic analysis of the human rights violations of tea plantation workers in Assam and West Bengal, please visit [www.fian.org/en/library/publication/a\\_life\\_without\\_dignity\\_the\\_price\\_of\\_your\\_cup\\_of\\_tea/](http://www.fian.org/en/library/publication/a_life_without_dignity_the_price_of_your_cup_of_tea/)



Nutritional well-being is not merely an ultimate goal, it is also a prerequisite for human beings to be healthy and to work.  
Photo: Kai Horstmann

international legal framework in place for the RTFN), both documents lamentably fail to incorporate all the dimensions of the RTFN in an exhaustive manner. The current dominant interpretations of this human right overlook women's rights and gender, as well as the intrinsic links between food and the social process around food and nutrition (i.e. governance of, access to and control over resources –land, water, seeds, etc.; participation in the governance of food production, how food is produced, by whom and for whom; food processing; food supply and distribution; food marketing; food preparation; food consumption; and the ultimate promotion of nutritional well-being and related capabilities). Indeed, the RTFN is more than the right to foodstuff. It is also more than the mere access to food that may be nutritionally and culturally adequate and safe. The RTFN can only be realized when there is a social process in which people, women and men equally, have choices at hand and can decide on how to engage with Mother

Nature, transforming resources into food. This food is mostly locally produced, in line with agro-ecological principles and consists of a diversified diet that is adequate, safe and nutritious. This is necessary for everyone to attain nutritional well-being, sustain one's own cultural identity, and be capable of leading a healthy, active, and social life within the community to which one belongs. Therefore, the RTFN can only be fully realized within the framework of food sovereignty.

### **3.1.1. The role of nutrition in the human right to adequate food and nutrition**

In addition, one must understand the role of nutrition in the holistic framework of the RTFN. The nutritional dimension must be considered in every phase of the food system—from how and which foods to produce, to individual consumption and utilization. For instance, nutritional well-being is linked to regular access to a

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diversified, balanced, colourful, safe, fresh, culturally adequate diet. This points to the need to promote biodiversity, promote agro-ecological methods, reduce distance between producers and consumers, reduce chemical inputs, guarantee adequate returns to the producers, inform consumers, and promote adequate wages, among other initiatives.

Nutritional well-being is not merely an ultimate goal, it is also a prerequisite for human beings to be healthy; give birth; grow physically, cognitively, and socially; understand the world; learn; work; share and enjoy the cultural and material wealth produced by humankind; and live and lead an active life within one's community. Therefore, the full realization of the RTFN includes and enhances the capability to protect oneself against most infections (linking to the right to health), the capability to interact with the social, emotional and physical environment, the capability to learn (linking to the right to education), the capability to be active, including to work (linking to the right to work), among other capabilities—all at the core of the indivisibility of rights.

### 3.1.2. The role of women's rights in the human right to adequate food and nutrition

Guaranteeing women's rights, on the one hand, and understanding the core linkages between women's rights and children's rights, on the other, are fundamental to the eradication of hunger and malnutrition, and central to this holistic approach. The full realization of the RTFN for all can only be achieved when women's human rights are fully realized. Systematically reducing women's role to merely that of a mother and food provider for the family not only contributes to structural discrimination and violence (e.g. maternal mortality, infant mortality, feticide, discriminatory feeding practices, child marriage, adolescent pregnancy, etc.), but it also ignores the diverse roles women play throughout their lifespans and neglects the importance of self-determination for women and control over their own body and life. For example, a significant proportion of infant and female

adult malnutrition and mortality, in particular in South Asia, is the result of the structural violence against women still prevalent in societies. The combination of low social status and social exclusion of girls and women, limited access to food, public policies and services, and child marriage, results in malnourished mothers, low birth weight and infant malnutrition (stunting), increased risk of childhood death, and a significant increase in risk of developing overweight and obesity in adolescence and adulthood, which are then associated with suffering and early death due to chronic non-communicable diseases (cardiovascular diseases, cancer, diabetes, etc.).



Guaranteeing women's rights, on the one hand, and understanding the core linkages between women's rights and children's rights, on the other, are fundamental to the eradication of hunger and malnutrition.  
Photo: Kai Horstmann



The Indian Constitution, one of the most progressive in the world for its time, recognises the centrality of human rights, and it guarantees equal rights to all citizens, without discrimination.

Photo: Kai Horstmann

### 3.1.3. The role of food sovereignty in the human right to adequate food and nutrition

Finally, the holistic approach to the RTFN must incorporate the food sovereignty framework which focuses on people, especially women, as the active participants and main decision-makers in all political processes and discussions that relate to food and food production. At the same time, this focus is meant to ensure sustainable livelihoods, as well as food and nutrition systems based on agro-ecological principles. Conceptualizing the RTFN within the food sovereignty

framework, instead of the food security framework, allows the root causes of hunger and malnutrition to be tackled, as it brings to the forefront the issue of power. Without the food sovereignty framework, the RTFN will risk being seen in the light of only outcomes, and therefore ignoring the questions related to who should control the natural and productive resources, who should define relevant food and nutrition policies, and who should regulate the powerful.

### 3.1.4. Interdependence and indivisibility of all human rights

The holistic framework of the RTFN, previously described, can be strengthened, understood and effectively put into practice by explicitly linking it to the promotion and realization of other related rights, such as the right to self-determination, the right to land, the right to water, the right to seeds, the right to work, the right to health, and the right to education. Indeed, human rights are indivisible and interconnected. Very often, a violation of one right inevitably leads to several violations of other human rights. Bridging violations of the RTFN to other human rights will thus enhance the development of this framework by emphasizing the indivisibility and interconnectedness of all human rights, as well as serve to unify the struggles of people on the ground (See Annex 2 for the international legal framework in place for the most pertinent human rights within a holistic understanding of the RTFN that is interdependent and indivisible from other human rights).

## 3.2. National standards–India

### 3.2.1. The Constitution of India

The Indian Constitution, one of the most progressive in the world for its time, recognises the centrality of human rights, and it guarantees equal rights to all citizens, without discrimination. It also provides for affirmative action as a Constitutional guarantee, especially for indigenous peoples (“scheduled tribes”) and Dalits (“scheduled castes”). The rights framework

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in the Indian Constitution guarantees civil and political rights as “fundamental rights” and economic, cultural and social rights as “directive principles of state policy”. Post-independence amendments to the Constitution, as well as legislation drafted by Parliament and orders of the Supreme Court, have accorded many socio-economic rights, which have a status equivalent to those of fundamental rights. These include the right to education, the right to information, the right to food, and the right to work. While the ability of the Indian State to implement laws, policies and programmes is often sketchy, the State has a track record of establishing independent institutions, including the judiciary and the National Human Rights Commission, which are increasingly filling in the gap of governance deficit in the executive branch.

Article 21<sup>37</sup> of the Indian Constitution, entitled “Protection of Life and Personal Liberty”, provides the fundamental right to the protection of life and personal liberty. The article has also been interpreted by the Supreme Court of India to include the right

to food and nutrition as well as the right to water.<sup>38</sup> Article 47 establishes the guiding principle that the State should raise “the level of nutrition and the standard of its people”. Article 47 must be read along with Article 39 (a) (d) (e) that spells out the duty of the State to raise the level of nutrition and standard of living and to improve the public health of its citizens, including women, as a primary responsibility. The right to adequate food is therefore a guaranteed fundamental right, which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution.

Besides utilizing the Constitutional guarantee of rights, India has over the years legislated a large number of rights by amending the Indian Constitution where appropriate, and it has referred to Parliamentary legislation. Some legislation has been periodically re-enacted, with stronger provisions introduced from time to time. Many of these laws—if duly enforced—contribute to the realization of RTFN of tea workers (See Annex 3 for the list and description of relevant laws and acts in India).



Article 21 of the Indian Constitution has been interpreted to include the right to food and nutrition as well as the right to water.  
Photo: Kai Horstmann

<sup>37</sup> Article 21 of the Indian Constitution: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>38</sup> In both cases—Krishen Pattnayak & another v. State of Orissa and People’s Union for Civil Liberties (PUCL) v. Union of India and others— the Supreme Court of India has taken a decision, thereby recognizing the right to food under the right to life as per Article 21 of the Indian Constitution, also with a reference to the Directive Principle Article 47 related to State policy concerning nutrition. “Interim orders in the latter case have led to new and better-implemented government programmes and have asserted that benefits under these programmes are legal entitlements. Such programmes include midday meals for school children, food entitlements in childcare centres, subsidized food for a number of specific vulnerable groups, as well as changes to the subsidies directed at all persons below the official poverty line. The court case continued for several years and included the appointment of Court Commissioners to monitor the implementation of interim orders.” See L. Knuth and M. Vidar: Constitutional and Legal Protection of the Right to Food around the World. (FAO, 2011). Available at <http://www.fao.org/docrep/016/ap554e/ap554e.pdf>



## 4. Main findings<sup>39</sup>

Here the main findings (main issues) of each of the plantations will be summarized.

### 4.1. Assam

Assam is located in the north-eastern part of India and shares its boundaries with two countries, Bangladesh and Bhutan. Assam is primarily an agrarian economy and the major industries are tea, petroleum and natural gas, coal, tourism, limestone, and granite.

Assam is the single largest tea-growing region in the world. It produces more than 50 per cent of the total tea production in India and approximately one sixth of the total world production. The total area under tea cultivation is 312,210 hectares. There are more than 850 tea estates in Assam. In the fiscal year 2014–15, the state produced approximately 507 million kg of tea. The main teas produced are the orthodox and the crush-tear-curl variety, but there is also production of smaller quantities of green and white tea. The low altitude, rich, loamy soil conditions, ample rainfall and a unique climate help Assam to produce some of the world's finest orthodox leaf teas. Assam tea is mainly exported to Egypt, the U.K., Iraq, Iran, Russia and Pakistan.

The following information was obtained from in-person interviews with approximately 50 workers from eight plantations<sup>40</sup> in Assam.

#### 4.1.1. Security of tenure/housing/living conditions

Workers from some of the plantations in Assam reported that management had dispossessed them of land they had been cultivating for generations. This

was done under the framework of “diversification efforts” by the tea company without any regard for the uses that tea plantation workers had been giving this land and without any benefit being derived from these diversification efforts for the workers themselves. Workers mentioned that much of this land had been converted into ponds for fish farming at the expense of the subsistence farming in which workers had engaged since colonial times and that no compensation had been given following the dispossession.

One of the major problems in Assam regarding housing seemed to be the lack of electricity. Workers often complained that although they had requested the management to furnish electricity, there was no response. Workers from one particular plantation stated that only three of the labour lines from this particular plantation had electricity and that they had met union leaders to try to have the issue of the lack of electricity addressed. In return, workers were told that they should instead approach the government about this issue. These workers said that upon further contact with the government, it was revealed to them that they would have to pay a security deposit of 3,500 INR in order to have “consumer status” before being able to obtain electricity from the government; this amount was beyond the reach of the workers. Other workers reported that they were told by management that since the deductions taken out of their paychecks for electricity were not enough, they would have to cut down on electricity usage.

Workers also complained that the conditions of their living quarters were very poor, as these structures were built 50 to 60 years ago. Workers said that when they complain to the management, the management often harasses them and repairs only the most direly affected part of their quarters. One worker mentioned that management threatens to move workers to another estate far way if they complain too much.

One major problem related to housing is leaky roofs. Various workers reported that they often do not have a place to eat at the plantations nor at home when it rains because their roofs leak, which is a problem

<sup>39</sup> The findings of the FFM were shared with the concerned tea gardens prior to publication.

<sup>40</sup> For security reasons and at the request of the workers interviewed, the names of the plantations visited in Assam will not be disclosed in this report.

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not only during the rainy season, but also during summers. Similarly, not only are ceilings rotting (with sacks being used to cover holes in the ceilings), but even walls are falling down. One woman reported not having eaten for a week because she could not leave her house owing to heavy flooding and inadequate housing construction.

Workers also said that only during inspections are labour lines cleaned up by the management. It was furthermore reported that labour lines exposed to public view are the ones that possess clean houses and sanitation facilities, are repaired, and are overall in better condition than labour lines in the other parts of the plantation.

### 4.1.2. Wages/working conditions

Workers complained about the lack of flexibility in their working hours and said that although previously, the plantation offered flexible working hours, since 2012 or 2013, the working hours have been set from 8 a.m. to 4 p.m. This time excludes commuting time and time spent weighing leaves, for which workers are not paid. Workers complained that the time spent travelling to and from work as well as time spent queuing to weigh the leaves that were picked during the lunchtime hour is a significant amount of time that takes up the space of other activities and should be counted as working hours. In line with this, workers said that there is never any time to rest during the day, primarily because the weighing of tea leaves takes place either during lunch or after working hours. One worker stated that if the weighing time at the end of the workday were to start at 3 p.m., a half an hour earlier than presently, there would be time to relax. During lunchtime, those in front of the queue have sufficient time for lunch, but those who are in the back of the queue do not. Even on Sundays, which are non-working days, workers reported that they spend their non-working time having to catch up on their household responsibilities such as cleaning, mending fences, and doing laundry.

According to workers, their ability to accomplish the required tasks is limited in the face of the heavier

workload that is expected of them as a result of a recent increase in their wages. Before the wage increase, the task entailed picking 21 kg of tea leaves; however, under the new wage, they are required to pick 24 kg in the same amount of time. If the amount picked is less, their wage is deducted by 1 INR for each kg picked. One female worker told the FFM team that she has to prune 500 tea bushes in one day to fulfil her task and she sometimes has to take a helper with her, usually her spouse or son who is 15 years old, in order to accomplish it. During peak season, workers have to cover a very large area of the tea garden—workers complained that irrespective of whether there might be fewer workers or some workers might be absent, workers who are present have to still cover all of the tasks required of a larger workforce and they often do so without a break except for the 45 minutes of lunch. Women also complained that they are often given the tasks of clearing bushes, which is very time consuming. Furthermore, during the lean season, wages are typically deducted by one kg (1 INR) because workers simply cannot fulfil the task of picking a certain amount of leaves.



Pesticide sprayers often eat lunch without having washed themselves after exposure to dangerous chemicals.  
Photo: Shruti Patidar/IUF

Another obstacle to workers being able to successfully accomplish their tasks is the lack of tools. For example, one male temporary worker who worked as an electrician said that he is not provided with safety equipment, nor has he any tools at his disposal. Other workers complained about not being provided with saws and axes and as a result, having to arrange somehow for their own equipment in order to be able to do their jobs. Workers reported having to borrow these from other workers in exchange for a certain amount of rupees; as a result, workers usually have to deduct 5 to 10 INR from each paycheck to be able to pay for the tools they need.

#### 4.1.3. Maternity protection

Women work until the eighth month of pregnancy and have three months of maternity leave—women reported typically taking one month before delivery and two months after delivery. No lighter tasks are given to women during pregnancy. They have complained to the management but no alternative tasks are given to them. When they return to work—typically two months after delivery—they usually have to keep their babies at home to breastfeed them, or they pay someone or rely on older children to bring their infants to them during their lunch breaks, as the area of the plantation in which they might be working can be far from their house. Some female workers reported sometimes being put to work the very next day after giving birth. Temporary workers noted that they do not receive any sort of maternity benefits.

The prenatal and postnatal care as well as access to crèche seemed to be inadequate. While women said that Accredited Social Health Activist workers would come to the labour lines to weigh the children once a month, the women reported that the weight of the babies born amongst the group ranged widely, from 1 kg to 3.8 kg. Women also complained that even though there are around 200 children in the plantation, only those children who can walk are allowed to go to the crèche. This results in children that are still being breastfed having to be cared for at home. As a result, many families pay 200 INR every 15



Spraying of pesticides is usually conducted by male workers, mostly youngsters, whose age ranges from 18 to 35 years.  
Photo: Shruti Patidar/IUF

days for a home caretaker. Women complained that conditions are bad and unhygienic at day-nurseries. Aside from a shortage of workers to look after children, workers reported that children are not taken care of well. There are not enough toys, no towels and lack of consistency of clean water available for children. Management is unresponsive to all of these issues.

Furthermore, pre-term and stillbirths as well as teenage pregnancy were also reported to be very common amongst tea plantation workers and their families, with severe implications for the young women's growing bodies as well as for the fetus' development. Health staff interviewed pointed out that adequate nutrition for pregnant women is a long process that cannot be covered by one or two months of iron tablets and prenatal vitamins. Physicians interviewed reported that lack of awareness and education were also barriers preventing women from accessing adequate prenatal and postnatal care.

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### 4.1.4. Use of pesticides

Spraying of pesticides is usually conducted by male workers, mostly youngsters, whose age ranges from 18 to 35 years. They are engaged in spraying year round in the plantation every day but Sundays, and not in the rainy and off seasons. One worker is generally assigned to spray half a hectare of the plantation a day. Aside from pesticides, there are liquid manures, micronutrients, growth promoters, etc., that are sprayed. When workers reach the age of 35 or when they seem to be inefficient, they are usually given other tasks (such as plucking) even though they may evidence limited physical capacity to perform tasks. Most workers in the plantations are illiterate, but even if they could read, they are not given pesticide labels or instructions for use. The plantation management purchases pesticides in bulk and stores them in a pre-designated place, often without observing the required precautions. Just before the spraying, the

required volume of pesticide is taken out and given to the workers.

Mixing of pesticides is done by other workers whose task is to only mix and not to spray. Therefore, those workers who are engaged in spraying pesticides usually do not get a chance to know the name/type of pesticides being used, their hazardous category based on colour code, precautions to be followed, nor details on handling emergency situations such as spillage, direct exposure, the name of antidotes, etc. The workers the FFM team spoke to knew that pesticides are poisonous chemicals and have potential deleterious effects on their health; however, they were unaware of the concrete risks and hazards of the pesticides.

According to the workers interviewed, they are not trained on the use of pesticides, the precautionary measures to be followed, and the safety aspects.



According to the workers interviewed, they are not trained on the use of personal protective equipment.  
Photo: Kai Horstmann

They are merely told by the managers to “finish” the spraying as soon as possible. Some workers stated that supervisors usually undergo awareness training on the use of pesticides, but this information is not shared with the workers who are engaged in spraying or mixing pesticides. It was also reported that workers did not have training on the use of personal protective equipment (PPE)–the importance of using PPE, types of PPE, the way to properly wear PPE, etc.

Often PPE is not provided by the management to the workers engaged in pesticide application. Even if PPE is available, it is given to the workers only during inspections. In most cases, only gloves and shoes of poor quality (and not gear masks) are available. Furthermore, whatever PPE is available is not personally assigned nor numbered, so workers do not maintain the equipment properly and they use the equipment interchangeably, causing a risk of infection or contagious diseases. Very often, the PPE

is damaged after being barely used. The management does not replace the damaged PPE, and when workers ask for replacements, management responds that financial burdens prohibit the provision. It is reported that during inspections the management plays a trick on the inspectors: a certain number of workers, with protective gear, is assigned to do the spraying, while other members of the spraying gang, lacking enough PPE, are assigned to do some other work.

Just before inspections take place, some workers may be given protective gear such as a mask, an apron (a sheet of plastic which is used as an apron) and an overcoat made up of plastic, a cap, some gloves and shoes. Workers explained to the FFM team that wearing the mask is uncomfortable, as it impedes breathing and causes a sensation of suffocation. Wearing the plastic apron and overcoat is also uncomfortable because it overheats the body and causes sweating. On warm days, this situation is aggravated. Wearing the shoes is also uncomfortable. It should not be surprising then to learn that even if the PPE is available, most workers prefer not to wear it.

Workers also informed the FFM that they are directly exposed to pesticides while spraying. Pesticide spillage during loading/wearing the knapsack sprayer and leaking sprayers are the major reasons. Exposure through spray drift also is common. In case of drift or spillage, workers must wash themselves if water is available; otherwise, they get to clean themselves only when they reach home. Additional risks of exposure happen owing to the lack of washing facilities in the field (workers cannot wash their hands before taking food), the entering of the field immediately after spraying or without observing the precautionary period after the spraying (risk of exposure also to other workers), and longer spraying hours demanded by the supervisors.

The health effects reported by workers are skin irritation, burning sensation, nausea, vomiting, headache, eye burns and irritation, burning sensation on face, muscle pain, abdominal discomfort and pain, loss of appetite, tiredness, shivering, swelling and



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skin rashes, and itching on the foot when walking through an herbicide-sprayed area.<sup>41</sup> One worker reported, “I have experienced eye burns, burns on face, mouth and nose and on hands soon after I have sprayed a pesticide named Decis”. Other illnesses reported by the workers are jaundice, anemia, shoulder pain, night blindness, back pain and tiredness. After pesticide spraying, some workers complained that they had sores on their feet and legs because of exposure where the mixing was taking place. If chemicals come into contact with skin, one worker said that blisters develop. Some workers also reported that they didn’t feel like eating after they sprayed pesticides for some four to five hours; the unpleasant pesticide odour stayed with them for a long time. One worker complained that although he has been asking for protective gear, soaps and detergent, these have never been provided. While workers reported blood being taken periodically for testing, the results are never shared with the workers; neither are the workers informed about the results of their medical examinations which the workers are required to take regularly. Therefore, workers remain unaware of their health condition.

Mixing chemicals near the tube well and water pumps happens in the plantation; this can pollute the water source. It is reported that workers spray herbicides along the labour lines, usually Paraquat or Round Up, which are two notorious herbicides carrying the risk of multiple and complicated health problems. As a result, people living nearby, particularly children playing in the exposed area, find themselves in a dangerous

position of exposure. It is also reported that some workers bring equipment used for pesticide application to their houses and often children play with that equipment, placing themselves at a serious risk of exposure to dangerous chemicals. Some workers also revealed that they used to mix pesticides by hand, without wearing any protective gear or taking any safety precautions.

A uniform work schedule was not reported by the workers. During interviews, it came out that usually spraying is done during one shift, starting at 7 a.m. and ending at 12 noon, with a break for eating and drinking. A worker is expected to spray 200 litres of pesticide solution, which usually takes about four hours. Though workers are required to spray for four hours a day, supervisors insist on an extension of some two hours. Workers from another plantation said that they start spraying early in the morning (5 or 6 a.m.) till 8 to 10 a.m., and sometimes continuing to spray till noon or 1 or 2 p.m. As the sprayers being used are knapsack sprayers with a tank volume generally ranging from 15 to 20 litres, workers have to refill the sprayer tank 10 to 15 times in order to spray the entire 200 litres of solution assigned to each worker. During intensive pest or disease outbreaks and weed growth, a second shift of spraying occurs, starting from 12 noon and lasting to 5 p.m. In most cases, the workers spraying in the second shift are the same ones who already sprayed the first shift. Thus, often workers are forced to spray for a long time, which of course poses serious risks to their health. There exist two more precarious elements: The majority of the workers have the habit of chewing tobacco, and they chew while working; secondly, some workers spray after having drunk alcohol, especially when they know they will have to spray on two shifts.

### 4.1.5. Access to health care

Workers from all plantations in Assam reported inadequate access to quality health care. Casual workers were further disadvantaged in regards to their access. One of the major complaints was in regards to the quality of healthcare workers. Workers reported a number of gross oversights by medical

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<sup>41</sup> In 2012, a study conducted by the National Labour Institute in Assam revealed that around 5 per cent of workers in tea plantations are engaged in pestcontrol activities. Additionally, anecdotal evidence collected through interviews with 426 pesticide sprayers conducted by the National Labour Institute reported that workers experience a range of ailments and physical discomfort, primarily muscle and body aches (57 per cent), feelings of weakness (49 per cent), headaches (32 per cent), chest pains (23 per cent), respiratory problems (16 per cent), eye irritations (15 per cent), skin irritations (13 per cent), chapped hands (3.3 per cent), throat infection (2.1 per cent) and excessive sweating (1.9 per cent). The responses about discomfort were not mutually exclusive; there were workers with multiple sorts of physical discomfort. See Das, K. (2012): Valuing life in a regulated labour market: a study on tea plantations in Assam, India. NLI Research Study Series No. 095/2012. [www.vvgnli.org/sites/default/files/publication\\_files/Valuing%20Life%20in%20a%20Regulated%20Labour%20Market.pdf](http://www.vvgnli.org/sites/default/files/publication_files/Valuing%20Life%20in%20a%20Regulated%20Labour%20Market.pdf)

personnel. For example, workers reported cases where the same syringe was used on two different patients. Another worker narrated an incident during which a child was sick, but her mother was the one who was injected mistakenly at the hospital. Many workers also mentioned that when they go to the plantation hospital because they are sick, doctors often say that they are OK and they are sent back to work without any medication. Workers who spray pesticides often complain that they are administered medical tests without ever being informed about the results. Many workers said that when they fall ill, they are given the same tablet regardless of the illness. Workers, irrespective of the illness, have to wait a long time to be seen by a doctor; however, they also said that when workers have severe illnesses such as tuberculosis, cancer, appendicitis, anemia, or gallbladder problems, they are transferred to the government hospital.

Workers, both permanent and temporary, complained about the costs of the medical care received. Workers said that when family members seek care, a certain amount of money is deducted from their paychecks, and they said that children are covered only until they are 16 years old. They also stated that there is no free medicine and if the plantation hospital does supply it, then it is deducted from their salary. Since families do not have money to pay for the medication they need, if they become sick, they have to borrow from neighbours or managers. One worker said that they have to pay 20 per cent interest every 15 days and the interest rate increases if they are unable to repay the amount on time.

The treatment of temporary workers in regards to their access to health care seemed to be worse. One worker mentioned that hospital facilities are available to them only if they have worked for six months or more consecutively, thus, only if one is considered a permanent worker. Workers from one plantation said that the plantation hospital has only one ambulance, which is free for permanent workers but charged to temporary workers. In severe cases, temporary workers from this plantation said that they have to hire their own cars instead of attempting to use the



Workers reported that the quantity and quality of water to which workers have access is a severe problem.  
Photo: Alex del Rey / FIAN International

ambulance provided by the hospital. One casual or temporary worker said that whenever she gets sick, the management asks her to bring a permanent worker with her to guarantee payment. This woman stated that she gets no benefits, including no ambulance, as everything has to be paid out of pocket; she said that she is “left to die”.

Workers also were disappointed in the food given to patients at the hospitals. Many workers stated that the food is of poor quality, utensils are dirty, plates are broken, and facilities are unhygienic. Workers complained that all patients are given chapatti plus tea without sugar or salt irrespective of the disease. Rice, dal, and curry are the foods that they would normally consume, but these are not given in the hospitals.

Workers implied that management was at least partially responsible for the poor quality of health care. For example, workers said that food given to patients was always part of an agreement between the workers and the hospital and that this food was supposed to consist of fruit, chapatti, and meat for three days; however, in reality, the management gets most of the meat, and the hospital gets only

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the intestines to give to patients. Furthermore, workers said that the hospital is cleaned only one or two hours before a scheduled inspection, and never otherwise. Finally, workers also complained that the management sometimes asks workers who fall ill to retire; however, once they do, they are indeed out of work permanently.

Many female workers revealed that they suffered from anemia and reported that malnutrition among children is common, as families cannot provide food for the children all the time. Anemia, jaundice and fatigue are common physical symptoms. Several women said that only retired doctors worked at plantation hospitals; they complained that in one particular plantation currently there is a very old and senile doctor, who unfortunately has not been replaced by a younger, preferably female doctor.

The FFM team visited the Dibrugargh Medical College in Assam and discussed with medical professionals there the health status of people living in teaplantations. An assistant professor informed the team that insecticide poisonings, particularly from organophosphate insecticides, were common among the plantation workers, and that a number of cases of skin-related diseases, especially skin rashes and itching, had been noted. An Assistant Professor of Gynaecology explained that pre-term birth and stillbirth have been observed among residents of plantation areas. Moreover, maternal mortality is higher among the plantation workers.<sup>42</sup> “Out of 10 maternal mortality cases, 8 of them are from tea plantations,” commented the Assistant Professor. Miscarriages are also reported from plantation areas and referred to the medical college during complicated cases.

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<sup>42</sup> Scientific literature has shown that pesticide exposure of the mother (during pregnancy or before pregnancy) to certain pesticides, especially, endocrine-disrupting pesticides, reproductive toxins and teratogenic pesticides, could be linked to cases of miscarriages, pre-term birth and stillbirth. The professor stated that hormone-related issues such as hypothyroidism and diabetes, cancers, liver and kidney diseases, night blindness, hypertension, anemia, tuberculosis, filariasis, hookworm infection, hepatitis, etc., are commonly reported among plantation workers. It is to be noted that certain pesticides can cause hormone-related disorders, cancers, kidney and liver diseases.

### 4.1.6. Access to water and sanitation

Workers widely reported that the quantity of water to which workers have access is a problem, as there are not enough drinking facilities for all workers at the labour lines and that those that are available are unhygienic. Water supply is a problem because the company has not provided hand pumps, and the workers have had to install their own. One worker reported that in his particular labour line, only 30 litres of water are available twice a day for a total of 58 people. Owing to this lack of water, workers complain that they cannot wash their hands properly, which often leads to sickness-related to the custom of eating with hands.

In addition, workers complained that the quality of water is a major problem. Often the drainage system is not clean, thus attracting flies and mosquitoes. The workers used to be able to clean it with disinfectant but cannot anymore because disinfectant is no longer being provided by the management and the workers cannot afford it. Workers also complained that when they boil drinking water, there are particles that come off from the tins they use because these are recycled tins they had previously been used for holding tar for the roads. Workers have complained a number of times to management but have received no response. Similarly, many complained that water tanks are unhygienic and water is extremely dirty. The dirty water spills over into drains for hand-pumped drinking water. As a result, the drinking water is dirty and the workers fall ill. There is no proper drainage system, which causes cholera and diarrhoea amongst workers. Moreover, the water tank is cleaned only once every three months. One worker reported that the water tank for drinking water has no cover. Various workers said that they have reported these various issues to the management; however, no response has been given to them.

In addition to mentioning the problems surrounding access to enough quality water, workers reported that there are no toilets available in the labour lines and that current latrines are 40 to 50 years old. Despite numerous worker complaints to management, it was reported that toilets are dilapidated. One female



worker said that she had complained to the managers about the lack of toilets and leaky roofs at her workplace, but had never received a response.

#### 4.1.7. Access to and quality of education

Access to education in tea plantations in Assam was reported to be inadequate. Workers said that there are too many students for too few teachers. One worker said that at the school in his plantation there is only one teacher managing five classes. In addition, some teachers were reported to be illiterate and had been hired only because they were related to the management. Workers also lamented that there is no government school nearby and so they could not send their children to a different school even if they wanted to. Children often only study until the eighth, ninth or tenth standards because many families cannot afford school expenses afterwards. Workers complained that schools are poorly equipped and that, for example, their children do not receive sports equipment at school.

#### 4.1.8. Food consumption

Workers widely reported that the rations (wheat flour, rice, and tea leaves) provided by the company are often of very bad quality and not sufficient. Every 15 days, workers receive three kg of wheat flour and three kg of rice, as well as 600 g of tea per month. Wheat is reported to often be mixed with sand and other materials, but workers have no choice but to eat it. For their children, parents receive 1 kg of wheat flour and 1 kg of rice per child until the child reaches age 16. Workers are highly dependent on the rations they receive for their food consumption on a monthly basis and so any change in their work status can result in severe hardship. One worker lamented that while she was out on sick leave from work she did not receive rations for 14 days and received only one third of her pay.

Female workers reported that the wage they earn is not enough for them to buy adequate amounts of food. In addition to the rations they receive from



Workers reported that the management does not attend to their demands.  
Photo: Alex del Rey / FIAN International

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their employer, workers have to spend their own income to purchase additional food. They reported that the food they buy with their income does not last for 15 days, as they usually have to spend 2,000 INR on food every 15 days, but receive only 1,000 INR every 15 days. Therefore, workers end up relying heavily on credit to obtain the rest of the food they consume. As a result, in order to satisfy their nutritional needs, workers borrow money from private money lenders in the plantations, and the interest rates range from 20 per cent to 100 per cent, resulting in permanent indebtedness. Alternatively, to be able to buy sufficient food, some families engage in a second job, such as the making of rice beer.

When asked about their food consumption on a typical day, female workers said that they try to have three meals a day, which consist of chapattis, rice, and dal. Some days they have broiler chicken, meat

or fish (usually on payment day), some of the families are able to raise a country chicken at home. Within the group of workers interviewed, some workers reported owning a small plot of land to grow food. Although workers were promised Below Poverty Line (BPL) cards, they were given Above Poverty Line (APL) cards, and thus were not entitled to receive subsidized food under the public distribution system.

Finally, while very few of the workers interviewed in Assam said they currently grow their own food, others reported that they used to do so in small plots of land in one of the plantations; however, about two years ago, the company took this piece of land away in its effort to diversify; the land is currently used for commercial fisheries, with the farmed fish being sold in the market. Workers reported that there was no compensation paid for the loss of their land.



When asked about their wishes for the future, female workers said that they hoped for higher wages so that they could send their children to school.

Photo: Alex del Rey / FIAN International

#### 4.1.9. Access to recourse mechanisms

Workers continually complained that when something goes wrong, they are unable to obtain adequate responses from the management. One female related that she has been discouraged from approaching the management numerous times. For example, she has approached the management about being allowed to do skilled work because of her higher level of education, but was not helped. She has also complained to management about a variety of housing issues, with very little response. While sometimes management does supply the needed equipment or make the necessary quick fixes, management does not address the more structural problems that exist.

Workers also consistently complained about inaccuracies in reporting the amount of weighed tea leaves. It was reported that there are some staff or 'babus' who are usually responsible for reading the weight off the scale and sometimes they deduct 10 to 12 kg from the real amount. It was reported that a deduction of about 10 kg per worker when weighing leaves is common, as these 10 kg go to workers who are absent and who have a special arrangement with the babus to share the wages that are taken from the workers who did work that day. Workers said that they want to find a way to stop the cheating during the weighing of the leaves, so they themselves often try to see the amount weighed; however, managers do not allow this examination, they themselves being the only ones allowed to read the scale. Workers also mentioned that they have repeatedly brought up the issue of the deductions that happen during the weighing of the leaves with the management, but there has been no action taken.

While workers mentioned the existence of a welfare officer, they also said that the welfare officer is concerned only with the welfare of the managers and not that of the workers. They also reported the existence of a system of bribery concerning the welfare officer. If workers pay the welfare officer, then remedies can occur. One female worker said that she has been approaching the welfare officer the past six

months about a number of complaints but has not achieved any success.

Female workers complained that there are very few female supervisors and said that those women who protest to the management suffer from retaliation. Another woman worker who had actively taken part in a protest about the death of two pregnant women in her plantation in 2011 said that as a result of her political involvement, her son is now not able to get work in the plantation. She was imprisoned for two months and her husband had to quit his work to access Provident Fund money for her bail. While she is no longer threatened with imprisonment, her son still does not have work in the plantation.

Workers further complained that the Assam Chah Mazdoor Sangha (ACMS) union does not help the workers. Furthermore, a worker who had recently retired and used to be affiliated with ACMS mentioned that whenever issues are brought to the attention of the management by ACMS, the company always bemoans that the tea industry is a "losing" business. Another worker said that the ACMS union representatives had told the workers that they had to work during holidays or else holiday pay would be reduced and they would not get wages for any days not worked.<sup>43</sup>

#### 4.1.10. Wishes for the future

In Assam, most of the parents and grandparents of the workers interviewed had worked in the tea plantations, but this current group of workers repeatedly stated that they do not want their children to work in tea plantations. When asked what their wishes were for the future, female workers said that

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<sup>43</sup> "The More Things Change..." The World Bank, *Tata and Enduring Abuses on India's Tea Plantations* (New York, USA, Columbia Law School, Human Rights Institute, 2014), p. 10, 67, 70-71. Available at [https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea\\_report\\_final\\_draft-smallpdf.pdf](https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea_report_final_draft-smallpdf.pdf) Nazdeek: Notification GLR (RC) 178/2014/179 for the fixing for minimum wages for daily rated workers employed on tea plantations in Assam; Objections and suggestions, unpublished document.

they hoped for higher wages so they could send their children to school and be able to buy better food for their families.

### 4.2. West Bengal–Darjeeling

Known for its excellent quality, Darjeeling tea is grown in Darjeeling, a small district in the extreme north of India's West Bengal State in the Himalayan foothills (elevation of around 6,710 feet). Tea is the main economic activity in the region (aside from tourism), generating the most employment and revenue. It is the main crop in the region, grown in a vast area of hilly land, covering some 17,542 hectares. The first three tea estates in the state were established in Tukvar in 1852. Since then, the number of tea estates has expanded gradually to 39 estates in 1866, 56 in 1870, and 113 in 1874. Today there are 87 tea plantations in and around Darjeeling town.<sup>44</sup> Superfine Darjeeling tea is grown only in Darjeeling and there is a global demand for this special variety. The entire production is sold every year, mainly for export. Nevertheless, the average yield (400 kg to 450 kg per hectare) is low when compared with the national average of 1,800 kg per hectare. All the tea estates in Darjeeling are permanently owned by the West Bengal State Government, which leases the land to the growers on a fixed-rent basis for a minimum of 30 years and a maximum of 99 years, with possibilities for renewal.<sup>45</sup> These leases can be transferred or sold. In 2004, Darjeeling tea became the first product in India to be registered under the Geographical Indications of Goods (Registration and Protection) Act of 1999.

The Darjeeling team visited four plantations:<sup>46</sup> 1. Selim Hill Tea Estate, 2. Goomtee Estate, 3. Jungpana Tea Estate, and 4. Singtom Steinthal Tea Estate.

#### 4.2.1. Selim Hill Tea Estate

Selim Hill Tea Estate was established under the British Empire. It is an open garden currently owned by Kamala Tea Company. Organic tea is grown currently on this 177 hectare tea estate. There are 249 families –around 2,000 individuals–living in the garden, among whom 10 are permanent workers and 251 are daily-rate workers.

##### 4.2.1.1. Housing and living conditions

Housing facilities are provided by the management as per the PLA.<sup>47</sup> The houses are small and there are no separate latrines. As per the information shared by the workers, the management has built only one toilet for the whole community of workers (for a total of 290 families).

##### 4.2.1.2. Wages/working conditions

During the FFM, the workers interviewed reported that they receive a wage of 122 INR per day<sup>48</sup> for some 8 to 12 kg of tea leaves plucked. The task work is set at 8 kg and there is a wage deduction of 5 INR per daily wage for non-fulfilment of the task work. The workers receive their wages every fortnight. A retired old man who has worked in the plantation during the last 42 years revealed that he receives a monthly payout of 400 INR for his pension. Most families have debt of some 2,500 INR, borrowed from the management without an interest rate. This money is given as a loan by the management to families, later to be deducted directly from their salary every month for a year.

<sup>44</sup> See [www.fao.org/docrep/013/i1592e/i1592e03.pdf](http://www.fao.org/docrep/013/i1592e/i1592e03.pdf), p. 115.

<sup>45</sup> *ibid*, p. 116

<sup>46</sup> The information pertaining to the number of workers (e.g. permanent and casual) employed in the tea plantations visited in West Bengal - otherwise mentioned - is extracted from a comprehensive survey conducted by the Labour Department of the State Government of West Bengal. See: <https://www.wblc.gov.in/download/TG-Survey-Final-Report.xls>

<sup>47</sup> Selim Hill was asked in writing to provide its response to the information gathered during the FFM. In its response, the management writes that the housing facilities are provided to the workers as per PLA standard size.

<sup>48</sup> In its response, the management writes that the industry wide agreement is Rs. 122/50 as per day and is paid to the workers. The task work is 8 kg.

#### 4.2.1.3. Access to health care

Although according to the PLA, all workers are entitled to free medical facilities, there is neither a health facility nor an ambulance nor medicines available in the plantation. In case of sickness, the plantation workers must travel to the closest city, a distance of 20 km, to a state hospital. According to the workers, the management does not pay for the medical fees incurred when the workers visit the government health facilities. However, a crèche is available (free of charge) and accessible to all the workers irrespective of their status.<sup>49</sup> One primary school (up to fourth grade) close to the plantation is provided by the management.

*“I had a problem with my eye for a long time but I could not and cannot afford the cost of transportation to the closest city 20 km away from the plantation nor for the treatment itself.”*  
(A female worker, age unknown)

#### 4.2.1.4. Access to water and sanitation

According to the workers, there is no safe drinking water provided by the management, either at the workplace or at the labour lines.<sup>50</sup> Every day, workers (and especially female family members) travel 45 minutes downhill to fetch water. Their journey starts at dawn (around 2 or 3 a.m.) and usually takes several hours. The workers bring the water with them to be consumed during the working hours at the plantation. The only support provided by the management is 50 INR provided per year per worker to buy a water

container. The workers make the same journey every day for personal and domestic uses. The workers built their own urinals/latrines, which, however, are not in good condition and are unisex.<sup>51</sup> There are no toilets available at the workplace and the workers must relieve themselves behind bushes.

#### 4.2.1.5. Access to Education

One primary school (up to fourth grade) close to the plantation is provided by the management.<sup>52</sup>

#### 4.2.1.6. Food consumption

The workers related that they eat twice a day, and a normal meal consists primarily of rice and chapatti, with vegetables consumed only seldom. As observed by the FFM members, many families have access to a small plot for home gardening (planting potatoes and onion) and keep limited livestock such as chickens and goats. Fruits are sold at the nearest local market, situated 30 km away, but the workers cannot afford to buy them, nor does the management provide any transportation for tea workers to reach the market. Those families who have family members working outside the plantation are the only ones that can afford, both economically and in terms of time, to buy fruits (once a week). It was reported that the children attending primary school are provided one meal (lunch) free of charge as part of the Midday Meal Scheme. There is no canteen in the plantation. The government subsidized ration (4 kg of rice and 9 kg of flour per month; cost per kg is 47 INR) is available to the workers.

The workers have never heard of the PLA. They do not know the Act nor the procedures for filing a grievance. They also do not elect their panchayat.

<sup>49</sup> In its response, the management writes that there are two garden dispensaries in each division with qualified compounders. There are two medical doctors who visit each division every fortnight. The workers at Selim Hill are provided free medicines in the dispensaries, as per doctors' prescription. If a situation requires, garden vehicles are used for carrying ill or wounded workers to a Government hospital for free treatment.

<sup>50</sup> According to the management, water was previously sourced from the Railway Water Line which was curtailed by the Railway Department five years ago. At present, there is no running water facility (provided either from the government or private). The management of Selim Hill is currently working with the state authorities to create a permanent water source in the vicinity of the tea garden; however, the work has not yet started. Currently, the management is dependent on an external water source at a high cost to keep the tea garden running.

<sup>51</sup> According to the management, “(t)he Workplace i.e. the Factory has separate Toilets for both Men and Women. We do not have Common Toilets in the workplace of an area of approx. 1000 acres. The Labour quarters are provided as per Govt standards, with private toilets, however maintenance and hygiene remains a challenge.”

<sup>52</sup> According to the management, there are two primary schools in the garden; one in “upper division” and one in “lower division”. These schools are run by the District School Board, the state government of West Bengal.

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Workers, especially female family members, travel long distances to fetch water.  
Photo: Alex del Rey / FIAN International

There is an increasing tendency of migration. Although labour migration seems to be quite common for better payment outside the plantation, workers strive to keep at least one member working inside the plantation in order to maintain the housing benefit.

#### **4.2.2. Goomtee Estate**

Goomtee Estate was established in 1899. There are currently 280 families—around 600 individuals—living in the labour lines. Among them, 307 are permanent and 145 are casual workers.

##### **4.2.2.1. Wages/working conditions**

A tea plucker receives an average daily wage of 122 INR. The work task is 9 kg per day, and the workers receive 4 INR for any additional kg picked.

##### **4.2.2.2. Maternity protection**

The female plantation workers have the possibility to leave their children in a crèche which is open during the working hours once they return to work from three months of maternity leave. The female workers can make use of a break to breastfeed their infants.

##### **4.2.2.3. Use of pesticides**

According to a worker interviewed, only bio-pesticides are used on the plantation. However, the FFM team observed signs of pesticides on the tea leaves. According to the same worker, around seven to eight people are responsible for pesticide application and protective gear is provided during the actual spraying.

##### **4.2.2.4. Access to health care**

One hospital/dispensary of a size of some 20 square meters is provided by the management. There is a doctor who pays a weekly visit to the hospital, and a nurse is stationed there all through the week. Overall, the building is in an extremely bad condition. Medications can be purchased by permanent workers for half the market price, or are free. This, however, does not apply to the casual workers.

##### **4.2.2.5. Access to water and sanitation**

Water is provided at the workplace, but it has been observed by the FFM team that the tap is highly oxidized.

##### **4.2.2.6. Access to education**

A government-owned-school (up to tenth standard) is situated nearby, at a distance of a five-minute walk. The school fee, which includes materials for children, amounts to 1,000 INR per year.

##### **4.2.2.7. Food consumption**

Subsidized rations are provided by the plantation management for the workers: 2 kg of rice and 2 kg of flour every fortnight. The workers are not aware of the price of the rations, as the ration costs are automatically deducted from their wages. Casual workers are not entitled to rations nor to the Provident Fund. The average meal of a worker consists of rice, chapatti, dal and some potatoes. Occasionally the workers eat fruit, if they can afford it. There is no canteen available at the plantation.

*“I have been waiting for 13 years for my pension. I did not know that I will get a pension, so I only submitted my paper three years ago.”*

*(A female worker, 70 years old)*

#### **4.2.3. Jungpana Tea Estate**

Jungpana Tea Estate is a 73.6 hectare plantation established in 1899. There are 365 permanent and some 35 to 75 casual workers employed on the plantation. According to the information shared by the management during the visit, Jungpana tea garden has never been closed, unlike some others in the region. The tea produced in this plantation is considered by many in the industry to be the best tea in the district.

##### **4.2.3.1. Wages/working conditions**

The plantation pays a daily wage of 122 INR to tea plantation workers.

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### 4.2.3.2. *Maternity protection*

A crèche is provided by the management during the working hours and the female workers are allowed to stop once during the workday to breastfeed.

### 4.2.3.3. *Use of pesticides*

The tea plantation and its factory are certified by IMO Control Private Limited (IMO India), an independent organic certifying agency. However, mono-cropping of tea bushes has been noticed, even though integrated crop management is mentioned as part of ten principles given by Rainforest Alliance.<sup>53</sup> The plantation also has two ISO certifications.<sup>54</sup> The FFM team observed spiders and weeds—a sign of bio-pesticide use—in the fields. There were display boards about internal policies regulating work in the plantation, in both English and Nepali languages.

### 4.2.3.4. *Access to education*

At the site of the plantation, there is a government-owned primary school. The workers interviewed pointed out that the quality is insufficient and some workers send their children to another school that is three to 4 km away. There is also a secondary school available outside the plantation.

## 4.2.4. Singtom Steinthal Tea Estate (Camellia Tea Plantation)

Established in 1852, Steinthal is one of the oldest tea gardens in Darjeeling and is currently owned by the

Camellia Tea Group Pvt Ltd. Singtom and Steinthal are two separate yet “sister tea estates” (245 hectares) that are jointly managed. Currently there are 600 workers and 150 staff working on the plantation.

### 4.2.4.1. *Housing and living conditions*

Although the management provides housing, it does not contribute to the repair of the houses. The workers interviewed told the FFM team that there is an agreement signed between the management and the workers that 9 per cent of the existing houses should be reconstructed by the management. However, nothing has taken place till now. According to the workers, once every two years, the management provides them with one umbrella, one blanket, and one pair of slippers, in line with the PLA.

### 4.2.4.2. *Wages/working conditions*

A daily wage for a tea plantation worker is 122 INR. The task work is 8 kg, and the workers receive 6 INR for each extra kg of tea leaves picked. The workers are only entitled to benefits if they work 120 days from March to September. The workers are allowed to take 14 days of sick leave per year, for which they receive three-fourths of their wages.

### 4.2.4.3. *Access to health care*

A dispensary in dilapidated conditions as observed by the FFM team is situated near the plantation. Free medications for a minor cold (e.g. coughs) are provided. It is open every day. One doctor visits the dispensary once a week. For serious sickness and accidents, the workers must go to a health-care centre located 4 to 5 km away from the plantation, in the city of Darjeeling. The workers do not get any support from the management in terms of expenses, except for a few litres of fuel if a treatment foresees several long trips. A crèche staffed with two people is available during working hours. Children below three years of age receive half a litre of milk per day at the crèche. The workers buy the milk with financial support provided by the management.

<sup>53</sup> Established in 1987, the Rainforest Alliance is a non-governmental organization (NGO) which aims to “conserve biodiversity and ensure sustainable livelihoods by transforming land-use practices, business practices and consumer behavior.” Rainforest Alliance agricultural certification, founded on the Sustainable Agriculture Network (SAN) standard, was developed by a group of farmers, scientists, conservation organizations and communities. This standard is based on ten principles of sustainable agriculture and provides a concrete measure against which environmental and social practices can be evaluated. See [www.rainforest-alliance.org/about/marks/rainforest-alliance-certified-seal](http://www.rainforest-alliance.org/about/marks/rainforest-alliance-certified-seal)

<sup>54</sup> ISO is an independent, non-governmental international organization, which develops voluntary international standards covering “almost every industry, from technology, to food safety, to agriculture and healthcare”. For more information, visit ISO homepage: [www.iso.org/iso/home/about.htm](http://www.iso.org/iso/home/about.htm)



#### 4.2.4.4. Access to water and sanitation

For safe drinking water, the workers walk 2 km up a hill. Rainwater is collected as well in containers for domestic purposes. There are no sanitation facilities (neither latrines nor urinals) provided by the management and the workers have been compelled to construct them by themselves. However, the conditions of these self-built latrines, as observed by the FFM team, are unsatisfactory.

#### 4.2.4.5. Access to education

A public primary school is situated within a walking distance of 5 to 10 minutes, and there is also a secondary school 4 km away. The workers complain about the quality of the primary school, while at the same time regret not being able to afford to send their children to a private school. The management does not provide any transportation costs and the children, especially those who attend the primary school, must walk a dangerous 4 km uphill.

#### 4.2.4.6. Food consumption

A total of 1 kg of rice and 2.3 kg of flour is provided by the plantation as a ration. The ration for a dependent applies to a maximum of only two children. Many workers shared with the FFM team that they are struggling to have nutritious food and to be able to buy vegetables and fruits.

### 4.3. West Bengal–Dooars

The tea industry in West Bengal is spread over three major tea producing areas, Darjeeling, Terai and Dooars. Dooars consists of the floodplains and foothills of the eastern Himalayas in north-east India bordering Bhutan. It is the largest of the three areas in terms of geographical area, number of estates and number of workers employed. Most of the development and expansion in the tea growing area in Dooars took place in the early twentieth century before independence in 1947. In 1900, there were 67 tea estates in Dooars. Today this number stands at 150.

Dooars is also the most productive of the three tea producing areas. As per the West Bengal Government Survey Report, “the standard average yield of tea estates in Dooars area should be 2,000 kg/ hectare or more but only 40 out of 150 tea estates have yields of 2,000 kg/hectare or more.” Most of the tea in Dooars is for domestic consumption.<sup>55</sup> While the domestic market has been growing in India, the same cannot be said for the estates in the Dooars, many of which are crisis-ridden and often in the headlines for that reason.

The West Bengal/Dooars FFM team visited four tea plantations that have different statuses: two are currently operating (Nowera Nuddy and Damdim)<sup>56</sup> plantations, one is a re-opened plantation (Chamurchi), and one is a closed plantation (Hantapara).

#### 4.3.1. Nowera Nuddy Tea Estate<sup>57</sup>

The name “Nowera Nuddy” originates from the Noera River, which flows from the Bhutan hills along the eastern side of the garden. The tea estate has a long history, dating back to the early twentieth century. The oldest planted section which is still being harvested today dates back to 1910. Since May 2008, the estate has been under the management of APPL, a Tata enterprise. The plantation is 553.03 hectares and currently employs 828 permanent workers (447 male and 381 female) and 350 casual workers (28 male and 335 female). The management provides 699 labour quarters to its workers. According to the estate

<sup>55</sup> See [www.wblc.gov.in/download/Synopse-of-Tea-Garden-Survey-Final-Report.pdf](http://www.wblc.gov.in/download/Synopse-of-Tea-Garden-Survey-Final-Report.pdf). p. 12

<sup>56</sup> A letter was received from APPL on April 22, 2016 responding to various allegations made in this report. The responses from APPL are included in footnotes in the sections on Nowera Nuddy and Damdim.

<sup>57</sup> In the letter dated April 22, 2016, APPL states that “[Nowera Nuddy and Damdim] are Ethical Tea Partnership compliant and Nowera Nuddy is Rain Forest Certified. Both Factories are ISO 22000 certified. It is also the first company in the tea industry to receive SA 8000 certification.” It should be noted that a Columbia Law School report (“The More Things Change...” The World Bank, Tata and Enduring Abuses on India’s Tea Plantations, p. 102) notes that “while private [certification] mechanisms should supplement the requirements of Indian law, they appear, instead to have deflected attention from the absence of company compliance and state enforcement.”

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website, 2007 was a milestone year in that the estate produced a record amount of tea that year.

### 4.3.1.1. Wages/working conditions

The task work is 25 kg; unlike other plantations, where pay deduction is a norm, here there is no deduction if the task work is not attained. The workers are awarded an additional 3.5 INR for each kg picked beyond the task work.<sup>58</sup>

*“The tea we pluck are weighted three times a day. Once at 9 a.m., then at 11 a.m., and finally at 3 p.m. On rainy days, 6 kg are automatically reduced from the total amount of tea leaves plucked. We do not know if we are paid accordingly because we do not get to see the numbers on the scale.”*

*(A female worker, age unknown)*

One of the main concerns raised by the workers is the issue of shareholders.<sup>59</sup> The workers became shareholders of the plantation in 2009. Their shares (100 shares for a total of 8,000 INR) have been deducted directly from their wages since then. This is equivalent to 44 INR per fortnight. The workers complained that not the slightest improvement has been made since they became shareholders. In addition, rations are not provided when workers are admitted to the hospitals. The workers have compiled their demands and submitted them to the management in the form of a Charter of Demands (Annex 5). While some demands have been met by the plantation management, several issues are pending.

### 4.3.1.2. Maternity protection

With respect to infant feeding patterns, the female workers interviewed told the FFM team that

breastfeeding is common for the first three years. When, however, infants reach half a year old, they are fed with rice porridge, and once teething begins, additional foodstuff is given. The female workers also mentioned that they have no knowledge about exclusive breastfeeding. In general, women tend to breastfeed exclusively during the first six months. When the babies turn half a year old, most women bring them to work. There are no specific “breastfeeding breaks”; however, mothers are allowed to breastfeed if babies cry, or they utilize the tea weighing time to quickly breastfeed their babies.<sup>60</sup>

### 4.3.1.3. Use of pesticides<sup>61</sup>

According to one worker, who oversees the spraying of pesticides, pesticides are sprayed soon after the leaves are plucked, and there are seven days of break thereafter. The types of pesticides used are Mitigate and Magister, and the weedicides are Round Up, 24D (however, use of this has stopped, as the weedicide was entering the leaf structures) and Glaxcin. The tasks related to pesticide use are fertilizer application, pesticide mixing, and pesticide spraying, along with washing the equipment used for pesticide application. Each of the mentioned tasks requires up to four hours of work. For pesticide instruction, seminars are given by the corporation. There is also a changing room available. Instructions are given on personnel protective equipment. If the instructions are not strictly followed, wages will be cut. However, for many workers, spraying with protective equipment such as protective masks hinders the accomplishment of tasks. Spraying time is over eight to nine months and occurs five days a week. Every three months there is a medical check-up, and if any sickness is detected (such as tuberculosis), the person is shifted to work in a factory.

<sup>58</sup> In the letter dated April 22, 2016, APPL states that it “strictly adheres to the minimum wages to be paid to the employees and there is no single instance where any manager has enhanced the task. It is extremely difficult to alter well established tasks which differ from estate to estate. The maximum pruning time is 5-6 hours”.

<sup>59</sup> For a thorough study of how the workers became shareholders, see “The More Things Change...” The World Bank, Tata and Enduring Abuses on India’s Tea Plantations (New York, USA, Columbia Law School, Human Rights Institute, 2014). Available at [https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea\\_report\\_final\\_draft-smallpdf.pdf](https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea_report_final_draft-smallpdf.pdf)

<sup>60</sup> In the letter dated April 22, 2016, APPL states that “Mothers who are Breast feeding are allowed to attend to their children so as to “Feed on Demand” without restriction at the work place.”

<sup>61</sup> In the letter dated April 22, 2016, APPL states that “All chemicals sprayed as per the Plant Protection Code (PPC) laid out and the Protective clothing is a must for all workers deployed on spraying.”

**4.3.1.4. Food consumption**

The average food consumption of a five-member family resembles data in the following table:

<b>Table 1: Average food consumption for a five-member family in Nowera Nuddy</b>		
<b>Item</b>	<b>Amount consumed</b>	<b>period of consumption</b>
Food grains rice	50 kg	1 month – if not sufficient, buy additional 40/45 kg (need 15kg a month)
Pulses (moong and masur)	200 g	1 week
Potatoes	1–3 kg	Less than 1 week
Other vegetables	Cauliflower 1kg=3 days; cabbage/ green vegetables; soybeans 100 g a week	Also food gathered in forest
Meat or fish	250 g (either meat, fish, or egg)	Once in two weeks
Eggs		
Cooking oil	1 kg (250 g = 1 week)	Month
Milk	No milk	
Fruit	No; only occasional	From fruit trees (there are 3 types of fruits like bananas, guava, papaya, mango, watermelon, once a year each fruit)
Famine food (tea/flour)		Gather
Snack items	Biscuit, samosa	Once a week
Other items	500 g (sugar to eat together with Roti)	1 month; need 3 kg a month but not managing
	100 g soybean	Once a week on a market

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Food is bought at a local market by tea workers when a wage payment is made. Families usually only eat boiled potatoes if nothing else is available.

The government rations of rice and flour (at the subsidized price of 0.40 INR per 1 kg for each item) is 4 kg of rice and 7.4 kg of flour, provided to each ration cardholder every two weeks. The workers told the FFM team that 315 applications for a ration card are pending and that although a ration card is normally issued after one month, many workers have been waiting for over two years. With respect to the quality of rations, the workers claimed that the quality is not consistent, and will only improve, for a short time, if the workers complain.<sup>62</sup>

### Box 1: Normal day of a female tea plucker in Nowera Nuddy

Working time: 7 a.m.–3 p.m.  
11.30 a.m.–12.30 p.m.: Lunch break<sup>63</sup>  
2 p.m.: Weighing time

### 4.3.2. Damdim<sup>64</sup>

Damdim, also an APPL-owned tea plantation, is located in Malbaza, Jalaiguri. The workforce consists of 52 permanent workers, 1,792 daily-rate workers, and 732 casual workers. The plantation has a total area of 738.02 hectares.

#### 4.3.2.1. Housing and living conditions<sup>65</sup>

Most houses do not have roofs. Therefore, when it rains, rainwater leaks through and families need to use buckets to contain the rain. The workers claim that out of 100 houses, one-fourth of them are in bad shape, and half of them are in moderate shape. Many complaints (latest one filed four months ago) have been transmitted to the management with respect to structural repairs, however to no avail. Firewood for cooking is also not provided by the management. In addition, owing to the lack of street lights, workers are faced with transportation and mobilization difficulties, especially in the evenings.

Pay slip (fortnight) of a female worker from the plantation  
Photo: Flavio L. S. Valente/FIAN International

The image shows three overlapping pay slips from a female worker. Each slip contains the following information:

- Worker Details:** NAME, DIVISION, ESTATE, WAGER, WAGES, PER, ESTATE, DAYS WORKED (LARGE/SMALL).
- Earnings:** LEAF, INC, P-POST, BUS, DTC, OTH, ATR, INC, GROSS EARNING.
- Deductions:** PF, SS, MED, ENT, FRS, ADV, GROSS DEDUCTION.
- Net Pay:** NET PAY.

<sup>62</sup> In the letter dated April 22, 2016, APPL states that: “Workers and their dependants are entitled to subsidised food grain @ 40 Paisa/Kg. This is presently being supplied under National Food Security Act 2013. Good quality and timely distribution is ensured.”

<sup>63</sup> Previously lunch break was 30 minutes, but the workers demanded more time.

<sup>64</sup> Please see footnote 49.

<sup>65</sup> In the letter dated April 22, 2016, APPL states that “[t]he repairs to the houses/toilets are undertaken in a phased manner on a continuous basis. It may be noted that APPLs spend on Labour Welfare measures including labour houses over the five years have been 748 Million INR which is 36.56% spend as a percentage of our PBT.” The letter also mentions that “both Estates have spent a total of Rs.171 lacs on Toilets, bathing enclosures and House repairs.”

*“I have been working for 25 years as a permanent worker, but I have no house and no firewood.”  
(A female worker, age unknown)*

#### **4.3.2.2. Wages/working conditions**

Another major concern raised by the workers is the issue of shareholding. The plantation workers are also the shareholders of the plantation. During the first two years, workers received 400 INR quarterly; afterwards, they received 800 INR quarterly. Thereafter, there was no more payment. Last year, some workers received 800 INR, others received 400 INR, and yet some others did not receive anything. However, since 2009, for every fortnight, 44 INR are being deducted from their wages. The workers do not have any shareholder documents, nor receipts. Only plantation staff participate in shareholding meetings.

Some workers complained that they did not have any choice, as the shareholder system was imposed on them by the plantation company. Even some mentioned that they were “threatened” by the management—either they become shareholders or they will lose their jobs. One female worker shared her story of how she could not work owing to her child’s sickness, and then there was no deduction anymore. She asked the management what had happened to her share, and there was no reply.<sup>66</sup>

<sup>66</sup> In the letter dated April 22, 2016, APPL states that “Meetings were held at estates to communicate any developments on the share issue. Communication is also sent in three languages.” Similarly, the letter further states that “APPL is again the pioneer and front runner to offer its employees shares at preferential terms. APPL has 31,000 employees from which 21,000 employees subscribed for the share scheme. If coercion was used, then the number of share-holders would have been 31,000 and not 21,000. The proportionate participation of the employees across all 24 estates of APPL varied from 15% to 100%. The above statistics depict that the share allotment process was voluntary and transparent. The estate workers were allotted 800 shares at Rs.10/- each amounting to Rs. 8000/- through an interest free loan catalysed by the company. The total amount of Rs. 8000/- is being deducted by the company over a span of 7 years at the rate of Rs.95/- per month. The Share scheme provided capital protection and guaranteed dividend of 6%. The company has also formulated a process wherein the employees being separated due to resignation, retirement or death are paid at fair market value which till date manifested a healthy appreciation in value. APPL as a company takes pride in such a unique model of Employees Share Allotment Process. APPL has maintained a dividend paying track record well above the guaranteed 6% and has even paid up to 10% to 12%.”

#### **4.3.2.3. Maternity protection**

In general, female workers continue to work throughout the pregnancy. However, tea plucking becomes difficult for women after five-months of pregnancy and some women wish to work only half-time after five months. There is a mobile crèche available, and women are allowed to breastfeed during the working hours.

*“I was scolded both by the management and doctor. While the doctor never seemed to take time for check-up as he was always on the phone, the management complained about the time I was away for the check-up”.*  
(A female worker, age unknown)

#### **4.3.2.4. Access to health care**

Common diseases among the children seem to be diarrhoea and malaria. Some children need one full month to recover, and mothers (who are also workers) need to stay home to look after their sick children, although they are not paid on these days. An unpaid sick leave is only allowed when the workers are admitted to a hospital situated several km away.<sup>67</sup> Very often owing to this distance, a sick person cannot go to the hospital alone, but needs to pay 20 INR per day to a person who accompanies the sick.<sup>68</sup>

<sup>67</sup> In the letter dated April 22, 2016, APPL states that “Sickness Allowance...is being paid as per the Plantation Labour Act.”

<sup>68</sup> In the letter dated April 22, 2016, APPL states that their hospitals conform to the PLA and are constantly improved, upgraded, and inspected by the Medical Inspectors of the State Government; “APPL workers are entitled to free treatment of Cancer at TMC, Kolkata”; “APPL is also a 100% cleft defect free Company and runs camps for cleft palate surgery with support of Operation Smile, India”; the “Damdim Hospital has a state of the Art “Tele Medicine E- Hospital””; “only complicated cases are referred to State Hospitals” in ambulances; and “Health camps and training programmes are held regularly.”

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### 4.3.2.5. Access to water and sanitation<sup>69</sup>

According to some workers, there is a ring well shared by 10 households, which is not situated in the vicinity of their houses. Most wells constructed are ring wells, but not elevated. Therefore, there is a threat of falling into the well, especially in the evening, when there is a lack of street lighting. Some workers also claim that the water from the well has caused sickness. Those who are employed as staff have a water tap right next to their houses. Despite a complaint to the Union, no ring well wall has been constructed.

Latrines are not available.

### 4.3.2.6. Food consumption

An average household food consumption includes rice, potatoes, and only occasionally meat. Potatoes seem to be the only type of vegetables consumed. Several interviewed workers lamented that rice provided as part of the ration is of bad quality. One woman who has been working in the plantation for the past five years told the FFM team that her average daily wage is 120 INR, equivalent to 6,000 INR per month. She buys rice and potatoes. An average wage for a fortnight is 1,100 INR. According to her, and several other workers present during the interview, the payment is often delayed. One elderly female worker deplored the fact that neither benefits nor a pension had been paid to her. Another female worker complained that she has been waiting for the payment of her deceased husband's pension for the past 10 years. A household spends an average of 650 INR on rice,

200 INR on meat, 100 INR on spices, and 100 INR on children's education (such as transportation) per fortnight. Several workers mentioned that many have debts, amounting to 2,000–3,000 INR, owned mostly to storeowners. The debts are paid back when the workers receive their annual bonus (around 5,000 INR).

### 4.3.2.7. Access to recourse mechanisms<sup>70</sup>

The workers submitted a Charter of Demands<sup>71</sup> to the management, but there was no action taken by the management. The workers were discouraged that the manager was "not willing to meet us".

*"Retired, no benefits, no firewood, no pension. I have no house. My husband died 10 years ago, but I have not received my husband's pension. The plantation has not provided me a house so I made it on my own". (A female worker, age unknown)*

### 4.3.3. Chamurchi Tea Estate

In 2009, Chamurchi was taken over by Chamurchi Agro India Private Limited, which had interests in jute, but little experience in tea. The management that had owned the garden earlier had left the estate in August 2002 but the garden was officially declared closed in 2004. During the period of closure, the operation and management committee of the garden, in charge of selling the green leaves, paid 50 INR per day to each of the workers. A PBKMS-IUF study in 2005 estimated that the workers of Chamurchi had dues of 38,177,792.36 INR owed

<sup>69</sup> In the letter dated April 22, 2016, APPL states that "[t]he water points are in the ratio of one for every 4 Households and sufficient water is supplied to all the Households for 6hrs every day. The ring wells have elevated sides so that no one can fall in."

<sup>70</sup> In the letter dated April 22, 2016, APPL states that "The Estate has Estate Employee Council (EEC) made up from representatives of the workers, Staff and the Union and the management. Common Issues [are] brought up and discussed along with democratic suggestions for resolving the same." The letter also says that "Both Estates have a well-defined grievance redressal mechanism and a complaint register which is maintained and addressed regularly. There is the time tried and tested forum of Bi- partite and Tri- partite meetings to settle disputes. These are enshrined in the Provisions of the Industrial Disputes Act."

<sup>71</sup> See Annex 5.

to them after the closure.<sup>72</sup> After the estate's reopening, workers did not get most of the dues. According to the workers interviewed, the current wages have been kept for the past six years.

#### **4.3.3.1. Housing and living conditions**

No housing has been provided by the company, and the houses built were constructed by the workers. A strong storm last year destroyed some houses, but the management did nothing.

#### **4.3.3.2. Wages/working conditions**

According to the workers interviewed, they receive 95 INR per day (against 122.50 INR which is the agreed wage per day). However, the workers do not receive any pay slips. An average wage for a fortnight is about 1,000–1,040 INR. Although some amount for the Provident Fund is deducted, the workers do not know whether they receive it. The bonus received was 13 per cent (contrasting to the previously agreed 15 per cent, even though the industry-set bonus is 20 per cent).

There is no latrine available at the workplace.

#### **4.3.3.3. Maternity protection**

A few children suffered from diarrhoea last year. When children become sick, families do not have money to buy medicine. There were two cases of deaths of infants recently in the plantation. There is no Integrated Child Development Services (ICDS) centre.<sup>73</sup> The so-called "centre" is merely a

rug of some 2 x 3 metres placed on the street where cars and pedestrians pass by (see picture below). On the day of the FFM, there were 14 children present. An Anganwadi worker cooks for the children by the same roadside and serves the food there. During rainy seasons, the Anganwadi worker is allowed to use a neighbour's verandah for a fee of 100 INR.

#### **4.3.3.4. Access to health care**

Common sicknesses and diseases are diarrhoea and tuberculosis. If family members become sick and need to see a doctor, they are carried to a state-owned hospital situated a few km outside the plantation, as the plantation hospital does not have any medicine. Very often, the workers take only one type of medication irrespective of the type of sickness or disease.

#### **4.3.3.5. Access to water and sanitation**

Water supply at the plantation is inadequate. Among the 950 total households, some 250 families do not have sufficient water. Even if water is available, the supply is only for two or three hours a day. There is only one water pipe which transports water from a nearby water stream (1 km distance). No serious sicknesses nor water-borne diseases are known to the plantation workers' families. However, some workers mentioned that even boiling water fetched from the nearby river has not stopped the occurrence of diarrhoea and other sicknesses. During the dry season (April–May) there is no water in the vicinity, so water must come from Bhutan. The water tank (see picture below) was built seven years ago by the State Government of West Bengal. Although water was pumped up and kept in the tank, the tank started to leak, and there was no water thereafter pumped. The tank was not repaired once. The panchayat has submitted a complaint three times, even to the District Magistrate of Jalpaiguri, but to no avail. Water is also intended for some plantation workers' families living nearby.

<sup>72</sup> A. Talwar, D. Chakraborty and S. Biswas: Study on Closed and Re-opened Tea Gardens in North Bengal (Paschim Banga Khet Majoor Samity (PBKMS) and International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, Plantation and Allied Workers' Associations (IUF), 2005). Available at [www.iufdocuments.org/www/documents/PKMS-IUFstudy.pdf](http://www.iufdocuments.org/www/documents/PKMS-IUFstudy.pdf)

<sup>73</sup> Also known as anganwadi, these childcare centres provide programs and services under the ICDS, such as supplementary feeding, immunization, health checkups and referrals, health and nutrition education to adult women, micronutrient supplementation and preschool education for 3 to 6 year olds. These services are delivered by so-called „Anganwadi workers“.

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"ICDS Center" in Chamurchi. It is situated on a road with vehicular and pedestrian traffic.  
Photo: Flavio L. S. Valente/FIAN International



### Case Study 1 – Female tea plucker

S.N. is 50 years old and works as a permanent worker at the plantation. She has a husband, two sons and three daughters. Of her five children, three are still young (grade five and grade two, and one small child not yet attending school).

S.N.'s first son completed eighth grade but he could not continue, as the family did not have enough money to send him to school. A total of 500 INR per year is required for schooling, which includes admission fees, books and school materials. The son is now 22 and is looking for a job again. He does not have an ID card so he is not allowed a job in Bhutan. S.N.'s husband does not work in the plantation but he is employed on a casual basis at a construction site in Bhutan and earns 120 INR per day, or 1,000–1,500 INR per month. He has a six-month visa to work in Bhutan. Because of a physical handicap, he is not able to work every day. He takes a small breakfast in the morning and walks to Bhutan (3 to 4 km). As a permanent worker, S.N. earns 1,000 INR every fortnight. Sometimes she is paid less because the manager happens not to have exact change, so she accepts whatever payment she gets, even if it is a few INR less. For 1 kg of extra leaf picking (ELP) beyond the task work, which is 22 kg, 1 INR is paid. S.N. says that other gardens seem to pay more (3–5 INR) for one kg of ELP. A total of 2 kg is automatically deducted from the total amount of tea leaves plucked for the bag, and 4 additional kg is deducted when it rains. The family monthly wage amounts to some 3,500 INR. S.N. does not know if the Provident Fund is paid, as there are no receipts. However, she does know that there is a deduction of 44 INR per month for that fund.

The monthly ration provided by the State Government is 18 kg of rice and 30 kg of wheat, for which S.N.'s family pays 2 INR per kg. Occasionally the family fetches tea leaves from the garden to

make tea flour. A typical meal for the family is rice porridge. On the day of the interview, S.N. told the FFM team that she has had rice porridge three times a day for the past three days. On other days, if other food items are available, then the family eats potatoes (mashed potatoes and potato curry) and some vegetables aside from potatoes (such as eggplant). The family does not remember when they had last eaten meat.

Regarding family expenditure, S.N. listed the items (and the prices) purchased the last week as follows: 650 INR on rice, 100 INR on vegetables, 100 INR on one kg of dal, 140 INR on milk (need to take care of a baby who does not have parents); and during the past six months, 500 INR were spent for school. Additional regular expenditures include 90 INR for three bars of soap, 60 INR for half a litre of oil, 40 INR for washing powder, 1,000 INR (every three months) for electricity, and a total of 3,000 INR per year on clothes, bedsheets, and medication.

The “kucha” (a hut) is in bad condition; it was not provided by the management so the family themselves built it.

Water is a problem.

The distance to school is far, the way to school is muddy, and children must go through a canal.

“*Shab Roger Ekai Ushad (shabbibaliyonkaek hi dawa)*”–There is only one medication for all types of diseases and illnesses. S.M. does not know if the doctor is qualified. The distance to the garden hospital is 8 km and there is no car to get there.

S.M. demands an increase in wages in order for the family to be able to sustain themselves.

### Case Study 2 – Maternal death

S.U.(husband)/M.U.(wife)

Their son was married at a very early age to B.U., also extremely young. B.U. died one year ago, immediately after giving birth at home to her baby girl, who also died, right after her birth. B.U.'s pregnancy was normal. There was not much bleeding. The delivery was assisted by B.U.'s mother, who is severely debilitated by malnutrition and mental illness. B.U.'s first child

is a girl who is presently 10 years old and lives with S.U. and M.U. (see picture below). B.U. was 18 years old at the time of her death (which would mean that that she gave birth to her first baby at the age of 8). Even taking into account a possible error of months or a year in the age estimates, this case demonstrates the complications of early marriage and pregnancy. After B.U.'s death, the son of S.U. and M.U. moved to another town and remarried.

S.U. and M.U. (B.U.'s parents in law) | Photo: Flavio L. S. Valente/FIAN International



**Case Study 3 – Child malnourishment**

S.M. (male, born on 3 August, 2013)

Both of S.M.'s parents are tea plantation workers. S.M. appeared obviously malnourished at the roadside ICDS centre (see picture). This was confirmed by the weight curve which showed a steep downward incline from the age of eight months, to below -2SD (see picture below). A home visit was made to find out the cause for this weight loss.

The mother was not given any light work during her pregnancy, and her task work remained 23 kg until she gave birth. After birth, she received

the usual maternity leave and at the end of her maternity leave, she took her baby to the crèche. There the baby was fed plain milk or formula milk with a biscuit once in the morning. At 11.30 a.m., the mother had her lunch break, took the child home, breastfed him, and then took him back to the day-nursery with plain milk so he could be fed in the afternoon. She breastfed the child and gave him little else to eat up to the age of one year. Now she gives him a small amount of the kind of food that the family eats, in addition to breast milk. S.M. had a severe cold and cough when he was seven months old, suffered from diarrhoea at the age of one, and thereafter had jaundice.



Growth and weight chart of malnourished child. Up to 18 months, growth was normal, but from then on, the growth curve flattened, indicating acute malnutrition.  
Photo: Flavio L. S. Valente/FIAN International

### Case Study 4 – Tea plucker family

S.M. is around 45 years old. She lives with her husband, her son and her daughter-in-law, and the son and daughter-in-law's two children (three-year-old boy and four-month-old baby girl).

Both S.M. and her husband are permanent workers and both of them receive 1,145 INR each for every two fortnight's work. Their son is a casual manual worker.

S.M. started to work on the plantation four or five years ago. Before taking up this job, she was a casual worker in Chitun at a construction site, carrying sand and mixing cement. Up to the present, she has missed only one day of work at the tea garden; however, she feels incessantly sick. She has been coughing constantly for the past two years. She coughs even more in winter, which does not allow her to work properly. She always feels tired and is losing her appetite. She has coughed yellow and green sputum, but it is usually mostly transparent. Cooking is done outside and no one in her family smokes nor has tuberculosis.

S.M.'s husband is frequently absent from work because he has gastric discomfort which started four to six years ago. He constantly has abdominal pain and has to use the toilet frequently. If he does not regularly go to work, his wage is reduced to 600 INR for the two weeks. S.M. has gone to a

hospital owing to shortness of breath and heavy breathing, but this requires travelling to another city with the additional expense of hiring a taxi. For a blood test, she must pay 900 INR. She visited the hospital three or four times last year. Although she was not diagnosed with tuberculosis, the doctor told her to get a second opinion.

In order to have cash to buy medicine, the couple has sold livestock and their bicycle and mortgaged household utensils. Reduced wages have an implication on their food intake: Sometimes they do not eat breakfast, and they do not buy vegetables. There is no reduction in sugar purchases and consumption. They regularly consume rice. The family shares food and eats together. When there is no food, then there is no food for all. There was no food on the table last Tuesday because they had taken loans to repay debt.

S.M.'s granddaughter has suffered weight loss in the past, but she has no real sickness. She is exclusively breastfed. The three-year-old boy was breastfed for a year. Every now and then, the children have fever and colds. Both children had diarrhoea the week before the interview. The river is the main water source and there is a pipeline which connects the water to labour lines; everyone drinks this water without boiling it. Rainwater is also collected.

### Case Study 5 – Death due to tuberculosis

S. became ill two years ago. He died nine months ago. Before S. was diagnosed with tuberculosis, he had already started to lose weight. According to his wife, S. initially recovered somewhat after treatment. However, S. did not stop consuming alcohol, and had to be taken to another hospital. His wife claims that S. already had tuberculosis before their marriage, as well as an alcohol problem.

Lack of food intake was less of a problem when S. was younger. However, owing to tension, he incurred debt, and his inability to pay off the debt caused further tension, which led to more drinking and weight loss.

According to S.'s wife, S.'s younger brother had also died (although she did not know the reason),

as well as S.'s first wife, who suffered birth delivery complications. S.'s wife now lives with her four-year-old son. He was suffering from a cold the day before the interview. She feels chest pain and "heat" when she works, has no appetite, and feels lethargic. However, she does not want to go to hospital. She tells the FFM team that people have told her that she is losing weight. She says that she has no phlegm (cough), no diarrhoea and no hematuria.

She was advised by the FFM team to identify a doctor and go to his/her service to get a second opinion on her cough history, and to be able to protect her son as well, in case she has tuberculosis.



Family house showing the unsanitary and crowded conditions that often lead to the easy spread of tuberculosis. Photo: Flavio L. S. Valente/FIAN International

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### 4.3.4. Hantapara

The conditions of the Hantapara tea garden (the total size is 600 hectares) started to deteriorate in 2002, and it was a “sick-garden” between 2004 and 2007. Some 80 per cent of the bushes are 100 years old. Since February 2015, it has become dysfunctional (closed). It is the first time that the plantation has closed. There were some 1,700 permanent workers and around 1,850 casual workers before the closure. The total number of households living in the plantation is 1,400, or around 8,000 individuals. The plantation is owned by the government, but the factory belongs to the owner.

#### 4.3.4.1. Wages/working conditions

According to a retired supervisor, there has been no work available since the closure, and there is a backlog of payments of over eight months. For the past 30 months, the workers have also not received the government ration (5 kg of rice and 4 kg of wheat per month per permanent worker, subject to a payment of 2 INR per kg for both the rice and the wheat).

*“Human rights are only for rich people. Everything is on paper but no pension has been paid, no single wage since eight months.”*

*(A male worker, age unknown)*

Although the workers have talked to the management, there has been no action from its side, nor any sign for re-opening, and the management sends occasionally to the garden only an assistant manager. The State Government of West Bengal has provided a ration free of charge in May and June and is aware of the non-deposition of the pension fund. A case against the management has been filed at the Criminal Investigation Department. According to the workers, the Provident Fund has been deducted for the past three years, however, without any deposit. In order to sustain their livelihood, many workers started “cash picking” for 4 INR per 1 kg for one and a half months during August and September 2015. However, no cash picking is available now. Some workdays are

available within the government-scheme of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA);<sup>74</sup> however, the number of workdays is insufficient and they are available in only a few places. There were even delays in payment reported.

#### 4.3.4.2. Access to water and sanitation

So far, the government has only provided a new transformer mainly to pump water. Even if it works, water is insufficient, as the pump can provide for one labour line only and the workers need to pay for diesel for it to work. Owing to the lack of safe drinking water, the workers are compelled to buy water from traders. A deep tube well is badly maintained, and the generator runs only 20 minutes a day. “This is the source of our water. The manager did not give NOC,” one worker complained. The management has not paid the electricity bill, and the burnt-out meter has not been repaired or replaced.

#### 4.3.4.3. Access to education

Several workers are worried about their children being able to attend school. There is no bus operating. Thus, the workers must rent a bus, hire a driver and pay for diesel, which is an additional economic burden on the families. The school is located some 20 km away.

#### 4.3.4.4. Food consumption

Since the closure of the plantation, most families have been facing food shortages. Most families eat once a day, the meal consisting of rice and salt, and some potatoes if families can afford them. Other families, as revealed during the case studies, eat rice mixed with diluted tea and tea flowers, along with cooked berries and leaves foraged from the tea plantation.

One of the alarming social effects of the closure is the increase of forced migration of women (but also men and children) from the plantation. The FFM team was told that some 600 to 700 women have already migrated to Bhutan, or they work in other tea gardens close by.

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<sup>74</sup> MGNREGA provides 100 days of employment to rural households.

The workers are highly critical of the inaction of the State Government and question why it has failed to do anything during the last three years. The workers have never raised the issue in the past because even with delay, their wages were always paid. The Hantapara workers demand the following:

- 1) re-opening (or declared official closure) of the garden;
- 2) re-admission of the workers;
- 3) provision of water;
- 4) transportation for children to school;
- 5) payment of arrears;
- 6) provision of health facilities/ ambulance;
- 7) maintenance of the houses;
- 8) status of the plantation as a cooperative.

#### Case Study 6 – B.M. (female plantation worker, age unknown)

Since the closure, B.M. has worked as a stone crusher, making 40 INR day. She cannot work every day because she is weak. B.M.'s son is 18 or 19, and he helps her by loading stones from a vehicle, contributing approximately 500 INR per month. Her husband (who was a permanent worker before the closure) has migrated to Kashmir, but B.M. has no information about his whereabouts and has no contact with him.

She does not have any livestock, no kitchen garden. Before the closure of the garden, the two family members had boiled potatoes, rice, meat,

leaves, oil (1/2 kg for two weeks), and pulses and dal only occasionally. If money was available, B.M. bought 10 INR of dal, 5 Kg every fortnight. Since the closure of the garden, there has been a major food-intake change: B.M. has stopped eating meat completely. Before, meat consumption was at least once a week. B.M. has also stopped buying vegetables from the market. Before the closure B.M.'s husband was the only wage-earning member of the family (his wage was 1,500 INR per month). Currently B.M. receives 3 kg of wheat and 1 ½ rice rations (16 INR per kg) every 15 days, but this lasts only four or five days.

#### Case Study 7 – G.O. (female plantation worker, age 30 +)

G.O. is a female plantation worker and has three children. The eldest, a 16-year-old youth, was away working in another state; she was not sure whether it was Punjab or Kalimpong. He sends her money from time to time. Her elder daughter, around 10 or 11 years old, was also working away from home, washing dishes in a restaurant in Kalimpong, she said. According to the neighbours, both siblings worked with the same employer. At present, G.O. and her younger daughter, about eight years old, were living in the house built with the money sent to her by her son. The construction of the house

was supervised by the employer of her children. The house itself had a thatched roof which leaked if it rained. The floor was made of brick roughly joined together with cement. In the place of walls, there was coarse matting put up to shut out the elements (rain, wind, sun, etc.) which had free entry through the large gaps in the matting. It was lunchtime during the interview. Her daughter sat down with a medium-sized bowl half full of rice mixed with diluted tea. For vegetables, she had cooked tea flowers, and berries and leaves foraged from the tea plantation. Her mother said she could not afford to buy vegetables.

**Case Study 8 – L.B. (male plantation worker, age 28)**

L.B. (28) was married to R.B. (25). He worked as a pesticide sprayer for five years in the Hantapara tea estate. He used to spray six days a week and earned 1,600 INR per month. In 2014, when the garden closed, he went to work in Bhutan as a factory worker for 6,000 INR. He worked five months at a stretch and then returned home. He had no known health problems.

**Symptoms:** The symptoms first appeared about 15 days after his return from Bhutan (5 October 2015). He had gone to another garden for a function (19 October) with a brother. When he returned home, he complained of weakness, joint pains, high fever, but at first with no diarrhoea.

**Evolution:** He went immediately to a country doctor. There was no improvement. Some eight

or nine days later, he developed jaundice. On 4 November, he went to a regular doctor in Madarihat. He received no prescription and no recommendations. The family was told to go to Elipurduar Hospital, but they did not have money for that. However, the next day, the family did go to hospital, but L.B. was not admitted, with no reason given. He was sent then to the Medical College Hospital, where he was admitted; the family was told that he was severely anemic and that the liver was heavily damaged. He died on the same night of admission.

There was no history of a similar case in his family or community. He drank socially.

Pesticide intoxication should be investigated.



## 5. Human rights analysis

### 5.1. Human right to food and nutrition

Today, the tea plantation workers of Assam and West Bengal are mostly, if not exclusively, dependent on the wages they receive from working on the plantation in order to feed themselves and their families. Alternative means of subsistence for female and male workers are almost non-existent at the plantations. Despite the existence of free tracts of land in the different tea gardens visited, in only one plantation were the workers and their families given a small plot for paddy cultivation. Even in closed gardens, the workers and their families do not use available land to grow food for consumption. In only one of the visited closed gardens, the workers and their families had occupied the land and were actively producing food for their consumption and sale in the market as well. This group is formally claiming the land for themselves.

The wages—as it was revealed during the FFM—are inadequate for plantation workers to feed themselves and their families. Meagre wages compel some families (male members exclusively) to supplement their household income either by selling home-made liquor (Assam) or by sending some male family members to work outside the plantation as casual labourers. The average wage of a tea plantation plucker amounts to 1,000 INR per fortnight (equivalent to 122 INR per day) in both Assam and West Bengal. Very often, the tea workers' abysmally low wages are reduced with deductions being justified by the non-performance of certain assigned tasks. Unjustified deductions also are made by the management in relation to the amount of tea leaves plucked by workers. Many workers, in Assam especially, complained that they are not provided with the necessary work equipment and thus must arrange for their own, leading to additional expenditures. Another concern is the cycle of debt in which the majority of plantation workers' families are trapped due to the inadequate wages

they receive. Often, families must borrow from the management (either with or without interest rates, which in some cases amount to as much as 100 per cent), other family members, or shopkeepers to obtain additional money to buy food, purchase medicine, pay for children's school fees, or provide for unforeseen expenses such as funerals. Since their regular wages are meagre and not enough for the workers to feed themselves, families borrow money to fill the gap—however, without any savings, half of their wages goes to pay off debts, and thus many find themselves in a permanent vicious cycle of indebtedness. Moreover, the delay in wage payment and a backlog of payment in some plantations exacerbates the situation. In one plantation, the workers disclosed that no pay slips had been given to them. Owing to meagre wages and a reduction of those wages due to debt payment, families have no choice but to limit their food intake, omitting one meal a day or being compelled to buy only cheap items in the market to supplement their food intake beyond the food rations they receive and what they can find in the nearby forest. Other families completely stop buying certain food items such as vegetables and meat in the market, denying therefore their access to a diverse nutritious diet. Some households, however, utilize small plots of land within the premise around their houses to do family gardening and grow vegetables and fruit, supplementing their daily nutrition intake. These small plots are extremely important in guaranteeing not only food diversity intake, but also in giving a sense of independence to tea workers. Furthermore, the plantation workers are entitled to rations given by the management as well as the government, assuming workers possess ration cards. The amount of ration provided, varying somewhat between the plantations, was still insufficient in amount and inadequate in quality. In one closed plantation visited, the workers had not been given rations by the management for over 30 months—here especially, the nutritional status of workers was alarming, with several malnutrition-related deaths already reported. Not only do rations supplement food-intake of many tea plantation workers, but in severe situations, they may be the only food available to the families.

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As a State Party to the ICESCR, India-specifically the State Governments of Assam and West Bengal– has failed to protect the RTFN of plantation workers in Assam and West Bengal, by failing to prevent plantation management from their depriving workers economic access to their right to food and nutrition. The State Governments of Assam and West Bengal must protect the RTFN of tea plantation workers by eliminating delay in wage payment; but when delay occurs a penalty should be imposed on plantation management as per the PLA. Furthermore, the State Governments have breached their fulfilment obligation in failing to guarantee that the wages of tea plantation workers meet the national minimum income level. Furthermore, the non-issuance of ration cards to those tea plantation workers whose fulfilment of the right to food and nutrition depends on rations, as well as the provision of rations of poor quality, constitutes a breach of fulfilment obligations (as well as protect obligations) under the RTFN. In one plantation, the State Government of Assam did not protect the RTFN when a small portion of land utilized by tea plantation workers was seized by the plantation owner without payment of any compensation for the lost land. As narrated by families, home gardening contributes to healthier diets, since most workers either stop buying or buy less nutritious food such as vegetables and fruit when there are wage cuts or when workers are unable to afford these items because of their high prices in the local market. With respect to the case of the closed tea garden in Hantapara, the State Government of West Bengal has breached its fulfilment obligation by failing to provide immediate relief (either direct provision of food or provision of cash to buy food). This is also a breach of Article 21 of the Indian Constitution. As it was observed by the FFM team, which included medical doctors, the extremely thin appearance of a significant portion of female tea pluckers, female adolescents and young children, many of whom complained of fatigue and showed clinical signs of anemia, inevitably led to the assumption that malnutrition is pervasive among tea workers and their children. This assumption is also supported by testimonies of doctors the FFM team interviewed in the government hospital in Assam

and by different studies. India as a State Party to the ICESCR as well as CEDAW and the CRC must fulfil its obligation vis-à-vis the RTFN in formulating a policy to guarantee, in particular, the RTFN of the tea plantation workers, who for reasons beyond their control are food insecure and suffer from hunger and malnutrition. Measures and policy changes that involve promoting enhanced breastfeeding (by allowing breastfeeding mothers to have more breaks during working hours), increasing the quality and quantity of food rations, and supporting programmes and policies that promote the capacity of the tea plantation workers to feed themselves in dignity by guaranteeing them access to natural resources (e.g. provision of a piece of land for small-scale cultivation and technical support, such as training) can all contribute to the fulfilment obligation of India in guaranteeing the RTFN of the tea plantation works and their families.

### 5.2. Women's rights

Violations of women's rights and discrimination on the basis of gender, in violation of CEDAW, the ICESCR, the CRC, ILO Conventions, and the national laws, were found in virtually all tea gardens that were visited during the FFM. As a State Party to all of these international conventions, India has a duty to ensure women's equal enjoyment of the right to work; however, India is in violation of its obligations to respect, protect and fulfil women's right to equal work in the context of tasks assigned, promotion opportunities, wages, status, and access to benefits–and all related rights. India is in violation of its respect-obligation under international human rights and labour law because of the discriminatory implementation of the PLA, which is an Indian law; in violation of its protect-obligation because it fails to protect female workers from discriminatory treatment by tea plantation employers; and in violation of its fulfil-obligation because it fails to take positive measures to promote and facilitate women's enjoyment of their right to work and related rights.

### 5.2.1. Discrimination on the basis of gender

As a party to CEDAW, India has a duty to ensure women's equal enjoyment of the right to work (Arts. 1 and 11); however, unlike men who dominate better paid clerical and management positions in the plantations, women who work almost exclusively as tea pluckers are barred from any promotional opportunities. This inability to perform other tasks results in the lack of opportunities for higher wages for women, thus severely impeding the realization of women's RTFN and related rights. Similarly, in some tea gardens that were visited, there was a disproportionately high number of female casual workers as compared to males—this is significant because, in violation of the PLA, casual workers do not receive the same benefits as permanent workers. While Indian law under the PLA does not distinguish between temporary and permanent workers with respect to benefits, in practice temporary workers are excluded from benefits and need guarantors if they are to seek health care, for example. Thus, not only are temporary tea plantation workers' rights under the PLA being violated, but also the rights of female workers with temporary status are being violated under CEDAW's Article 11 (right to work) and Article 1 (right to non-discrimination). This temporary status affects mostly women and has an impact on every aspect of their lives, including their ability to access basic social services. This lack of equal work opportunities for both men and women in tea plantations seems to also impact the professional personnel in the tea gardens. Women often complained that there were very few female supervisors and hardly any female doctors in the tea gardens; they also explained that those women who engaged in activities to protest against the management often suffered retaliation.

### 5.2.2. Maternity protection

Women in virtually all tea gardens reported violations of their maternity protection rights under Indian Law (Section 32 of the PLA and the Indian Maternity Benefits Act of 1961), ICESCR (Arts. 7 and 12), CEDAW (Arts. 11, 12, and 14 and General Recommendation



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India is in violation of its human rights obligations to respect, protect, and fulfil women's rights, in particular those related to equal work in the context of tasks assigned, promotion opportunities, wages, status, and access to benefits.  
Photo: Kai Horstmann

34), CRC (Art. 24), and World Health Assembly (WHA) Resolutions.<sup>75</sup> In particular, these violations related to the protection of the health of the mother during pregnancy, maternity leave benefits, breastfeeding breaks, and prenatal and postnatal care.

While the ILO Maternity Protection Convention (2000) deals specifically with maternity protection at the place of employment, India has not ratified this instrument.

#### **5.2.2.1. Safe working conditions**

Article 11 of the CEDAW requires State Parties “[t]o provide special protection to women during pregnancy in types of work proved to be harmful to

them”; however, India is failing in its obligation to protect pregnant tea plantation workers in Assam and West Bengal from potential harm. Workers from all gardens complained that women continue performing the same tasks throughout their pregnancy, typically right up to their eighth month of pregnancy, which is when most women begin taking maternity leave. Pregnant women are expected to pluck the exact same amount of leaves as the others, as no break is given to them; their wages are deducted if the task work is not met. Women also reported having to go back to work two months after the delivery, and not being provided with any sort of relief upon return, in violation of the CEDAW’s Article 12(2) (requiring State Parties to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period”) and the CRC’s Article 24(d) (“to ensure appropriate pre-natal and post-natal health care for mothers”). The FFM team encountered several women who had explicitly asked

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<sup>75</sup> There are many WHA Resolutions which are continuously adopted. See: [http://ibfan.org/art/WHA\\_resolutions-from-code-essentials.pdf](http://ibfan.org/art/WHA_resolutions-from-code-essentials.pdf).



Violations related to the protection of the health of the mother during pregnancy, maternity leave benefits, breastfeeding breaks, and prenatal and postnatal care were widely reported. Photo: Alex del Rey / FIAN International

management for relief (for example, fewer working hours and lighter tasks) during the pregnancy and lactation periods, but had been in fact scolded by management for these requests. Furthermore, it was found that leaves are often plucked only 12 days after pesticides were sprayed; considering that tea pluckers are usually women, the risk of exposure of pregnant and breastfeeding women is very serious. There may be deleterious consequences for the mothers and the newborns following the exposure. During a visit to the Dibrugarh Medical College, an Assistant Professor of Gynaecology confirmed that pre-term births and still births were common amongst the tea garden population. While the team was unable to confirm the precise reasons for the high level of pre-term and still births, a potential reason, among other possibilities, could be exposure by the mother or father to certain pesticides, especially endocrine-disrupting pesticides, reproductive toxins and teratogenic pesticides.

### **5.2.2.2. Maternity leave**

Under Article 11 of the CEDAW, India has the obligation “to introduce maternity leave with pay or with comparable social benefits”. While tea workers are entitled to maternity leave under Indian law, this falls short of that which is required under Article 4 of the ILO Maternity Protection Convention (2000), which states that women are entitled to a “period of maternity leave not less than 14 weeks” and “six weeks compulsory leave after childbirth”. While India has not ratified this ILO Convention, this is what India should aspire to provide as minimum; however, all women interviewed in Assam and West Bengal reported a maximum of three months of maternity leave—one month before the delivery and two months after the delivery, which would be the equivalent of 12–13 weeks. Furthermore, workers reported that temporary workers did not receive any maternity benefits and thus, did not even receive the 12–13 weeks of paid leave that permanent workers were able to receive, clearly in violation of both Indian and international laws.

### **5.2.2.3. Breastfeeding protection**

Article 11 of CEDAW requires States Parties “to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”. Similarly, CEDAW General Recommendation 34 on the rights of rural women goes further by saying that states should allow women “to breastfeed during working hours” (Paragraph 52(h)). In direct violation of international law, several of the women interviewed reported that there were no breastfeeding breaks provided. Women talked about having to return home during their lunch breaks to breastfeed and about rushing home to breastfeed their infants after the tea leaves had been weighed at the end of the workday. The long waiting lines for weighing were particularly problematic for breastfeeding women, as these severely affected the remaining “free” time they had to breastfeed their children. Those women who did not live close by talked about having to pay someone or relying on older children to bring their infants to them during their lunch breaks. Furthermore, there were reports of management harassing women who they saw breastfeeding their children by calling them pejorative names. While Article 12 of the PLA states that “in every plantation wherein fifty or more women workers ... are employed ... or where the number of children of women workers ... is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women”, many women, especially from the plantation in Assam, reported day-nurseries as being inadequate, unsanitary, unable to be used by infants because of a policy that only children who can walk are allowed, and in the worst cases, simply not available at all in their particular tea garden. More specifically, where day-nurseries were available, these had no buildings and consisted of a tarpaulin hung for shade for the children, with a consistent lack of clean water and a shortage of workers to look after the children.

The lack of breastfeeding breaks and crèches potentially constitutes violations under Article 24 of the CRC, as this article emphasizes the right of every child to adequate and nutritious food and the right of the mother to pre- and postnatal care. Furthermore, WHA Resolutions recommend adequate maternity leave that enables mothers to exclusively breastfeed their children and for facilities to be provided at the workplace.

In addition, there does not seem to be any arrangement to ensure that women know about best practices for infant and young child feeding, in violation of the CRC (Art. 24) and CEDAW (Arts. 12, 14 and General Recommendation 34). In light of this, some women interviewed reported having no knowledge about the importance of exclusive breastfeeding, while other women reported their infants being given animal milk or formula at the crèche, and in some cases, children were also given biscuits.

#### **5.2.2.4. Maternity benefits**

Article 12 of the CEDAW calls for States Parties “to introduce maternity leave with pay or with comparable social benefits”. Furthermore, under the PLA and the Maternity Benefit Act of 1961, tea plantation workers have these rights under Indian law; however, India is in violation of maternity benefits rights under both international and domestic law, in particular in relation to temporary workers. The PLA does not distinguish between permanent and temporary workers in regards to benefits, including maternity benefits and access to health care; however, the reality is that temporary female workers do not receive the maternity benefits they are entitled to under Indian and international law.

#### **5.2.3. Prenatal and postnatal care**

Article 12 of CEDAW makes clear the importance of appropriate health services for women during “pregnancy, confinement and the postnatal period ... as well as adequate nutrition during pregnancy and lactation”. Women widely reported hospital

care as being inaccessible, since transport to the hospital is not always available, which results in childbirth occasionally taking place at home. A visit to the Dibrugarh Medical College in Assam revealed that prenatal care is appalling in the tea gardens. Physicians reported that virtually all pregnant women from the tea plantations come in with nutritional anemia and eclampsia, and one physician went as far as claiming that from his experience, 8 out of 10 women who die because of labour complications are tea workers.

### **5.3. Indivisibility and interconnectedness of rights**

#### **5.3.1. Human right to water**

Most plantation labourers interviewed reported that there is a lack of adequate safe drinking water (in both quality and quantity) at the labour lines as well as at the worksite. Because of the lack of firewood, workers’ families are unable to boil water as a means of purification. In addition, very often there is not enough water for tea workers to wash their hands properly. Moreover, several workers who spray pesticides stated that because of the lack of water, there is no washing facility in the field, so they cannot wash their hands before taking a meal during the lunch break. Although exposure through spray draft is common, workers do not get to clean themselves immediately after exposure because of the unavailability water. Some workers also informed the FFM team that mixing of chemicals is done near the tube well/water pumps, thus eventually contaminating the sources of drinking water. When pesticides are not being sprayed in the tea estate, the water tank used for mixing water with pesticides and other chemicals is used as a regular water tank by families.

Not only is non-provision of water, both at labour lines and at the workplace, a violation of the PLA, it is also a breach of the human right to water. The



State authorities have failed in their obligation to ensure access to drinking water and to protect the sources of water for human consumption against contamination by pesticides.  
Photo: Kai Horstmann

State Governments of Assam and West Bengal have failed to protect the right to water of tea plantation workers by not taking measures to safeguard the enjoyment of this right from the interference of third parties, i.e. plantation managers. Furthermore, the failure of the authorities to ensure access to drinking water and to protect the sources of water for human consumption against contamination by pesticides is a breach of states' obligations. Additionally, the non-action (omission) of the State Government regarding the repair of the government-constructed water tank at Charmuchi, despite several complaints of the tea plantation workers, constitutes a breach of the respect obligation under the human right to water. The state is obliged to promote the right to water by ensuring education on the hygienic use of water and the protection of water resources.

### 5.3.2. Human right to work

#### 5.3.2.1. Just and favourable conditions of work

Article 7 of ICESCR recognizes "the right of everyone to the enjoyment of just and favourable conditions of work". Just and favourable conditions of work entail that there is remuneration which enables workers to have a decent living for themselves and their families, that there are fair wages and equal remuneration for work of equal value, safe and healthy conditions, and also equal opportunity for everyone to be promoted without discrimination. As earlier explained, the lack of adequate wages not only threatens the RTFN of the plantation workers, but it also forces workers to compromise on other basic needs such as health and children's school fees, thus contributing to the deterioration of a set of other basic human rights (see below).

The tea plantation industry is labour intensive; the task of female tea pluckers involves hours of standing, exposing the women to several occupational hazards, such as pesticides and fertilizers. During the peak season, work is physically arduous with no break except for a 45-minute (in some plantations, 30-minute) lunch break. However, in some plantations, weighing of tea occurs during the lunchtime; thus many



workers end up queuing and therefore forgoing their break. Furthermore, despite the physical hardship involved in plucking the tea leaves, working hours are the same for all workers irrespective of age, health conditions, and whether women are pregnant or not. Pregnant workers are expected to do the same job and fulfil the task work until they take their maternity leave.

Although the government departments and agencies such as Central Insecticides Board (CIB) and Registration Committee (RC) & RC, the Labour Department, the Tea Board, Tea Research Associations, along with international regulatory bodies, have made mandatory requirements and protocols for handling pesticides, field data show that often these are not implemented as required. The use of pesticides in tea plantations is found to violate occupational health and safety legislations laid out nationally and internationally. As per the information gathered from the plantation workers during the FFM, 27 brands of 25 different technical ingredients of pesticides, insecticides, fungicides, herbicides and plant growth regulators are used in the tea plantations in the state of Assam. An analysis by Pesticide Action Network India reveals that 10 of the 25 technical ingredients are highly hazardous pesticides and 9 are endocrine-disrupting pesticides, which can cause hormonal disorders. In spite of these facts, workers engaged in pesticide spraying are not given protective equipment (such as protective gear) when applying pesticides. In most cases, only poor-quality gloves and shoes (and not gear masks) are available. Many workers have reported that protective gear is provided only during inspections. There are also no training sessions (except for supervisors) on the use of pesticides, safety aspects, precautionary measures to be followed, and the use of and types of personal protective equipment (PPE) and how to properly wear the equipment. Some occupational hazards (and health risks) related to pesticide spraying are as follows: improper and multi-use of PPE (leading to risk of infection or contagious diseases such as tuberculosis), pesticide spillage, exposure through spray drift, and longer spraying hours demanded by the supervisors. While national law mandates that all

workers spraying pesticides undergo a medical check-up at plantation hospitals with the medical inspector of the plantation, and that only the workers who hold a fitness certificate after the medical examination be allowed to do the pesticide application, the reality is that workers rarely find out the results of the medical tests that are carried out.

### **5.3.2.2. Freely accepted work—no forced or compulsory labour**

According to Article 6.1. of ICESCR, work must be chosen and accepted freely. While tea plantation workers are not forced to work on the plantations against their will or under threat, in reality, there are no real choices or alternatives at hand. Poverty has kept many workers from sending their children beyond primary school. With no educational and alternative-employment opportunity, children and youth join the tea plantation labour force as unskilled workers (or as supplementary help to their mothers). Generation after generation, willingly or unwillingly, workers become “tied” to the plantations. Compounded by the fact that most families are highly indebted, in some cases with rates as high as 100 per cent, many families thus end up living in “debt-bondage”.

### **5.3.2.3. Child labour**

Decent work furthermore implies that there should be no child labour. The CRC mandates that all States to eliminate child labour and provide “adequate opportunity for (their) healthy upbringing and development (Art. 23)”. Child labour is furthermore prohibited by ILO conventions: C10: Minimum Age (agriculture) convention (1921), which bans children under 14 years of age from working in both private and public agricultural undertakings, and Minimum Age Convention 138 (1973), which decrees that 15 years old is the minimum age for employment. In India, there are constitutional safeguards against child labour, for example, Article 24 of the Indian Constitution prohibits children below age 14 to be employed in any factory or mine or engaged in any hazardous employment, and Article 45 guarantees free and compulsory education for all children



The tenure right of the tea workers is entirely attached to the labour they provide; with workers having no legal tenure right, any management staff has the power to evict any worker currently out of work. Photo: Kai Horstmann

until age 14. The PLA also rules out employment of children below age 14. Although the FFM team did not observe child labour at the plantations, some interviewed workers revealed that children were sometimes brought to the field to help their female parents who otherwise would not be able to complete their task work. Furthermore, by allowing children to work at plantations, whether formally or informally, India violates Article 32 of CRC, which “recognize[s] the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”

#### 5.3.2.4. Equal opportunity

As part of accessibility of the right to work, there must be equal opportunity for both men and women to be promoted in their employment to an appropriate higher level of position without discrimination. Although female workers constitute more than half of the total workforce in tea plantations, almost all of them are employed as tea pluckers, engaged also in pruning, transplanting, weeding, etc. Women are excluded from being employed in positions that are managerial, clerical or supervisory in nature and they have no promotional opportunities. They remain permanently as tea pluckers no matter how long they work in the plantation. On the other hand, men have

monopolized all the other existing positions within the plantation and its management (e.g. supervisors and staff), positions which are often better paid.

As a State Party to ICESCR and CRC, and a signatory to ILO Conventions C10 and 138, India and its State Governments must take actions against child labour in line with its human rights obligations, also abiding by Article 24 of its Constitution. Failure to regulate activities and malpractices of tea plantation owners, which limit if not deny equal access to decent work (e.g. no lighter job given to pregnant women, no adequate time to rest, non-provision of protective gear for those workers who spray pesticides), is a breach of a protect-bound obligation under the right to work and a violation of several national acts. Here, the government must ensure that tea plantation managers duly abide by the provisions set out in PLA, the Maternity Benefit Act, and the Insecticides Act, and also hold plantation owners accountable toward its duty under human rights. In addition, the Government of India should fulfil the right to work of tea plantation workers by taking positive measures to assist tea plantation labourers—particularly women, but also youth—to enjoy their right to work by providing technical and vocational training and programmes that can facilitate access to decent employment—without discrimination in position or pay—of their choice.

### 5.3.3. Human right to land and housing

#### 5.3.3.1. Legal security of tenure

One of the core elements of the human right to adequate housing is the security of tenure. As expressed by Raquel Rolnik, the former Special Rapporteur on adequate housing, “insecure tenure arguably annuls all other aspects of adequate housing.”<sup>76</sup> The plantation workers’ security of tenure

is neither guaranteed in the PLA nor in the state rules relating to standards of housing. The land on which the plantation workers reside is “owned” by the management, and it changes hands if and when the company that manages the estate changes. This is despite the fact that in legal terms, in some states such as West Bengal, the State Government is the legal owner of the land and has given the same in lease to the management, and can cancel the lease in case of mismanagement. Despite workers and their families having had a house as their living quarters which had been lived in by their past family members for the last two hundred years, it is the management that controls their house and their homestead. The tenure right of the tea workers is entirely attached to the labour they provide; as long as one person in the family is working in the plantation, the family can reside in the house. Put another way, with workers having no legal tenure right, any management staff has the power to evict any worker currently out of work. This has meant that workers continue to work for pittance wages of 122 INR per day, which is below the statutory minimum wage and often the market wage. This is especially true of women, as men migrate for better wages, but women, the elderly and children continue to stay on, keeping a toehold on the only house that they possess, having lost over the last 200 years their ties to their actual homeland. The workers therefore continue to work in a state of bondage, frightened to organize and fight for better working conditions, as protests can mean eviction from their homes.

The homestead for the tea plantation worker is not just a roof over the family’s head. It is also often a source of food, as it gives the worker the space to keep a few chickens and goats and a cow, and to grow some vegetables to supplement the family’s meagre diet. It is therefore a very precious asset. Eviction can mean the end of community life for the worker, too, as there is no other homeland to go to. The use of land for food and sustenance has been part of the plantation’s history, where earlier small plots of land along with the homestead were given to each family to grow its own food; but with land

<sup>76</sup> United Nations, General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/22/46 (24 December 2012), p. 5.

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becoming a valuable commodity, this land has been forcibly taken back by plantation owners to grow tea, thus leading to much conflict and adversity for the workers and their families.

Enlargement of the family over generations has also led to a housing crisis, as management is not keen to provide houses or land for the next generation, and at the same time does not allow legal purchase.

The abandonment of 16 plantations owned by Duncans in March 2015 led workers to seek their own solution to this problem, where 300 workers occupied about 90 hectares of estate land that had been lying unused for many years. While growing food to deal with the hunger caused by closure is one of the reasons for occupying the land, another reason is to build houses for sons and daughters who can no longer be accommodated in the company-provided homestead.

### **5.3.3.2. Availability of facilities essential for health, security, comfort and nutrition**

Adequate housing must include safe drinking water, adequate sanitation, energy for cooking, heating, lighting, and food storage or refuse disposal. Many workers reported non-availability of drinking water within the vicinity of the labour lines as well as inadequacy of water in quantity and quality. Very often, there were also either no latrines or they were in very poor condition. Moreover, necessary costs for electricity are shouldered by the plantation workers themselves in (almost) all the plantations visited; otherwise, there were complaints of overcharging by management for electricity, where the electricity is supplied through the management. Several workers complained that no firewood, which is the primary source of fuel for workers and their families, was provided by the management, in violation of PLA.

As per the West Bengal Government Report of 2013,<sup>77</sup> 44 tea estates, or 16 per cent of the total number of

estates in the state, do not have a single latrine. A total of 28,519 houses, or 17 per cent, have not yet been connected to electricity. At least 12 estates in the Dooars are in complete darkness.

The report further states that “The Workmen (sic) of Tea Estates suffer badly for supply of drinking water both in quality and quantity. 1,32,379 out of 1,66,591 houses are covered under supply of drinking water by different methods”. This means that the 34,212 workers or 21% have no water supply at all. The Tea Estates of Hill Area, i.e. Darjeeling, Kurseong and Kalimpong sub-divisions, evidence an acute lack of drinking water. Natural spring water and Jhora (mountain or hill springs of water) are the only sources of water. Most of the Tea Estates of Hill Area have not properly distributed the water through pipelines.

As per Section 8 of the PLA, management has to provide drinking water to the workers. In closed and abandoned gardens, the drinking water crisis has reached epic proportions. In such gardens, owing to non-payment of electricity bills by the management, the electricity connection has been disconnected to the buildings of offices, factories, garden hospitals and staff quarters. Most lines had supplied water from the factory pumps, but the pumps are no longer working. The State Government Public Health Engineering Department has not stepped in to remedy this situation. As a result, little or no water is available from deep tube wells or pipes for the workers and their families.

### **5.3.3.3. Habitability**

The PLA lays down the duty of the plantation owner “to provide and maintain necessary housing accommodation for every worker and his family” (Section 15). This applies to both the workers residing inside the plantation and to those living outside but who have worked six months continuously in a given plantation. However, the FFM team observed

<sup>77</sup> Survey of Tea Gardens conducted by Regional Labour Offices under jurisdiction of Joint Labour Commissioner, North Bengal Zone, May 2013.

old and ramshackle housing: ceilings were shabby, walls had fallen down, and sacks were used to cover holes in ceilings. According to the tea plantation workers interviewed, although some houses had been constructed by the management several years ago (some as long ago as 50 years), the employer has not contributed to any repairs of the housing, in one plantation even when houses were badly damaged due to extreme weather. Many workers also claimed that the management had not responded to several of their requests; therefore, they had been compelled to construct their own houses (known as “kutchas”–huts).

According to a West Bengal Government report, in 2013:<sup>78</sup>

- A total of 36 per cent of the permanent workers (95,835 out of 262,426 workers) had not been provided houses.
- A total of six tea estates had not provided even a single house to their workers, while 10 had provided houses to only 20 per cent of their workers.
- The quality of the housing also left much to be desired, as only 44 per cent, meaning less than half) of the workers had “pucca”<sup>79</sup> (permanent) houses (115,689 out of 262,426 workers).
- In the four years from 2009 to 2012, 91 estates, or one third of the total number of tea estates, spent less than 500,000 INR on repairs to houses, with 37 estates spending not a single rupee.
- From 2009 to 2012, “the employers had spent INR 594,908,112 towards construction of new houses, repairing and maintenance. By calculating average cost per annum per worker we find that an amount of 893 INR has been incurred on the subject for each worker per annum which seems to be very nominal.”

While no equivalent survey is available for Assam, the FFM team from their observations and from previous reports and visits found the housing situation even worse in Assam.

Owing to the special legal status of the estates and their workers, coverage under government schemes, which usually applies to the rural poor, is not available. As per the West Bengal Government report, only 3,156 houses have been built from government schemes. The report says: “The permanent workmen (sic) of T.E.s have been considered as industrial workers and they have been enlisted as APL (above poverty line). They are not eligible for Indira Avas Yojana (IAY) (the main Government scheme for rural housing).”<sup>80</sup> In addition, one of the prerequisites of the government schemes is ownership or legal possession of the homestead. As the workers, despite having lived on the estates for 150-200 years, have been given no legal rights, they are unable to access government schemes.

The right to adequate housing is closely related to the right to health, since inadequate housing can have repercussions on the right to health—for example, if houses and settlements have limited or no safe drinking water and sanitation, their residents may fall seriously ill and negatively impact on the people’s physical, mental and social well-being. Proper housing not only protects people against illness and other health hazards, it also can contribute to better health, increased economic productivity and physical and psychological well-being. The State Governments of Assam and West Bengal fail to confer legal security of tenure to tea plantation workers. By denying security of tenure, India, and especially the State Governments of Assam and West Bengal, has breached the respect obligation under the right to adequate housing. Although the PLA clearly sets the duty of the plantation management to construct

<sup>78</sup> Survey of Tea Gardens conducted by Regional Labour Offices under jurisdiction of Joint Labour Commissioner, North Bengal Zone, May 2013.

<sup>79</sup> Pucca house is one built with permanent materials, such as bricks, concrete, stone blocks, and cement.

<sup>80</sup> *ibid.*

housing and provide necessary facilities and services to make housing “available” and “habitable”, both of the State Governments have failed to prevent third parties (plantation owners) from depriving the right to adequate housing by not complying with the PLA. The State Governments as well as central government must adopt legislation or rules to establish that tea plantation owners comply with human rights standards related to the right to adequate housing by guaranteeing full implementation of the PLA and ensuring adequate remedies for non-compliance of the PLA.

### 5.3.4. Human right to health

According to Section 10 of the PLA, medical facilities must be provided to workers and their families. However, as observed during the FFM, such facilities were either not available within the plantation or were inadequate; hospitals and dispensaries were run-down, treatment was not proper, medical personnel were not available, medical equipment was unhygienic and improperly used, no free medicine was available, and medicine was very often limited to permanent (and not casual) workers. Some workers reported that casual workers can avail themselves of medical facilities only if they are accompanied by permanent workers, who can guarantee payment. Although free medication is to be provided to tea workers, very often the medication fee is either deducted automatically from their paycheck or recorded as a debt that the workers must eventually pay. In case of lack of medical facilities at the plantation, or in situations of severe illness, plantation workers are compelled to visit state-owned hospitals, which are usually situated several kilometers away. Paying a visit to a government-run hospital away from the plantation means additional expenses for the workers. In addition, some workers complained that the meal provided at the plantation hospital was often of poor quality. Those who sprayed pesticides pointed out that the results of their medical tests were never shared with them. Some workers also observed how medical facilities are cleaned only prior to scheduled inspections.

By not protecting the casual workers from discrimination vis-à-vis their access to medical facilities, India, and thus the State Governments of Assam and West Bengal, has failed to meet its human rights obligation of non-discrimination with respect to the human right to health. Furthermore, the State Governments of Assam and West Bengal need to ensure that the PLA does not constitute a threat to the availability, accessibility, acceptability and quality of medical facilities. The governments also should guarantee that plantation owners conform to human rights standards when providing medical facilities and health care. In addition, both state governments must protect the right to health of the workers by inhibiting plantation owners from not disclosing the results of pesticide sprayers’ medical check-ups. Finally, the State Governments must fulfil the right to health of all the plantation workers and their families by adopting special measures and programmes which fully ensure the provision of health care, as well as access to health facilities and services, including complete immunization for infants, prenatal and postnatal care for all mothers irrespective of working status, and information and counselling on health-related issues such as safe use of pesticides, exclusive breastfeeding, and best feeding practices for infants and young children.

### 5.3.5. Human right to education

Violations of the human right to education under international frameworks, such as the ICESCR (Art. 13), the CRC (Arts. 28 and 29), CEDAW (Art. 10), as well as under national Indian law, under the Right of Children to Free and Compulsory Education Act 2009, the Midday Meal Scheme, ICDS, and the PLA, were widely reported in the tea gardens visited.

Many workers reported not being able to send their children to school past a certain age because of many different barriers they encountered, including distance, inability to afford expenses associated with an education, lack of transportation, and inadequate facilities and educators, among others.

Education was not available owing to a lack of required facilities and the fact that there seemed to be insufficient resources to support the demand that resulted from the number of children of school-age in tea gardens. Workers reported that there were very few teachers for the number of students and that one teacher taught as many five classes. When schools were available, workers widely reported these to be unacceptable in terms of quality, as teachers were often illiterate, having been hired only because of their relationship with the tea garden's management, and poorly equipped, as they lacked all sorts of equipment expected of a school. The economic accessibility of schools was also a challenge that was difficult for parents employed in the tea gardens to overcome. Workers reported being able to send their children to school only until the eighth, ninth or tenth standard, since families' wages were not high enough to cover school expenses, such as transportation, books, and fees. The situation was made worse by the physical inaccessibility of many schools. Many workers reported schools being located far away from their homes, having to overcome physical barriers in order to reach them, and generally lacking school buses for transportation. In these cases, workers reported having to rely on a paid driver, which results in the additional expenses of having to pay for a driver and fuel in order to send their children to school. In addition, in some cases, workers complained that government schools and private schools were not physically accessible, thus leaving parents with very limited options for their children's education, as they had to end up relying on the schools located within the tea gardens, which many found to be inadequate. Reports<sup>81</sup> of the lack of acceptability of the education being provided, in terms of language and cultural appropriateness, were also brought up during the mission.

With the lack of educational opportunities, children join the tea plantation workforce in violation of international and national laws regarding child

labour, further perpetuating the violations and poverty for future generations. In fact, even those children who manage to complete a full primary education find themselves trapped in the tea gardens, as there is often little opportunity to do skilled work. Finally, the impact of violations of the human right to education go much beyond the lack of employment opportunities, as these can also pose barriers for the ability of the people to realize their RTFN and their right to health, among others.

### 5.3.6. Human right to social security

While the Constitution of India has provisions related to social security, many of the existing programs and schemes provided by the Government are out of reach for the tea plantation workers due to the PLA, which provides for the welfare of plantation workers and regulates the conditions of work in plantations. In this context, the PLA directs the responsibility for providing social security and welfare measures to the tea plantation management. During the FFM, it was observed that the benefits provided for relevant social risks and contingencies, for ex. health care, sickness, old age, family and child support, maternity, and disability are either not available (e.g. sickness, unemployment, and disability), inadequate (e.g. health care, family and child support), or not accessible for plantation workers and their families (e.g. maternity benefits, health care). This lack of access to social security benefits was exacerbated for casual workers. Although the PLA does not differentiate between the benefits that different types of workers are supposed to receive, those who are employed as casual workers reported not being able to access health and welfare provisions of the PLA. Also, many retired workers lamented not receiving pensions, or experiencing delayed payment of their pension, or were simply not aware of the pension itself or how to access it. In addition, in many plantations, workers reported a lack of adequate food rations, in terms of quality and quantity. Also, it was reported that the process for

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<sup>81</sup> This was reported in verbal meeting the FFM team had with local NGOs supporting tea plantation workers and academics working on the subject in Assam.

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acquiring ration cards, which entitles them to receive food rations, took a long time. Even in the case of Hantapara (closed garden), where cases of starvation deaths were reported, the State Government of West Bengal merely provided free rations for two months.

The right to social security guarantees a minimum essential level of benefits to all individuals and families that enables them to acquire at the minimum, essential health care, basic shelter and housing, water and sanitation, food stuffs, and the most basic

forms of education. In spite of poverty and appalling living conditions, access to social security has been denied to tea workers and their families by the State Government of Assam and West Bengal—both due to the non-implementation of the PLA and to the fact that tea plantation workers are not legally entitled to benefits under many of the schemes available to other marginalized groups in India—in clear violation of India’s social security obligations under international and national law.



Although the PLA does not differentiate between the benefits that different types of workers are supposed to receive, those who are employed as casual workers reported not being able to access health and welfare provisions of the PLA.  
Photo: Kai Horstmann



## 6. Conclusions

In the tea gardens of Assam and West Bengal, the RTFN and related rights of tea workers and their families have been relentlessly violated for generations, with no recourse, justiciable or otherwise. Tea workers are not receiving adequate living wages, and their working conditions are harsh and physically arduous. Without protective equipment, those who spray tea bushes are regularly exposed to pesticides. Female tea pluckers—around half of the entire work force—suffer from violations of their human rights. Women plantation workers are subjected to violations of their maternity protection rights and benefits and face rampant discrimination at work; the wages they receive are less than those of men; and have few, if any, promotional opportunities. The homes of tea workers—the so-called “labour lines” —are in dilapidated conditions. Workers’ houses are old without any water supply or sanitation facilities and their children do not receive proper education. Workers’ families toil to educate their children, with a desire that their children should not continue living under the same conditions of life as current and previous generations. Often, parents face huge barriers at every stage of their child’s growth. Health care and medicine are not within easy reach—physically and financially—nor are other basic necessities, such as water, sanitation, or electricity.

Tea workers are at the mercy of tea garden owners and management. For generations, they have been tied to tea plantations, reduced to being bonded-workers, without owning the land they have been working and living on and without any alternative sources of livelihood. Their dependency becomes most obvious when plantations close down—having nowhere to go and having no savings, tea workers are forced to reduce their food intake, while some family members (including children and adolescents) may migrate or manage to take up precarious and irregular jobs near the plantation; others starve to death.

While consumers of tea, in India and abroad, are paying heavily and continuously to access tea, the money flow back is a trickle at the end for tea workers. Fair trade brands, organic tea brands, etc., are not a solution to ensure economic and social justice for tea workers. The Indian government has failed in delivering justice and the current structure in place forces tea workers to find their own way out of the morass they have been in for more than a century, without resources or support.

India is a state party to several international human rights instruments, among which are the ICESCR, CEDAW, and CRC. It has also ratified several ILO Conventions.<sup>82</sup> Furthermore, Article 21 of India’s Constitution guarantees the fundamental right to the protection of life and personal liberty, while directive principles of state policy (Articles 39 and 47) emphasise the State’s duty to uphold the right to an adequate means of livelihood of its people, to raise the level of nutrition and the standard of living of its people as among “its primary duties”. By enacting the PLA, the Government of India formalised the system that had kept workers completely dependent on tea plantation owners by entrusting the tea garden owners the responsibility to provide wages and basic needs to tea workers and their families. In turn, India evaded its obligations to respect and fulfill the workers’ RTFN and related rights and thus, failed to comply with its human rights obligations vis-à-vis tea workers and their families. While there are a plethora of acts, programs, and schemes, they are neither accessible to tea workers nor are they duly implemented, resulting in the perpetuation of these conditions for generations to come. The chronic violations of human rights in tea plantations require a structural change within India that can only be achieved with the central involvement of the tea workers themselves and those who support their struggles on the basis of human rights in holding the Government of India accountable to its human rights obligations.

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<sup>82</sup> For a list of ILO Conventions ratified by India, visit: [www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102691](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691)

## 7. Recommendations

### 7.1. Recommendations for the Government of India

*India, as a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), inter alia, has the obligation to respect, protect and fulfill the right to food and nutrition (RTFN) of tea garden workers and their families in Assam and West Bengal. In this context, India has the obligation to take all necessary steps within the maximum of its available resources toward the progressive realization of the RTFN and related rights, in the context of the interdependence and indivisibility of all human rights and to guarantee that its national laws and policies are in compliance with human rights. India also has particular obligations as a member state of the International Labour Organisation (ILO) and specifically in relation the ILO Conventions it has ratified.*

*In line with these obligations and in light of the findings of the fact finding mission to the tea gardens in Assam and West Bengal, including also meetings with government authorities, institutions and other relevant social actors, the fact finding mission has the following recommendations to the government of India:*

7.1.1. Take immediate actions to guarantee all human rights of tea workers, especially the RTFN, housing, water, sanitation and education for tea workers and their families, in line with international and national law, upon close consultation with the concerned workers.

7.1.2. Pay urgent attention to closed tea gardens that are abandoned by the owners; in this context, the Government of India has the obligations to:

- Provide immediate support to guarantee the RTFN of those at risk, including the provision of food rations;

- Ensure that unpaid wages, gratuity and Provident Fund are duly paid by tea garden owners and prosecute those who fail to fulfill their legal obligations;
- Ensure that backlog of food rations are duly provided;
- Guarantee adequate facilities related to water, sanitation, medical, educational, electricity and housing when owners abandon estates;
- Ensure that, after closure or abandonment, coverage under the PLA does not prevent tea workers from accessing government facilities and with no alternative means of subsistence;
- Facilitate, with the direct participation of tea workers and their unions, the identification and implementation of solutions for the resolution of the structural problems leading to the present situation of hunger and food insecurity. These could include:
  - Revocation or revision of the PLA;
  - Transformation of the tea gardens into cooperatives of tea workers managed by tea workers themselves;
  - Closure of the gardens and transfer of the lands to tea workers for agricultural production.

7.1.3. With immediate effect enforce the PLA and prosecute tea garden owners who fail to comply, also ensure adequate remedy for workers affected by non-compliance.

7.1.4. Conduct with the full participation of tea workers and their unions an assessment of the PLA to measure how effectively it respects, protects, and fulfills the RTFN of the tea workers and their families. Based on this assessment, take all the necessary measures to guarantee that the PLA or any other law or policy that replaces it ensures all human rights of tea workers.

7.1.5. Provide adequate resources for a well-trained, properly resourced state labour inspection service, including gender training of inspectors.

7.1.6. Ensure that wages of tea workers are in line with the Minimum Wage Act and are duly paid with full transparency by the owners of the tea gardens and that the living wage is calculated using accepted norms such as the recommendations of the 15th Indian Labour Conference and Supreme Court orders. Ensure that any wage decided through tripartite agreement must be above this minimum wage and that arbitrary wage deduction and payment on the basis of task rate is prohibited.

7.1.7. Take immediate actions to put an end to all forms of discrimination against women and guarantee all women's human rights, in equal standing to men, including equal rights to the highest attainable standard of health, sexual and reproductive health and the special rights of pregnant and lactating women and their children.

7.1.8. Ensure the recognition, enjoyment and exercise by women of their human right to non-discrimination, particularly in the field of employment, including their rights to promotion opportunities, freedom of association and bargain collectively, in compliance with ILO Conventions and international human rights law, specifically the CEDAW.

7.1.9. Take appropriate measures to modify the social and cultural patterns with a view to eliminate prejudices and all other practices which are based on stereotyped roles for men and women.

7.1.10. Ensure that policies and interventions aimed at addressing malnutrition place the emphasis on guaranteeing the needed social and legal protection against discrimination of women and girls, throughout the life cycle, in particular against child, early and forced marriage.

7.1.11. Ensure that policies capture the significant role that women's good nutritional status, prior to—independently of becoming a mother, has for the potential future offspring.

7.1.12. Duly guarantee all the provisions in the Maternity Benefit Act, ensuring 26 weeks of paid leave, two nursing breaks for every nursing mother until the child is 15 months old, in addition to the normal lunch break and other breaks (Section 11). Ensure employers provide possibilities for lighter work during pregnancy if so wished by the pregnant workers.

7.1.13. Ensure employers provide protection against exposure to insecticides, chemicals and toxic substances which could impact the health of women, especially pregnant and lactating women and young children.

7.1.14. Guarantee that prenatal and post-natal care is provided without delay to all female tea plantation workers.

7.1.15. In line with ILO Convention 184 on safety and health in agriculture, formulate, carry out and periodically review a coherent national policy on safety and health on tea gardens. This policy shall have the aim of preventing accidents and injury to health arising out of, linked with, or occurring in the course of work, by eliminating, minimizing or controlling hazards in the agricultural working environment.

7.1.16. Promote agro-ecological methods of tea growing to ensure elimination of the use of highly hazardous pesticides and encourage bio-diversity.

7.1.17. Where pesticides have to be used, ensure immediate provision of protective equipment and washing facilities to every worker engaged in work that risks exposure to pesticides, chemicals or toxic substances in such a manner as prescribed by national and international laws and guidelines; ensure access to information, proper awareness and training on the use of such personal protective equipment.

7.1.18. Ensure provision of comprehensive medical examinations to workers engaged in work that risks exposure to pesticides and ensure that the results of such examinations are shared with the worker concerned.

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7.1.19. Ensure access to information, proper awareness and training on the use, handling, storage and transport of pesticides, chemicals or toxic substances in accordance with national and international laws and guidelines.

7.1.20. Provide comprehensive universal social security to all rural workers as to enable them regardless of work status to have access to a basic standard of rights. Ensure the implementation of all relevant social security and social protection programs pertinent for the enjoyment of the RTFN of tea workers and their families – for example the National Food Security Act, Mahatma Gandhi National Rural Employment Guarantee Act, Integrated Child Development Scheme, National Social Assistance Programme, Midday Meal Scheme etc. In particular, the Government must ensure that beneficiaries are properly identified and required documents (e.g. ration cards) are duly issued within the ceilings prescribed under the various programs. Similarly, the Government should ensure that tea garden workers are aware of the programs to which they are entitled and how to avail programs themselves.

7.1.21. Ensure that employers meet all their statutory obligations towards workers as provided under the Employers Provident Fund Act, Payment of Gratuity Act,<sup>83</sup> and other applicable labour laws.

7.1.22. Fulfill the progressive realization of the RTFN by adopting policy measures that provide alternative income opportunities and necessary vocational and technical training to tea workers.

7.1.23. Ensure that any decisions in relation to the future of tea gardens, including any structural alternatives, are taken with the involvement of the concerned tea workers during the entire process.

7.1.24. For those tea plantations for which shared-ownership schemes are in place, immediately

provide options to withdraw from such a scheme, in consultation with concerned tea workers. The Government of India should ensure that tea workers are not further coerced into agreeing to the scheme. It should also ensure that workers get transparent information about the profits of the company as shareholders and get their share of the profits as shareholders, in case they decide to continue with the scheme.

7.1.25. Immediately implement measures to ensure security of tenure, including the right to adequate housing, for tea workers and their families.

7.1.26. Guarantee the immediate provision of an alternative plot of land to workers in APPL plantations and provide compensation for the dispossession that took place during the “diversification” process of APPL plantations of agricultural land they had cultivated for generations.<sup>84</sup>

7.1.27. Ratify and implement ILO fundamental conventions (138 and 182) on minimum age and worst forms of child labour and immediately apply their provisions on tea estates to ensure there is no child labour.

7.1.28. Guarantee free and compulsory education to all tea workers’ children between 6 and 14 years in

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<sup>84</sup> See Columbia Law School Human Rights Institute, *More Things Change*, p. 88 - 91. According to the report, a former Managing Director of APPL said in an interview that „(...) workers had been “compensated” for the land that they had lost, and would “benefit” from the fisheries set up there.” The report further continues: “When pressed for details, he acknowledged that there were no specific benefits (...) but that there would be “visible” improvements on the plantations. The report further narrates how some workers were offered casual employment and that “[W]orkers were unable to identify any other “benefit” or “compensation” that came from the fisheries”. Ibid, p. 91.

In a reply to Columbia Law School’s report, APPL writes that the land in question (seizure of workers’ agricultural land for agri business) belongs to the company and was re-acquired by the company. It further states: “Except at 2 estates none of these areas were under cultivation. At Teok alternate land was given and at Nahorani employment was provided.” See: [https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/appl\\_response\\_to\\_report\\_.pdf](https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/appl_response_to_report_.pdf)  
For additional information, see:  
[www.accountabilitycounsel.org/wp-content/uploads/2013/07/APPL-complaint.pdf](http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/APPL-complaint.pdf)  
[www.cao-ombudsman.org/cases/document-links/documents/AppraisalReportCAOAPPLFeb2014.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/AppraisalReportCAOAPPLFeb2014.pdf)  
[www.accountabilitycounsel.org/wp-content/uploads/2013/07/APPL-Policy-Violations-Supplement.pdf](http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/APPL-Policy-Violations-Supplement.pdf)

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<sup>83</sup> An employee who has rendered at least five years of service for e.g. factory, mine, or plantation is entitled to a retirement benefit paid as gratuity to the employees as an incentive to continue working efficiently.

accordance with the Right of Children to Free and Compulsory Education Act.

7.1.29. Reorganise the Tea Board of India to ensure democratic representation of tea workers, ensuring that women who make up the majority of tea workers are fairly represented.

7.1.30. Ensure that all subsidies to tea companies provided by the Tea Board for changing tea bushes or any other reason are allocated based on the compliance of the tea estate with the PLA and other relevant legislation.

7.1.31. Use existing funds from sales and transactions of tea to implement recommendations in this report.

## 7.2. Recommendations for the International Community

### To International Finance Corporation (IFC)

The FFM welcomes the IFC statement that it is “fully aware that there is more to be done to address living conditions and poverty at APPL and throughout the tea industry. We know plantation workers live a fragile, tenuous existence with few opportunities for economic advancement”.<sup>85</sup> However the FFM found only piecemeal attempts to improve living conditions and end poverty at APPL and across the tea industry generally.

7.2.1. The IFC must use its influence and resources, including engaging with relevant UN agencies like the ILO and Food and Agricultural Organisation (FAO); to develop and implement a programme to achieve decent work in tea gardens.

7.2.2. The IFC must report publically in what has been done to train workers to understand the APPL share schemes and its monitoring and grievance

mechanisms and what measure it has taken to ensure that workers who raise issues of concern about the scheme are not subject to retaliation.

7.2.3. The IFC Compliance Advisor Ombudsman team completed a field visit to APPL plantations in August 2015, including meetings with workers and management. Its investigation report must be made public as a matter of urgency.<sup>86</sup>

### To the Committee on World Food Security (CFS)

7.2.4. Using Indian tea plantations as a case study, request the High Level Panel of Experts on Food Security and Nutrition (HLPE) to study how poor working conditions in plantations undermine the RTFN and to make recommendations to ensure plantation workers can fully exercise their rights to food, nutrition, water and sanitation. Encourage all actors of the CFS and the HLPE to highlight the issues of plantation workers in the various work streams and policy processes of the CFS.

### To the CFS’s Civil Society Mechanism (CSM)

7.2.5. The CSM should include in its priorities the topic of food security and nutrition of plantation workers and organise a side event on nutrition during CFS 43 (2016) that includes a presentation on the case of malnourished Indian tea plantation workers and their children.

### To the International Labour Organisation (ILO)

7.2.6. As part of the ILO’s on-going commitments to decent work in rural areas including application of standards covering rural workers, engage with ILO constituents at national and international level to develop a time-bound plan to achieve decent work (and living wages) on Indian tea plantations.

<sup>85</sup> [www.ifc.org/wps/wcm/connect/REGION\\_EXT\\_Content/Regions/South+Asia/Countries/IFC\\_Response\\_Working\\_Living\\_Conditions](http://www.ifc.org/wps/wcm/connect/REGION_EXT_Content/Regions/South+Asia/Countries/IFC_Response_Working_Living_Conditions)

<sup>86</sup> [www.cao-ombudsman.org/cases/case\\_detail.aspx?id=195](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195)

### **To the Food and Agriculture Organisation (FAO)**

7.2.7. Refer this report to the Intergovernmental Group on tea and invite them to include achieving decent work in tea plantations within their remit.

### **7.3. Recommendations to tea garden owners**

7.3.1 Tea garden owners must at a very minimum comply with the PLA.

7.3.2. Tea garden owners must take measures to protect vulnerable workers (scheduled castes and communities on tea gardens, especially women).

7.3.3. Tea Garden owners must take immediate steps to improve occupational health and safety, especially reducing use of highly hazardous pesticides starting with paraquat.

### **7.4. Recommendations to tea packing companies and retailers**

7.4.1. Tea packing companies and retailers must conduct all due diligence requirements under the UN Guiding Principles for Business and Human Rights; the OECD Guidelines for Multinational Enterprises and relevant national law e.g. the UK Modern Slavery Act. They must not hide behind certification schemes and audits.

7.4.2. Tea packing companies and retailers must pay a fair price for their tea which allows decent working conditions and living wages.

7.4.3. Tea packing companies and retailers must take measures to ensure the human rights of vulnerable workers are not violated, and in particular, protect women workers.

### **7.5. Recommendation for other States**

7.5.1. World Bank member States must use their influence within the organisation to ensure that the IFC acts consistent with their human rights obligations (The Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 15). This entails, first and foremost, ensuring that the IFC provides remedies for those negatively affected by the project it supported.

7.5.2. In line with their territorial and extraterritorial human rights obligations, States have to put in place regulatory frameworks that make it a criminal offence for companies, to contribute to human rights abuses within their territory or abroad.

### **7.6. Recommendations for GNRTFN members**

7.6.1. Endorse, support, and disseminate the FFM report.

7.6.2. Advocate for action/implementation of the FFM recommendations.

7.6.3. Raise issues from the FFM report with appropriate national, regional, and international bodies.

7.6.4. Generally be alert to the situation of plantation workers and their nutritional situation and advocate for the realization of their RTFN.

### **Recommendations to the IUF, as member of the GNRTFN**

7.6.5. The IUF should continue to work with tea workers to build a global engagement with the transnational companies that control the tea trade and to ensure tea workers' concerns are heard and to

ensure tea workers' representation in identifying and resolving human rights violations and potential risks for human rights violations in the supply chains of these companies.

7.6.6. The IUF should seek to ensure that tea workers in India contribute fully to the discussion on the future of the PLA. This should include ensuring that the PLA guarantees freedom of association and the right to collective bargaining as defined in ILO Conventions and Recommendations and does not constrain or undermine these rights in any way.

7.6.7. The IUF should seek to ensure that tea workers are free to join democratic and independent unions of their choice and should train women tea workers to participate fully and at all levels of their unions.

## Annex 1 – International Legal Framework

### International standards

#### *The International Covenant on Economic, Social, and Cultural Rights (ICESCR)*

The human right to adequate food and nutrition (RTFN) is a human right recognized in the Universal Declaration of Human Rights (UDHR, 1948) as part of the right to an adequate standard of living (Art. 25 (1)), and it is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. The Covenant's Article 11 contains two separate yet related norms: the right to adequate food (Art. 11 (1)) and the right to be free from hunger (Art. 11 (2)). The right to be free from hunger is the only right in the said Covenant that is termed "fundamental", thus highlighting the essential status of this right.

Furthermore, the human rights principles of interdependence and indivisibility—recognised in the Preamble of the ICESCR, among other instruments—recognise that the human right to adequate food and nutrition will not and cannot be successfully addressed in isolation from other human rights. The systematic conditions of discrimination and marginalization that are behind individuals' and groups' food insecure status must be addressed. In this context, all human rights violations—of civil and political as well as economic, social, and cultural rights must be tackled simultaneously to prevent inadequate interventions that result in short-term fixes that do not truly tackle the structural conditions in place. The root causes can be missed if the links between the RTFN and the various other human rights are not adequately analysed.

Similarly, the rights of peoples to self-determination and to freely disposing of their natural wealth and resources under Article 1 of the ICESCR, as well as the equal access of men and women to all economic, social, and cultural rights under Article 3, are

interpreted as structural conditions relevant for the realization of all human rights contained in the ICESCR, including the RTFN, and reaffirm people's sovereignty framework.

#### *Legal content of the RTFN under ICESCR General Comment 12*

According to General Comment 12 of the ICESCR, the authoritative interpretation of the RTFN, this right "is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement" (Art. 6). The legal core contents of the RTFN are availability, accessibility, adequacy, and sustainability. Not only should food be available from natural resources (through the production of food, fishing, hunting or gathering) or sale in markets or shops, but it should furthermore be accessible to all, both economically and physically speaking. Economic accessibility requires food to be affordable without compromising any other basic needs (e.g. school fees, medicine or rent); thus, the state entity must ensure sufficient minimum wage or social security benefit to allow the procural of nutritious food and other basic needs. Physical accessibility requires food to be accessible to all, also including to those who are physically vulnerable children, the sick, people with disabilities, the elderly, people residing in remote areas, and victims of armed conflicts and natural disasters. In addition, food must be adequate, taking into account, for example, dietary needs (related to age, living conditions, occupation, sex, etc.), safety factors, purity (free from harmful substances such as contaminants coming from industrial or agricultural activities) and cultural acceptability. Finally, food must be sustainable for both present and future generations.

#### *Specific and general human rights obligations*

As a human right, the RTFN imposes three levels of obligations on States: the obligations to respect, protect, and fulfil (facilitate and provide). Under the respect obligation, States must not discriminate against any individuals or groups for any reason, and



States must not destroy a person's or a community's access to food, for example by forcibly evicting people from their lands, forests, or fishing grounds; or by destroying their livelihoods; or by blocking food transports. The protect obligation obliges States to take measures (to the greatest extent possible) to protect against and to redress the consequences of actions by powerful third parties (such as corporations and landlords) which destroy a person's or a community's access to food, and when possible to prevent such actions from occurring. The obligation to fulfil (promote and facilitate) obliges States to introduce, to the greatest extent possible, policies and programmes which address resource and income inequalities, with a view to every hungry and malnourished person having access to diversified healthful and adequate diets; States will use production, wage and social protection mechanisms, as appropriate, to meet this obligation. The obligation to fulfil (provide) also means that whenever an individual or group is unable, for reasons beyond their control, to benefit from the right to adequate food by the means at their disposal, States must provide that right directly; providing resources that allow access to food or outright providing food (or money to buy food). This applies notably to people who are victims of natural or other disasters. In addition, the obligation to fulfil (facilitate) requires States to proactively engage in activities intended to strengthen people's access to and use of resources, and to jobs and other means of ensuring their livelihoods, including their food security. For example, States must take measures to identify marginalized and disadvantaged groups and to design policies and programmes that improve access to resources or income for these groups (e.g. support services for small scale farmers, social protection systems and school food programmes). Furthermore, States are not only obliged to respect, protect, and fulfil the RTFN for their own citizens, but, under their extra-territorial obligations, they also have the duty to take measures to respect and protect all human rights, including the right of individuals in other countries.

While the three levels of obligations just explained are referred to as specific obligations, there are also general obligations, as recognized under Article 2 of the ICESCR, that bind States parties to take concrete actions, to the greatest extent possible, to move expeditiously and effectively towards the realization of the RTFN. Furthermore, States parties should immediately guarantee that no one will become a victim of discrimination on the grounds of race, colour, sex, language, age, religion, political affiliation, or social or economic status, with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of the RTFN or their access to productive resources. Finally, States parties must engage in international cooperation to support less developed States that lack sufficient resources for the fulfillment of the RTFN.

The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights are also relevant for this analysis. While the State, in this case India, is the primary duty-bearer towards its population, other entities, such as corporations and international institutions, have human rights responsibilities and all States have extraterritorial obligations "to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."<sup>87</sup> In the case of tea plantations, States where the parent companies are based also have an obligation under international law to hold these corporations responsible if they commit human rights abuses in India.

### ***Recognition of the RTFN in international instruments***

The RTFN is furthermore formally recognized in various UN conventions, such as the Convention on the Elimination of all Forms of Discrimination against

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<sup>87</sup> See Olivier De Schutter, et al., Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 34 Hum. Rts. Q. 1084 (2012) (including the full text of the Principles).

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Women (CEDAW, Art. 12 on adequate nutrition during pregnancy and lactation and 14 on discrimination against women in rural areas), the Convention on the Rights of the Child (CRC; Art. 24 and 27), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, Arts. 15, 25, and 27). Furthermore, the full realization of the RTFN for all is intrinsically dependent on the observance of all articles of CEDAW, the CRC and ICRMW, among others. India is a signatory to all the aforementioned UN conventions and has also ratified several conventions of the International Labor Organization (ILO), among which are the C011 Rights of Association (Agriculture) (1921), C100 Equal Remuneration (1951), and C141 Rural Workers' Organisations (1975).

Aside from the aforementioned legally binding international human rights instruments, there are also soft-law instruments<sup>88</sup> which are accepted by States and serve as guidance on how States can comply with the obligations in these international instruments related to the realization of the RTFN. One such instrument is the Food and Agriculture Organization (FAO) Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (hereinafter referred as Right to Food Guidelines), adopted in 2004. Guideline (8.1) on access to resources and assets clearly obliges States to respect and protect the right of all to natural resources, and where needed, to carry out land or other policy reforms. Guideline 8 is complemented by guidelines 8A, 8B, 8C, 8D, and 8E. Guideline 8A (8.8) of the Right to Food Guidelines calls for the States to “take measures to encourage sustainable development in order to provide opportunities for work that provide remuneration allowing for an adequate standard of living for rural and urban wage earners and their families, and to promote and protect self-employment (...)”. Guideline 8A (8.9) recommends that States “enhance human

capital through education programmes, adult literacy and additional training programmes, as required regardless of race, color, gender, language, religion, political opinion, national or social origin, property, birth or other status”. Guideline 8.7 calls for States to design and implement programmes that include different mechanisms of access and appropriate use of agricultural land directed at the poorest populations. Guideline 10 reiterates the fact that nutrition forms an essential element of food adequacy which is at the basis of the RTFN. The enjoyment of this human right can only be guaranteed by the consumption of “sufficient and targeted nourishment” at all levels. This guideline therefore urges States to take “measures to maintain, adapt or strengthen dietary diversity and healthy eating habits and food preparation, as well as feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake”. Specifically, the guideline recommends that States promote home gardens, breastfeeding, and dissemination of information on feeding of infants and young children.

Another relevant instrument is the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, adopted on May 2012 by the Committee on World Food Security. With an aim to promote responsible governance of tenure of land, fisheries and forests, these FAO Tenure Guidelines provide a framework for States to apply, to national strategies, policies, legislation, programmes and activities, irrespective of the form of tenure. Guideline 4.8 reaffirms the indivisibility, interdependence and interrelatedness of human rights, thus calling for States to ensure that the governance of tenure of land, fisheries and forests should consider all those human rights with links beyond access to and use of natural resources. Especially with respect to publically owned land, Guideline 8 demands States to determine the

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<sup>88</sup> Soft-law instruments include, for example, recommendations, guidelines, resolutions or declarations.

use and control of public land, fisheries and forests in light of broader social, economic, and environmental objectives and ensure that their actions are consistent with existing national and international law. Furthermore, Guideline 8 requests States to recognize, respect, and protect the legitimate tenure rights (including customary tenure systems) of individuals and communities; it also requests States to develop and publicize policies about allocating tenure rights and in so doing, to render due consideration to local communities that have traditionally used the land. Guideline 12.4 defines responsible (public and private) investment as investment which does “(...) no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. (...) such as poverty eradication; food security and sustainable use of land, fisheries and forests; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable.(...)”. Similarly, Guideline 12.6. further calls States to consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders. Finally, Guideline 20.5 on spatial planning demands States to promote diversified sustainable management of land (...) including agro-ecological approaches and sustainable intensification (...).”

## Annex 2 – Interdependence and Indivisibility of All Human Rights

### Women’s rights

CEDAW, adopted in 1979 and widely ratified by States around the world, including India, is the human rights treaty that affirms States Parties’ obligations to realize women’s full range of human rights. The Convention provides a basis for non-discrimination on the basis of gender and for realizing substantive equality between women and men. While all rights contained in CEDAW are relevant to the RTFN, this human right is explicitly recognized under women’s right to health (Art. 12) and the rights of rural women (Art. 14). Furthermore, CEDAW General Recommendation No. 34 on the rights of rural women explicitly recognizes the RTFN within the framework of food sovereignty, and it includes a holistic approach to the right by specifying women’s rights throughout their lifetime and not solely when mothers or food producers. In addition, CEDAW’s article on employment (Art. 11)–which includes the non-discrimination of women in relation to the right to work, and adequate working conditions (including maternity protection) and opportunities–is also implicitly relevant for the RTFN as those elements are key dimensions of that right. Similarly, Art. 11 also calls for the elimination of discrimination against women in terms of the right to social security, which is complementary to the right to work, to income, and to adequate working conditions, and thus, crucially related to the RTFN.

Similarly, under the CRC, which has also been widely ratified, States parties’ obligations to respect, protect and fulfil the RTFN are described under Articles 24 and 27. More specifically, under Art. 24, States parties “recognize the right of the child to the enjoyment of the highest attainable standard of health”, which is elaborated in the Art. and perceived to encompass the RTFN. Under this Art., the CRC recognizes that

the RTFN in relation to the right to health goes beyond the provision of nutritious food, and it calls for the provision of nutrition information, education of, and general support to those responsible for the children’s care and well-being, in particular mothers and parents. In this context, the CRC states that in addition “to combat[ing] disease and malnutrition ... through the provision of adequate nutritious foods”<sup>89</sup>, States parties shall take steps “to ensure appropriate pre-natal and post-natal health care for mothers” and “ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, [and] the advantages of breastfeeding ...”<sup>90</sup> In its Article 27.3, the CRC further links the RTFN to social protection measures by stating that States shall take steps “to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition ...” It is important to read the CRC in conjunction with CEDAW, as it is important to note that when talking about the maternity-related dimensions of the rights of women, the nutrition aspect must be linked to the realization of all rights of women (self-determination, non-discrimination, sexual and reproductive rights, education, work, inter alia). It is not enough to be well nourished during pregnancy and lactation, but rather all women must be sovereign and well-nourished throughout their life cycles if pregnancy outcomes for women and children are to be improved.

In addition to CEDAW and CRC, the ILO has several conventions that protect women’s RTFN in the context of labour. The ILO Convention on Maternity Protection No. 183 (2000), which has been ratified by 31 countries,<sup>91</sup> provides specific protection in regards

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<sup>89</sup> CRC Article 24.2(c)

<sup>90</sup> CRC Article 24.2(e)

<sup>91</sup> As of February 2016. It should be noted that while India has not ratified the ILO Maternity Convention, many of the 1951 Indian Plantation Labour Act’s Maternity Protection provisions are consistent with the ILO Maternity Convention.

to the amount of leave mothers should receive, the cash benefits during the leave, the medical and health benefits both during and after the pregnancy, breaks for breastfeeding and childcare, and protection regarding employment discrimination because of pregnancy or motherhood. In addition, the ILO Social Security (Minimum Standards) Convention No. 102 (1952) and its Recommendation No. 202 on Social Protection Floors (2012) reaffirm the right to social security as a human right, and the instruments urge all States to establish and maintain their social protection floors comprising basic social security guarantees, which include maternity protection. The ILO's supervisory bodies have also commented on problems including the exclusion or non-coverage of women in the agricultural sector with respect to maternity leave as well as the lack of statistical data on coverage in this sector.<sup>92</sup>

### ***Human right to water***

It is fundamental to recall that water is also an integral part of the RTFN. Water is fundamental for mere living as well as livelihood, and as such is part of the RTFN. Human beings are 66 per cent water, and most of one's meals is actually composed of water. Water is also fundamental for cooking and hygiene, and contaminated water can be a cause of diseases and contribute to the onset of malnutrition. Furthermore, without water, the human organism does not function, eventually dying from dehydration.

The right to water is recognized as part of the right to an adequate standard of living, which is enshrined in legally-binding treaties such as the ICESCR, the CRC (Arts. 20, 26, 29, 46), and CEDAW (Art. 14(2)). Water is not only essential for mere human existence, maintaining human health and well-being, but also indispensable for meeting the human rights standards set out in the UDHR. According to General Comment 15 on the right to water, the

normative content of the right to water includes the availability, quality, accessibility, non-discrimination and information dimensions. The availability dimension refers to a sufficient and continuous water supply for both personal and domestic uses, such as drinking, personal and home hygiene, and washing clothes. In order to establish the quantity of water, the General Comment refers to the guidelines of the World Health Organization which recommend a minimum of 20/40 litres per person per day, but refer to additional water needs depending on conditions such as health, climate and work. The water quality dimension refers to water being "free from micro-organisms, chemical substances and radiological hazards", and to water having an acceptable odor, colour and taste. The accessibility dimension refers to physical accessibility, which means that adequate water facilities and services must be in the vicinity of homes, work and educational places. In addition, under this dimension, physical safety should not be threatened during the access to water services. Economic accessibility refers to the affordability of water and to water connection services for everyone. Non-discrimination refers to the management of water resources and services in accordance with nondiscriminatory principles. Finally, information refers to the obligation of States to ensure that everyone has the possibility to obtain information about water services, management and related issues. The right to water is inextricably linked to the RTFN, as well as the rights to the highest attainable standard of health and to adequate housing, and must be seen "in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity". Furthermore, States must provide nondiscriminating opportunities to access and control water resources and must consider the particular role of women, especially rural women, in connection to the right to water. General Comment 15, Paragraph 6 further reaffirms that water is crucial for the realization of many of the Covenant rights, among others, e.g. water to produce food (right to adequate food), water to ensure environmental hygiene (right to health), and water to secure livelihoods (right to gain a living by work).

<sup>92</sup> See ILO (2012): [www.ilo.org/actrav/info/WCMS\\_175451/lang--en/index.htm](http://www.ilo.org/actrav/info/WCMS_175451/lang--en/index.htm)

### **Human right to work**

Historically, people are forced to work for others not because they want to, or because it is natural, but as a consequence of their separation (usually forceful) from their territories and from their social, cultural, economic and natural resources, reflected in their more or less significant loss of sovereignty and self-determination. The landless and jobless Adivasi forced to work in or attracted to the tea gardens of Assam and West Bengal by the plantation owners were victims of this eviction in colonial or even more recent times, and are still struggling to organize themselves to have their workers' human rights recognized or to recover access to land, water, and seeds.

Decent work<sup>93</sup> has a solid international normative foundation as a human right to which every person is entitled as a means of personal development and inclusion in socio-economic activities. This entitlement has come about in many instances owing to the protracted struggle of workers and their unions, at the cost of much suffering and even lives. The right to decent work and wages is fundamental to the realization of other human rights, including the RTFN, and forms an inseparable and inherent part of human dignity. This right encompasses all forms of work and is an individual right with collective components (e.g. freedom of association). Article 23 of the UDHR guarantees everyone “the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. The ICESCR also includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” (Art. 6) and the right to just and favourable conditions of work which ensure, in particular, remuneration providing all workers, as a minimum, with “... a decent living for themselves and their families, ... fair wages and equal remuneration for work of equal value without

distinction of any kind” (Art. 7). Furthermore, Article 8 recognizes the “[r]ight of everyone to form trade unions and join the trade union of his choice” as well as “the right of trade unions to function freely subject to no limitations other than those prescribed by law.” CESCR General Comment 18, which is the authoritative interpretation of Article 6, outlines the legal content of the right to work and defines the core elements of the right to work as availability, accessibility, acceptability, and quality. Available work means that individuals should be supported through specialized services of States to identify and find available employment. Accessible work refers to non-discrimination on the ground of sex, race, colour, etc.; to physical accessibility to work for persons with disabilities; and to access to information. The acceptability dimension of the right refers to the right to freely choose and accept work. Finally, work must be of good quality, which means that the fundamental rights of workers must be respected, e.g. no forced labour, no child labour, non-discrimination, and guaranteed freedom of association. In the context of the acceptability and quality dimensions, just and favourable working conditions also encompass safe and healthy working conditions, equal opportunity for everyone to be promoted, and rest and leisure.<sup>94</sup>

General Comment 18 also links the human right to work with pertinent ILO instruments. While all ILO conventions, recommendations, indicators and other instruments are relevant to the right to work, in the context of tea workers and the RTFN, relevant ILO conventions are the following: C183 Maternity Protection (2000), C99 Minimum Wage Fixing Machinery in Agriculture and C100 Equal Remuneration (1951), C184 Safety and Health in Agriculture (2001), C102 Social Security Minimum Standards and its Recommendation (1952), No. 202 on Social Protection Floors (2012), C10 Minimum Age (Agriculture) (1921), and C138 Minimum Age (1973).

<sup>93</sup> The International Labour Organisation (ILO)'s decent work agenda includes: creating jobs, decent wages, guaranteeing rights at work, extending social protection, and promoting social dialogue. See: [www.wageindicator.org/main/labour-laws/international-conventions](http://www.wageindicator.org/main/labour-laws/international-conventions)

<sup>94</sup> See Right to Decent Work – Factsheet <https://undg.org/wp-content/uploads/2015/02/HR-Standard-Right-to-decent-work-EN.docx&cd=6&hl=de&ct=clnk&gl=de>

The right to work is essential for the RTFN, as it enables people to feed themselves in dignity instead of having to depend on others to be fed. The RTFN gives special attention to economic accessibility being subsumed in access to resources, and it rejects a narrow understanding of the RTFN as a “package of nutrients”. Access to resources, and economic progress, cannot occur without work or an income. Work and fair remuneration are directly linked to the RTFN, since the right is fulfilled by means of public policies, programmes and laws providing access to resources in the form of agrarian reform, employment generation and employment scheme guarantees, and minimum wages.

### ***Human right to housing***

Both the right to housing and the RTFN are integral parts of the right to an adequate standard of living (UDHR Art. 21.1). The right to housing is furthermore enshrined in the ICESCR Art. 11(1) and CEDAW Art. 5. The core contents of the right to housing are: legal security of tenure of land; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location, and cultural adequacy. Irrespective of the types of tenure,<sup>95</sup> all people should possess a degree of security of tenure which must be protected against forced eviction or other threats. State Parties should take immediate measures aimed at providing legal security of tenure to those individuals and households which lack such protection. Availability of public services, materials, facilities and infrastructure means that all people should have sustainable access to “safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage, and emergency services.”<sup>96</sup> Affordability emphasizes the need for housing-related costs to be commensurate with income levels that do not threaten the attainment of

other human rights and “for those unable to obtain affordable housing”, States are to implement housing subsidies and financing options. In addition, tenants must be protected against unreasonable rent levels or rent increases. Habitability establishes that housing units provide “adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors<sup>97</sup>”. The Committee on Economic, Social and Cultural Rights (CESCR) encourages States parties to comprehensively apply the Health Principles of Housing prepared by the World Health Organization with a view towards reducing disease caused by inadequate housing. Adequate housing must also be accessible to disadvantaged groups (e.g. the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, victims of natural disasters and people living in disaster-prone areas). The CESCR further notes that for many States parties, “increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.”<sup>98</sup> Furthermore, housing should be in a location that permits “access to employment options, health-care services, schools, childcare centres, and other social facilities.”<sup>99</sup> This location requirement is applicable in both rural communities and urban areas. Moreover, housing should not be built on or in immediate proximity to sources of pollution that “threaten the right to health of the inhabitants.”<sup>100</sup> Finally, the cultural adequacy dimension requires that housing be constructed (building materials used) appropriately to respect cultural identity and diversity.

Access to housing may be a precondition for the enjoyment of many related rights, including the RTFN. For example, living in housing without safe drinking water, reliable sanitation, or without electricity can have implications on a person’s right to health, and thus also indirectly on the RTFN. In addition, the possibility of earning a living can be damaged if a

<sup>95</sup> Some examples of types of tenure are: rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements.

<sup>96</sup> General Comment 4, Paragraph 8(b).

<sup>97</sup> General Comment 3, Paragraph 8 (d)

<sup>98</sup> General Comment 4, Paragraph 8 (e).

<sup>99</sup> General Comment 4, Paragraph 8 (f).

<sup>100</sup> *ibid.*

person is forcibly evicted, thus impacting the person's economic ability to enjoy the RTFN.

### ***Human right to health***

There are several international instruments which address the different dimensions of the right to health, among which are Article 23 of the UDHR: "Everyone who works has the right to just and favorable remuneration ensuring ... an existence worthy of human dignity." Article 25 adds that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care." Article 12 of the ICESCR further "recognize[s] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Article 24 of the CRC recognizes the "right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health." This article also calls on States parties to "strive to ensure that no child is deprived of his or her right of access to such health-care services". Article 12 of CEDAW calls on State Parties to "... eliminate discrimination against women in the field of health care". It also calls for the provision of "... access to health-care services, including those related to family planning" and "appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation". The indivisibility of women's human rights is recognized through its interlinked relationship to the RTFN, right to adequate housing, and right to life. The CESCR outlines in its General Comment 14 some of the State's obligations to fulfil the right to health, which includes the provision, for example, of nutritious, safe food and safe drinking water, of basic sanitation, and of adequate housing. It is further important to highlight, in line with General Comment 14, that:

the reference in Article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health

care. On the contrary, the drafting history and the express wording of Article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

In this context, the complementary core elements of the right to health are availability, accessibility, acceptability, and quality. Functioning health-care facilities must be available in sufficient quantity, which includes safe drinking water, adequate sanitation, hospitals and clinics, trained medical personnel who receive domestically competitive salaries, and essential drugs (defined by the WHO Action Programmes on Essential Drugs). All health facilities and services must be accessible to everyone without discrimination, must be within safe physical reach (physical accessibility), must be affordable for all including socially disadvantaged communities, poorer households should not be disproportionately burdened with health expenses compared to others who are economically better-off (economic accessibility), and information concerning health as well as the right to seek and receive must be accessible (information accessibility). However, the provision of adequate health care does not diminish the obligation of States to take all necessary measures, to the greatest extent possible, to tackle the major social determinants of ill health.

Indivisibility, interrelatedness and interdependence of human rights are also highlighted in the links between the RTFN and the right to health. Nutrition is indeed an important component of both rights, but the importance of the underlying determinants of health should not be overlooked. These determinants include more than the mere existence of health facilities and services. For even if a pregnant or breastfeeding woman is guaranteed access to prenatal and postnatal care, if she is denied access to nutritious food or lives in an unhealthy environment



and in insalubrious conditions, she can still be suffering from malnutrition and thus is deprived of the RTFN as well as the right to health.

### ***Human right to education***

The human right to education is enshrined in the ICESCR (Art. 13), as well as in the CRC (Arts. 28 and 29) and CEDAW (Art. 10). As highlighted previously, the realization of the RTFN includes the capability to learn and to interact with the social environment. The realization of the human right to education can serve as a vehicle to uplift those who are economically and socially marginalized, enabling them to escape poverty and to be able to participate in their communities and to obtain self-determination. Education must be available (educational institutions must have the required facilities in sufficient quantity), accessible (to all without discrimination, within safe physical reach and affordable to all), acceptable (content and methods must be relevant, culturally appropriate and of good quality), and adaptable (flexible to the needs of a changing society and community). At the minimum, States must ensure primary school for all in accordance with Article 13 (2) of the ICESCR. This is a prerequisite for guaranteeing people access to traditional and technological knowledge, culture, and material wealth.

### ***Human right to social security***

The human right to social security was first explicitly recognized under the UDHR as the right of everyone to social security and as “indispensable for his dignity” (Art. 22) and also enshrined under the right to an adequate standard of living (Art. 25). This right was subsequently recognized under Articles 9 and 10 of the ICESCR, and the legal content of the right is defined under General Comment 19. The right to social security is crucially linked to the RTFN as well as the right to work. Articles 9 and 10 of the Covenant recognize the right of everyone to social security and to the widest possible protection to families, mothers and children. General Comment 19 of the CESCR outlines the normative content of this human right

and establishes its components as availability, social risks and contingencies, adequacy, and accessibility. In this context, an available social security system refers to a system that is established under domestic law, which public authorities are responsible for implementing, and which is sustainable. The social security system must ensure that benefits are provided for relevant social risks and contingencies, which include health care, sickness, old age, family and child support, maternity, disability, and survivors and orphans. The benefits provided by the system must be adequate in amount and duration and accessible in regards to coverage, affordability, physical access, and participation and information.

Furthermore, General Comment 19 clearly states that it applies when people “are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights” and as such, this right should be seen as complementary to the access to both resources and income and as an important obligation to realise if the RTFN is to be a reality for all people. In this context, the ILO C102 on Social Security (Minimum Standards) (1952) and its Recommendation No. 202 on Social Protection Floors (2012) reaffirm the right to social security as a human right and direct all States to establish and maintain their social protection floors comprising basic social security guarantees, which include maternity protection. The ILO’s supervisory bodies have also commented on problems including the exclusion or non-coverage of women in the agricultural sector with respect to maternity leave as well as the lack of statistical data on coverage in this sector.

## Annex 3 – India’s National Legal Framework

### ***The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989***

The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 provides for stringent punishment for discrimination against Dalits and indigenous peoples, including special investigative procedures and courts for the trial of the accused and rehabilitation of the victims.

### ***Land Acquisition and Rehabilitation and Resettlement (LARR) Act, 2013 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006***

Two noteworthy laws that have especially attempted to ensure people’s rights to natural resources and therefore their rights as food producers are the Land Acquisition and Rehabilitation and Resettlement (LARR) Act, 2013 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The LARR Act ensures that the informed consent of land owners and other people dependent on land (such as fishers, tenants, sharecroppers, agricultural workers, etc.) is obtained before any displacement takes place and also that adequate resettlement plans are drawn up for those displaced. The Recognition of Forest Rights Act on the other hand is even more progressive, conferring rights to forest land for tribes and other forest dwellers who have been residing in forest areas and cultivating land. It also has provisions for granting community rights to forest resources.

### ***The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2009***

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2009 provides a legal guarantee of at least 100 days of unskilled manual employment to every rural household in the country at minimum wages.

### ***The National Food Security Act (NFSA), 2013***

The National Food Security Act (NFSA) aims to make the right to food and nutrition (RTFN) a legal entitlement, thus alleviating hunger in India. The NFSA grants all eligible people—two-thirds of the population—the legal right to receive essential cereals and foodstuffs at subsidized prices, thereby making a significant shift in the safety-net targeting from the current welfare approach to that of a rights-based approach. Under the NFSA, vulnerable groups such as women and children are also entitled to meals free of charge. Implementation of the said Act at state levels is not yet complete; as of date 25 states and union territories have started full implementation of the NFSA. Existing programmes to guarantee food security of the poor will have to suffice until the NFSA is fully applied nationally.

The Indian Supreme Court has also from time to time stepped in to provide stronger legal guarantees for Constitutional provisions on socio-economic rights. The case of PUCL vs. Union of India and others, popularly known as the “Right to food” case, is an example of judicial activism: the court has passed more than 200 orders since 2001 in one of the longest running litigations on economic, social and cultural rights of anywhere in the world. These orders have created legal guarantees for Midday Meal Schemes,

a school meal programme aiming to improve the nutritional status of school-age children by providing free lunches; the Integrated Child Development Scheme (ICDS), which supplies food, primary health care and preschool education to children below six years of age and their mothers, to adults working in various wage employment programmes, to the urban homeless, to people entitled to food grains under the Public Distribution System (PDS), and to pensioners. In addition, the Supreme Court has passed a number of orders related directly to tea garden workers.<sup>101</sup>

There are also numerous government schemes to provide social protection, but which are not legislated and therefore may not have the desired justiciability. For instance, the National Social Protection Scheme allots financial assistance in the form of monthly pensions and schemes under the programme covering persons with disabilities, widows, and destitute people. The National Family Benefit Scheme compensates a family living below the poverty line at the time of the death of a breadwinner.

Tea plantation workers inhabit hamlets called “labour lines”. These living quarters are considered neither rural nor urban, and do not fall under the purview of the local system of governance. Although the Plantation Labour Act, 1951 provides for the welfare of plantation labour and regulates the living and working conditions of the plantation workers, access to welfare and social benefits accruing under government schemes are denied to plantation workers. Despite their level of poverty and appalling living conditions, many workers are not recognized as Below the Poverty Line (BPL).<sup>102</sup> This means that they are not eligible for rations provided under the Public Distribution Scheme nor for any rural subsidized

electrification schemes targeting the BPL population, thus being deprived of rural electricity connections.

### ***Legal framework of pesticide use in India***

In India, pesticides are regulated by various government agencies. The Central Agriculture Ministry regulates the manufacture, sales, transport and distribution, export, import and use of pesticides through the Insecticides Act 1968 and the Insecticides Rules 1971. In effect, pesticide regulation is governed by two different bodies, namely the Central Insecticides Board and Registration Committee (CIB & RC, under the Ministry of Agriculture) and the Food Safety and Standards Authority of India (FSSAI, under the Ministry of Family Welfare). CIB is responsible for advising the Central and State Governments on technical issues related to the manufacture, use and safety of pesticides. In addition, CIB & RC recommend uses of various types of pesticides depending on their toxicity and suitability, the shelf life of pesticides and a minimum gap between the pesticide application and harvest of crops (waiting period). The RC is responsible for registering pesticides after verifying the claims of the manufacturers, importers or formulators related to the efficacy and safety of the pesticides concerned. The RC also approves the use of pesticides for specific crop-pest combinations.

At the state level, State Agriculture Departments (SADs) and/or State Agriculture Universities (SAUs), and at the national level, various Commodity Boards such as the Tea Board and National Horticultural Board make recommendations for farming practices, including pesticide use; these recommendations are supposed to be based on already-approved pesticide-use decisions of the CIB & RC. However, studies show

<sup>101</sup> For ex. in January 2004, a report on starvation deaths in closed gardens was filed by the West Bengal Right to Food and Work Network. The Supreme Court asked the West Bengal Government to take immediate action. In response, the State Government, among others, declared all tea workers in closed gardens to be below poverty line, enabled them to access a number of Government social assistance programmes, and assured the court that it would provide them with cheap Antyodaya rations, work through a rural public works programme, drinking water and medical assistance.

<sup>102</sup> Tea workers have been considered “industrial workers” and therefore considered better off compared to the rest of the population. In Assam, however, many workers seem to have Above Poverty Line (APL) status.

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that the use of many pesticides recommended by SADs, SAUs and Commodity Boards do not adhere to the decisions about pesticide use made by CIB & RC.

Aside from the above mentioned acts, programs, and schemes, there are several national acts (as well as regulations and policies) that are pertinent to the fulfillment of the RTFN of people, especially for the tea plantation workers. These are the Plantation Labour Act, 1951; the Minimum Wages Act, 1948; the Equal Remuneration Act, 1976; and the Maternity Benefit Act, 1961. These acts will be briefly explained below, with an emphasis on how they relate to the RTFN of the tea plantation workers.

### ***The Plantation Labour Act, 1951***

The PLA was passed by the Indian Parliament in 1951. As a labour welfare law, the PLA seeks to ensure the welfare of labourers by regulating the provision of medical facilities, canteens, day-nurseries, recreational facilities, housing, drinking water, sufficient number of latrines and urinals separately per gender, and educational facilities for children of labourers. The PLA requires employers (tea plantation owners) to provide these welfare measures, which are statutory entitlements. The PLA also allocates power to State Government to appoint chief inspectors of plantations as well as other people subordinate to the chief inspector to ascertain whether the provisions of the PLA are fully implemented by plantation managers (Sec 5 of the PLA). Furthermore, a penalty of a fine of 500 INR and/or three months of imprisonment is imposed for violation of the provision (Chapter 7, Art. 35). The right to file a complaint rests solely with the Chief Inspector; neither the plantation worker nor the Union has the prerogative to file a complaint and launch a legal process against a plantation manager/

owner. There was no consultation with the labourers when the PLA was drafted, and many scholars argue that the PLA was enacted from the “benefactor’s perspective”.<sup>103</sup> According to J. John and P. Masingh, these measures were not entitlements, but “instruments of enticements the planters offered to retain workers in the plantations”.<sup>104</sup> Moreover, temporary or casual workers, who comprise more than 40 per cent of the daily workers in tea plantations, are not covered under the PLA. The amendment of the PLA in 2010 includes a clause which defines what a worker is (“a person employed on contract for more than sixty days in a year”); however, it is difficult to claim the benefits if denied. Furthermore, under the PLA, State Governments have been empowered to take all feasible steps to improve the lot of the plantation workers. Although the passing of the PLA brought some improvements in the plantations sector by creating conditions for organizing workers and facilitating the establishment of trade unions, potential benefits remain unfulfilled, mainly because of the non-cooperation of plantation managers, who seemingly exploit the ignorance of workers about their entitlements under the law, and because of government inaction. From a human rights perspective, these entitlements cannot be interpreted as being fully compliant with the framework, since they are embedded in a legal framework that in practice means a life of bonded labour and captivity for tea workers.

### ***The Tea Act, 1952***

The Tea Act, 1952 provides for “the control by the Union (central government) of the tea industry, including the control, in pursuance of the International Agreement now in force, of the cultivation of tea in, and of the export of tea from, India and for that

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<sup>103</sup> See for example, R. Rai and S.R. Chakraborty: “Tea Leaves and a Bud: Tea and Social Justice in Darjeeling”, p. 84, in P.K. Bose and S. K. Das (Editors): “Social Justice and Enlightenment. West Bengal”. Sage Series in State of Justice in India: Issues of Social Justice (Vol. I, Series Editor R. Samaddar).

<sup>104</sup> J. John and P. Masingh: Plantation Labour Act 1951 and Social Cost—The Case Of Tea Industry (NRPPD Discussion Paper 26, p. 19).

purpose to establish a Tea Board and levy a duty of excise on tea produced in India”.<sup>105</sup> Under Sections 16A to 16E, the Act gives powers to the Tea Board to enquire into the affairs of owners, to intervene in the affairs, to ensure that management takes corrective measures, and even to take over the estate when there are severe problems in its running both from the industry’s point of view and from the point of view of the welfare of the workers.

#### ***Minimum Wages Act, 1948 and Equal Remuneration Act, 1976***

As one of the earliest labour acts in India, enacted immediately after independence, the Minimum Wages Act owes its existence to Article 43 of the Constitution under the Directive Principles, wherein is written that “The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas”.

Furthermore, Article 39 of the Constitution emphasizes State policy to secure the right to an adequate means of livelihood equally to both men and women (Art. 39 (a)) and to ensure equal pay for equal work for both men and women (Ar. 39 (d)). Applicable to the unorganized sector, the Minimum Wages Act 1948 authorizes both Central and State Governments to fix minimum wages for the different scheduled employments—both agricultural and non-agricultural. The Act further mandates relevant governments to revise the wages every five years. The Act provides a

statutory wage, payments below which are illegal. This wage differs from state to state and from profession to profession. There are clearly laid-out provisions for wage computation, revision and enforcement. The calculation is closely bound to the amount of food that a family needs to consume and to other daily necessities like clothes, housing, health, education, etc. Unfortunately, unions, the Government and employers have agreed to exclude the tea industry in West Bengal and Assam from being covered by this Act. India has other labour legislation protecting the rights of workers in the formal sector, which includes the tea industry. The Employees Provident Fund and Miscellaneous Provisions Act (1952), the Payment of Gratuity Act, the Payment of Wages Act, etc., all ensure that workers receive pensions and other forms of adequate compensation for years of service to the industry.

#### ***Maternity Benefit Act, 1961***

The main objective of the Maternity Benefit Act, 1961 is to maintain the health of a pregnant female and her child. It thus grants employees mandatory paid leave as well as cash and non-cash benefits, applicable to every factory, mine or plantation, and to every working establishment wherein 10 or more people are employed. A pregnant employee is granted up to six weeks of paid leave before delivery and the same amount of paid leave after delivery. Additionally, female employers are entitled to a medical bonus of 1,000 INR. In case of miscarriage, there are six weeks of leave with pay. Aside from these cash benefits, there are non-cash benefits, which include light work for one month (upon request), two 15-minute nursing breaks during the first 15 months of the child’s life, and the guarantee that no female employee can be discharged or dismissed during maternity leave. In

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<sup>105</sup> THE TEA ACT, 1953, No. 29 of 1953.

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case of contravention, there is a minimum prison sentence of three months, with a maximum of one year. Similarly, there is a fine of between 2,000 and 5,000 INR. At present, there are discussions to increase the maternity leave for women employed in private firms from the current 12 weeks to 26 weeks.<sup>106</sup>

### ***National Rural Health Mission (NRHM)***

Launched in April 2015, the National Rural Health Mission (NRHM) seeks to provide “accessible, affordable and quality health care” to the rural population, with a focus on the vulnerable groups. The National Urban Health Mission combines with the NRHM to make up the National Health Mission (NHM). In order to respond to the dire state of health services, the State Government of Assam has extended NRHM programmes to tea plantation workers through public/private partnerships set forth in memorandums of understanding.

### ***The Right of Children to Free Compulsory Education Act, 2009***

The Right of Children to Free and Compulsory Education Act, 2009 guarantees free and compulsory education to all children in the age group of six to fourteen years.

### ***The Right to Information Act, 2005***

The Right to Information Act, 2005 promotes transparency and accountability regarding the work of public authorities by giving citizens the right to demand information from the institutions of government and those deemed to be public authorities under the Act.

Despite existing laws and legislation, there is a huge overarching gap in all these laws and legislation; legal measures that hold estate owners liable for their actions as investors and employers are largely missing. Similarly, whatever enforcement of legislation that does exist is highly inadequate. Thus, employers in tea plantations have been known to openly siphon off profits from their estates, investing them elsewhere. Tea bushes have been left to grow old, factories have become more and more dilapidated, productivity has fallen. Employers have then started defaulting on paying workers their wages, Provident Fund installments, rations, etc., in order to ensure that they still are able to siphon off some money from the estate. When even this has become impossible to do (for example, because of huge defaults and mild protests from workers) owners have abandoned the estates, throwing thousands of workers and their families into destitution. The Tea Act, despite its strict provisions, has been rarely used to remedy the situation. Where it has, it has generally found the courts hostile to workers’ rights, with that judiciary body seemingly considering employer rights superior to workers’ rights.

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<sup>106</sup> <http://indianexpress.com/article/india/india-news-india/govt-to-increase-maternity-leave-in-pvt-sector-from-12-to-26-weeks>

## **Annex 4 – List of Participants (Name/Organisation)**

Sue Longley/IUF  
Svetlana Boincean/IUF  
Shruti Patidar/IUF  
Jashmi Suna/IUF  
Raja Sona/IUF  
Uttam Lohar/IUF  
Anuradha Talwar/Right to Food Campaign India and  
PBKMS  
Dr. Flavio Valente/FIAN International  
Yifang Tang/FIAN International  
Denisse Cordova/FIAN International  
Alejandra del Rey/FIAN International  
Gorkana Rupakheti/FIAN Nepal  
Dileep Kumar/PAN India  
Dr. Narasimha Reddy/PAN India  
Dr. Parbati Sengupta/IBFAN  
Shyam Kumar Basnet/Right to Food Nepal  
Zakir Hossain/National Campaign for Right to Food &  
Social Security (RTF&SS)

## Annex 5 – Charter of Demands

By the representatives of the workers unions from Nowera Nuddy Tea Estate and Damdim Tea Estate, sent to the General Manager of APPL on March 2, 2015.

Recd. on  
02/03/2015 at  
8:15 A.M.  
Nishu  
02/03/15.  
Acting Manager  
NOWERA NUDDY TEA ESTATE

To  
The General Manager  
Amalgamated Plantations (P) Ltd.  
Guwahati, Assam 781005

Forwarded through the Manager,  
NOWERA NUDDY  
Tea Estate

Subject: Charter of Demands of worker. DATE 02.03.2015

Dear Sir,

This is for your kind information that we the worker of Tata group's garden in Duars are demanding some of our primary and secondary demands in front of you. The charters of demands are as follows:

**Charter of Demands**

1. WAGE
  - a) Provide Rs.322/- to each worker.
  - b) ELP revision of extra leaf paisa in accordance to wage.
2. HOUSING
  - a) Provide house to each worker
  - b) Renovation of old houses in each garden
  - c) Provide firewood to each worker
3. HEALTH, SAFETY & SECURITY
  - a) Provide watch house, sanitation facilities and rest house in each section of gardens
  - b) Appoint M.B.B.S. doctors in each garden's hospitals
  - c) Provide new ambulances according to workforce
  - d) Food expenses (Rs. 80/day) in case of medical checkup other than garden's hospital and wages for the attendant.
4. ADEQUATE FOOD & FOOD SECURITY
  - a) Provide division wise pump house to each garden and Safe drinking water for workers
  - b) Provide safe 500 gram tea for each worker
  - c) Provide cooking gas to each family in all garden ✓
5. PAID LEAVE
  - a) Double pay in case workers are working on weekly offs or holidays
6. EDUCATION AND COMMUNITY DEVELOPMENT
  - a) Provide new school buses in each garden

01/03



- b) Open high school In each garden
- c) Open computer centre in each garden
- d) Provide new canter vehicle in each garden
- e) Arrangement Electricity Facilities by Govt. in each garden
- f) Provide street light in each line of garden

**7. EMPLOYMENT**

- a) Fill vacant posts of staff and sub staff in each garden
- b) Give permanent employment to 2 sons in case one parent retires or diseased
- c) Fill up replacement at the place of long absenteeism or dismissed

**8. NON-DISCRIMINATION**

- a) Provide same benefits to temporary workers as permanent workers – sick leave, ration, wet protective gears, mobile crèche and maternity benefits , weekly medical checkup for spraying worker

**9. OTHER SERVICES**

- a) Establish church, temples and cremation area in each garden

So, we would be highly thankful to you if take necessary action from your end as soon as possible.

Thanking You!

Copy forwarded to:-

- I. Assistant Labour Commissioner, Mal, Jalpalguri
- II. Secretary, DBITA, Binnaguri
- III. The General Secretary, Central Committee, PPWU, PTWU, Nagrakata.

02.01.12

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1. Nowera Nuddy Tea Estate	<i>Kaibab Ore</i> Secretary PPWU/PTWU Secretary/President Nowera Nuddy TE Unit PPWU	<i>Suresh oraoy</i> President PPWU/PTWU Secretary/President Nowera Nuddy TE Unit PPWU
2. Damdim Tea Estate	<i>Shir Chandan Barick</i> Secretary PPWU/PTWU <i>Mr. Anischaada Chik Barick</i> Secretary P. T. W. U. Damdim T.E.	<i>Ankit Topro.</i> President PPWU/PTWU
3. Rangamattee Tea Estate	<i>Edowa ORAO</i> Secretary PPWU/PTWU P.T.W.U RUNGAMUTTEE TE UNII Mal, Jalpaiguri	<i>Pradyumant Chow</i> President PPWU/PTWU P.T.W.U RUNGAMUTTEE TE U Mal, Jalpaiguri
4. Batabari Tea Estate	<i>Suklal Santhel</i> Secretary PPWU/PTWU	<i>Milky Muzum</i> President PPWU/PTWU

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The Global Network for the Right to Food and Nutrition is an initiative of public interest civil society organizations and social movements (peasants, fisherfolk, pastoralists, landless people, consumers, urban people living in poverty, agricultural and food workers, women, youth, and indigenous peoples) that recognize the need to act jointly for the realization of the human right to adequate food and nutrition. The Network opens a space for dialogue and mobilization of its members to hold States accountable for their obligations to realize this right; it supports the struggles of social movements and groups fighting against the violation of this right; it supports and does its best to protect human rights defenders against repression, violence and criminalization; and it moves to end the impunity of state-condoned violations and of non-state human rights abusers.

